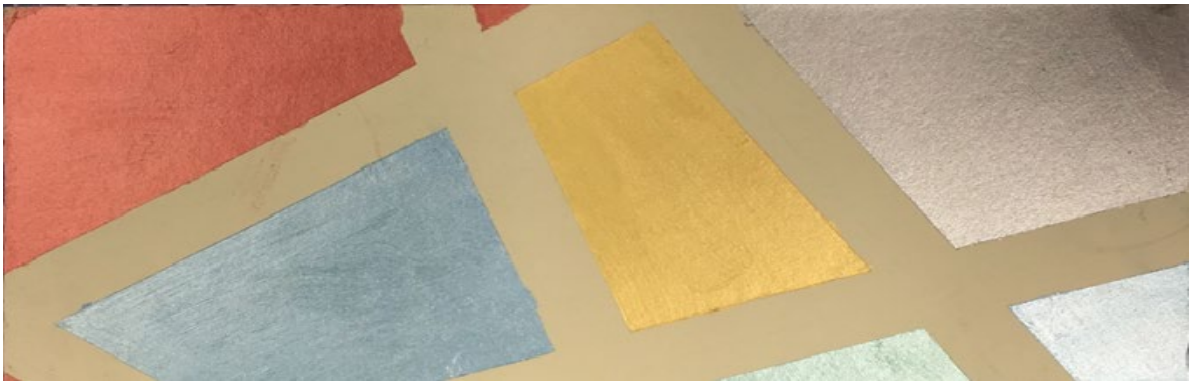


Welcome to the March 2025 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: insight into the proper place of insight, best interests decision-making and good clinical governance, and anorexia and the changing calculus of decision-making;

(2) In the Property and Affairs Report: the Court of Protection's (international) jurisdiction over children;

(3) In the Practice and Procedure Report: fees changes relating to the Court of Protection and the OPG guidance on disclosing visitors' reports;

(4) In the Mental Health Matters Report: the Mental Health Bill progresses and the independent investigation into the care and treatment of Valdo Calocane;

(5) In the Children's Capacity Report: why the report is named as it is, the Court of Appeal confirms that local authorities cannot consent to the confinement of children in care, and guidance for judges writing to children;

(6) In the Wider Context Report: the updated Code of Practice on diagnosing death and restraint in Northern Ireland.

(7) In the Scotland Report: no hard news, but the way ahead for AWI reform becomes clearer, and unhelpful uncertainty about powers of attorney.

The progress of the Terminally Ill Adults (End of Life) Bill can be followed on Alex's resources page here.

You can find our past issues, our case summaries, and more on our dedicated sub-site here, where you can also sign up to the Mental Capacity Report.

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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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Fees changes in the Court of Protection

From 1 April 2025, and subject to Parliamentary approval, with amendments to the Court of Protection Fees Order 2007 and the Civil Proceeding Fees Order 2008 respectively, fees relating to the Court of Protection will change as set out below.

Application fee: £421 (was £408)

Appeal fee: £265 (was £257)

Hearing fee: £259 (was £494)

On the filing of a request for detailed assessment for Court of Protection costs: £99 (was £96)

Appeal against a Court of Protection costs assessment decision: £79 (was £77)

Request to set aside a default Court of Protection costs certificate: £74 (was £72)

Short note: capacity and contempt

Issues of litigation capacity and contempt arose recently before the Court of Appeal in *Macpherson v Sunderland City Council* (in which a further judgment of Theis J is awaited). They also arose for consideration in *Derbyshire City Council v Grundy* [2025] EWCOP 1 (T1), a decision concerning committal to prison for contempt arising out of proceedings before the Court of Protection. In that case, DJ Davies had to consider whether the defendant had capacity to understand the terms of the injunctions that he had breached, the terms of the suspended sentence order he had breached, as well as capacity to conduct the contempt proceedings. The judgment provides a useful example of the level of detail required both as regards the assessment by relevant professionals and, we would suggest, the court in reaching a determination as to such issues. DJ Davies found that the defendant did have the requisite capacity. The second reported case in the sequence [2025] EWCOP 2 (T1), in which DJ Davies undertook the sentencing exercise, involving the (relatively unusual) sentence of immediate imprisonment.

Court of Protection visitors and the release of their reports

The Office of the Public Guardian (OPG) has published an online guidance document, *Court of Protection visitors and the release of their reports*. After explaining the purpose and operation of Court of Protection visitors and special visitors, the Guidance states that '*publication of visit reports is generally not permitted by the Office of the Public Guardian (OPG)*' and approval should be sought from the OPG before publication. Visitor reports are generally given to the court and given to the parties and under COPR 5.9, '*someone who is not a party to the case can apply to the court for a copy of a report, though the court may only provide an edited version…Reports produced for the court can only be released with its permission.*' Visitor reports may be filed in Court of Protection proceedings; the OPG may

consider protecting the identity of people who supplied information to the visitor if disclosure would lead to physical or psychological harm.

Under Regulation 44(5) of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007, the OPG may release a copy of a visit report to '*anyone interviewed while preparing the report, inviting them to comment on it.*' A report may also be released to another visitor '*who is visiting people in the same case.*' Deputies who have been subject to an assurance visit may request a copy of the visit report.

The Guidance further states that the OPG may release a copy of the report to '*people or organisations included in a Public Guardian application to the court or supplied to the police or a local authority during an investigation*' as well as to health bodies and care providers. The rationale for releasing a report to local authorities, health bodies and care providers is given as the power (under s.58(2) MCA) given to the OPG to cooperate in the discharge of its functions *'with any other person who has functions in relation to the care or treatment of P'*.

There is no explanation given as to the basis upon which reports can be provided to the police. We would sound a very strong note of caution about taking this step without formal authorisation, at least if the report has been prepared for Court of Protection proceedings. We would, in particular, note that Keehan J refused permission to the police to see psychological reports prepared for purposes of proceedings before the Court in *Re AB (Court of Protection: Police Disclosure)* [2019] EWCOP 66.

People who have been the subject of reports (or their attorneys or deputies on their behalf) may make a subject access request for the reports.

The Guidance gives circumstances when a report may not be released:

> *The Public Guardian can choose not to release a report if it contains information that:*
>
> - *might go against a third party's data protection rights*
> - *was told to the visitor in confidence by a third party*
> - *could be harmful to anyone named in the report*
>
> *The Public Guardian can also release a report with parts removed, or redacted. For example, to protect the identity of someone making an allegation of abuse.*

The Guidance sets out a process for requesting a copy of a report.

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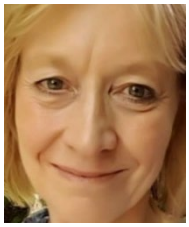
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Conferences

Members of the Court of Protection team regularly present at seminars and webinars arranged both by Chambers and by others.

Alex also does a regular series of 'shedinars,' including capacity fundamentals and 'in conversation with' those who can bring light to bear upon capacity in practice. They can be found on his website.

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 April. 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.

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