



Welcome to the October 2022 Mental Capacity Report. Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: Capacity to make decisions regarding hoarding, parental consent for deprivations of liberty, and Article 2 and informed consent.
- (2) In the Property and Affairs Report: A new guidance notes on selling properties;
- (3) In the Practice and Procedure Report: The Court of Appeal weighs in on the test for injunctions in the Court of Protection, and a new Civil Justice Council working group considers litigation capacity in civil proceedings;
- (4) In the Wider Context Report: Withdrawal of treatment; jurisdiction of the Ombudsman; mental capacity and Article 14 status; and 'Shedinars' galore.
- (5) In the Scotland Report: An update on the Mental Health Law Review

You can find our past issues, our case summaries, and more on our dedicated sub-site [here](#), where you can also subscribe to this Report, and where you can also find updated versions of both our capacity and best interests guides.

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Jill Stavert

The picture at the top, "Colourful," is by Geoffrey Files, a young autistic man. We are very grateful to him and his family for permission to use his artwork.

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### Scottish Mental Health Law Review

The Scottish Mental Health Law Review (Scott Review), which ran from May 2019 until September 2022, published its [final report](#) and recommendations on 30<sup>th</sup> September. The review was chaired by Lord John Scott KC who with an Executive Team comprising Alison Rankin, Karen Martin, Graham Morgan, and Professors Jill Stavert and Colin McKay conducted the review with the support of a Secretariat. It consulted widely with stakeholders with lived experience and unpaid carers at the centre of its activities.

The broad remit of the Scott Review was:

*‘...to improve the rights and protections of persons who may be subject to the existing provisions of mental health, incapacity or adult support and protection legislation as a consequence of having a mental disorder’*

and its final report, of over 900 pages and with over 200 recommendations, its chapters cover consideration of law built on equality and human rights, the purpose of the law relating to persons with mental and intellectual disabilities and what it should look like. It then goes on to consider specific aspects of such law including supported decision making, specialist support in legal and administrative proceedings, economic, social and cultural rights, the role and rights of unpaid carers, Human Rights Enablement, Autonomous Decision Making and deprivation of liberty, reducing coercion, forensic mental health law, accountability, children and young people, and adults with incapacity and adult support and protection legislation.

Very much part of an ongoing process, its recommendations encompass the short, medium and long term with many things that can be done to improve human rights compliance, including moving closer to CRPD compliance, in advance of actual legislative change.

The extent to which the Review’s recommendations are embraced and adopted largely depends on the Scottish Government whose response is currently awaited.

*Professor Jill Stavert*

### Mental health law reform – the Scottish perspective: in conversation with Professor Jill Stavert and Professor Colin McKay

In this ‘in conversation,’ [Alex speaks with Professors Jill Stavert and Colin McKay](#), both members of the executive team of the [Scottish Mental Health Law Review](#) chaired by (Lord) John Scott QC. The Review reported in September 2022, and our discussion explores why the Review was needed, how it was carried out, and its key recommendations. They look in particular at what it means to carry out a review seeking to implement positive rights in the mental health and capacity sphere.

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Victoria regularly appears in the Court of Protection, instructed by the Official Solicitor, family members, and statutory bodies, in welfare, financial and medical cases. Together with Alex, she co-edits the Court of Protection Law Reports for Jordans. She is a contributor to 'Assessment of Mental Capacity' (Law Society/BMA), and a contributor to Heywood and Massey Court of Protection Practice (Sweet and Maxwell). To view full CV click [here](#).

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Neil has particular interests in ECHR/CRPD human rights, mental health and incapacity law and mainly practises in the Court of Protection and Upper Tribunal. Also a Senior Lecturer at Manchester University and Clinical Lead of its Legal Advice Centre, he teaches students in these fields, and trains health, social care and legal professionals. When time permits, Neil publishes in academic books and journals and created the website [www.lpslaw.co.uk](http://www.lpslaw.co.uk). To view full CV click [here](#).

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Katie advises and represents clients in all things health related, from personal injury and clinical negligence, to community care, mental health and healthcare regulation. The main focus of her practice however is in the Court of Protection where she has a particular interest in the health and welfare of incapacitated adults. She is also a qualified mediator, mediating legal and community disputes. To view full CV click [here](#).

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Steph regularly appears in the Court of Protection in health and welfare matters. She has acted for individual family members, the Official Solicitor, Clinical Commissioning Groups and local authorities. She has a broad practice in public and private law, with a particular interest in health and human rights issues. She appeared in the Supreme Court in *PJ v Welsh Ministers* [2019] 2 WLR 82 as to whether the power to impose conditions on a CTO can include a deprivation of liberty. To view full CV click [here](#).

**Arianna Kelly:** [arianna.kelly@39essex.com](mailto:arianna.kelly@39essex.com)

Arianna has a specialist practice in mental capacity, community care, mental health law and inquests. Arianna acts in a range of Court of Protection matters including welfare, property and affairs, serious medical treatment and in matters relating to the inherent jurisdiction of the High Court. Arianna works extensively in the field of community care. To view a full CV, click [here](#).



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**Simon Edwards:** [simon.edwards@39essex.com](mailto:simon.edwards@39essex.com)

Simon has wide experience of private client work raising capacity issues, including *Day v Harris & Ors* [2013] 3 WLR 1560, centred on the question whether Sir Malcolm Arnold had given manuscripts of his compositions to his children when in a desperate state or later when he was a patient of the Court of Protection. He has also acted in many cases where deputies or attorneys have misused P's assets. To view full CV click [here](#).



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## Scotland editors

**Adrian Ward:** [adrian@adward.co.uk](mailto:adrian@adward.co.uk)

Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services to the mentally handicapped in Scotland; honorary membership of the Law Society of Scotland; national awards for legal journalism, legal charitable work and legal scholarship; and the lifetime achievement award at the 2014 Scottish Legal Awards.



**Jill Stavert:** [j.stavert@napier.ac.uk](mailto:j.stavert@napier.ac.uk)

Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Capacity Law and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee. She has undertaken work for the Mental Welfare Commission for Scotland (including its 2015 updated guidance on Deprivation of Liberty). To view full CV click [here](#).



## Conferences and Seminars

### Forthcoming Training Courses

Neil Allen will be running the following series of training courses:

30 November 2022	BIA/DoLS Update Training
13 January 2023	Court of Protection training
26 January 2023	MCA/MHA Interface for AMHPs
16 March 2023	AMHP Legal Update
23 March 2023	Court of Protection training

To book for an organisation or individual, further details are available [here](#) or you can email [Neil](#).

### 25 October 2022: Understanding the Law around Dementia

Are you a carer or partner of someone with dementia in the North West of England? Neil Allen with university students and lawyers from Simpson Millar solicitors will be offering free legal information and advice from 1-4pm at the Greater Manchester Law Centre. There will be four talks and drop-in advice clinics (and refreshments!). No need to book, but please do come along for what will be a super afternoon. Further details are available [here](#).

### **National Mental Capacity Forum new series of webinars: starting 20 October with DNACPR and the MCA**

#### **NEVER STOP LEARNING ABOUT MENTAL CAPACITY:**

The National Mental Capacity Forum is pleased to announce the launch of a second series of National Mental Capacity Webinars, produced in collaboration with the Autonomy Project at the University of Essex, and with support from the MoJ and DHSC. Born of necessity during the COVID-19 pandemic, National Mental Capacity Webinars provide a forum for free training and discussion for anyone involved in applying the Mental Capacity Act in practice. These 1-hour webinars bring together experts to address specific challenges relating to the MCA, and provide an opportunity for participants to ask questions and raise concerns, shaping the agenda for future webinars. The webinars are designed for new, novice and experienced practitioners. There are many paths to learning and the webinar series will provide learning prompts for individual professionals, professional associations and networks.

The first webinar in the new series will take place on **Thursday, 20 October, 2022, 1-2pm**. It will focus on the application of the Mental Capacity Act to decisions around the initiation of Cardiopulmonary Resuscitation, along with practices concerning DNACPR (Do Not Attempt Cardiopulmonary Resuscitation). We will review existing law regarding DNACPR, launch a new set of educational videos, and address some hard questions about the use of best-interests decision-making in the context of cardiac arrest. Confirmed speakers include: Karen Chumbley (Clinical Lead for End-of-Life Care; Suffolk & North East Essex ICS); Margaret Flynn (Chair, National Mental Capacity Forum); Alex Ruck Keene (Barrister, 39 Essex Chambers); Prof Wayne Martin (Director, Essex Autonomy Project) and Ben Troke (Partner, Hill Dickinson solicitors).

**HOW TO REGISTER:** Participation is free but places are limited. **Advance registration is required.** To register, please follow [this link](#) and take a few moments to answer the registration questions.

### **Advertising conferences and training events**

If you would like your conference or training event to be included in this section in a subsequent issue, please contact one of the editors. Save for those conferences or training events that are run by non-profit bodies, we would invite a donation of £200 to be made to the dementia charity [My Life Films](#) in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

Our next edition will be out in November. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Report in the future please contact: [marketing@39essex.com](mailto:marketing@39essex.com).

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