



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

- (1) In the Health, Welfare and Deprivation of Liberty Report: time-specificity of capacity (again), a Welsh primer on key caselaw and urban myths around s.4B MCA 2005;
- (2) In the Property and Affairs Report: two guest articles from new members of the Court of Protection on attorney elephant traps;
- (3) In the Practice and Procedure Report: the purpose of transparency and the length of restrictions, and the contempt consequences of being found to have capacity;
- (4) In the Mental Health Matters Report: progress of the Mental Health Bill and the CRPD and the United Kingdom in a stand-off;
- (5) In the Children's Capacity Report: the Law Commission's Disabled Children's Social Care report and improving the outcomes of children in complex situations.
- (6) In the Scotland Report: an update on AWI reform.

We do not have a Wider Context Report this month, but 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](#).

#### Editors

Alex Ruck Keene KC (Hon)  
Victoria Butler-Cole KC  
Neil Allen  
Nicola Kohn  
Katie Scott  
Arianna Kelly  
Nyasha Weinberg

#### Scottish Contributors

Adrian Ward  
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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### Disabled Children's Social Care report

On 15 September, the Law Commission published '[Disabled Children's Social Care: Final Report](#).' A summary of the report is available [here](#).

The review was carried out at the request of the Department for Education following the [2022 Independent Review of Children's Social Care](#). The Law Commission undertook a broad consultation process in 2024-2025. The review considered disabled children's social care, which the report defines as '*the body of rules which determines:*

- whether a disabled child can obtain help from social services to meet their needs;*
- what help they can obtain; and*
- how they go about obtaining it.'*

The key legislation was s.2 of the Chronically Sick and Disabled Persons Act 1970 and s.17 Children Act 1989. The Law Commission identified three overarching problems with the current legal framework:

- The law had become overly complex, and was now spread across numerous pieces of legislation, making it difficult to navigate.
- Parts of the law were out of date, developed before modern understandings of many conditions

disabled children may experience. It is not aligned with approaches in the Equality Act 2010 and the UN CRPD.

- The law is potentially unfair. *"It has been interpreted to allow local authorities to develop area-specific eligibility criteria, to determine which disabled children qualify for services and which do not. This means that disabled children with the same needs get treated differently depending on where they live in the country. That was not the intention behind the legislation"*

The Law Commission also identified concerns of families about the way the system actually operates, including a focus on safeguarding rather than support, a lack of expertise on the part of assessors, setting eligibility criteria too high, overlooking the needs of the family of the disabled child, and lack of joined-up working between services.

The key recommendations of the report are:

- A simplified and unified legal framework for disabled children's social care law, sitting within the Children Act 1989.
- A single, comprehensive piece of statutory guidance on disabled children's social care law, setting out the rights and responsibilities of disabled children, families, and local authorities. This guidance should include material which helps local authorities to ensure that there is an appropriate balance struck between identifying and meeting the needs of

disabled children and their families in a non-stigmatising way and safeguarding them from harm and abuse. The purpose of this is to avoid inappropriate stigmatisation of parents and carers.

- An updated definition of disability.
- A single duty to meet the social care needs of disabled children, subject to national eligibility criteria. As a first step toward this national system, we recommend that the Government carry out further work – involving disabled children, families and local authorities – to decide what the eligibility criteria should be and ensure that they are financially sustainable.
- A right to independent advocacy for disabled children, and for parents and carers, who would not be able to effectively participate in the assessment of their needs without the support of an advocate.
- Rights for disabled children to participate in decisions about their care and support.
- A statutory requirement that planning for disabled children to make the transition to adulthood should start by the age of 14.
- Clarification of the dividing line between health and social care.
- A fair, accessible, independent and effective system for resolving disputes about social care for disabled children.

Alex has recorded a walkthrough of the recommendations, which also gives some more insights into how they came to be developed from his perspective as a consultant on the

project. They include specific discussion of some areas likely to be of particular relevance for readers of this Report, including the adoption of the MCA 2005 for relevant decisions/actions by 16-17 year olds and a statutory test for determining competence for under 16s on the basis of the functional limb of the MCA 2005.

### Deprivation of liberty: improving outcomes for looked-after children in complex situations

An extremely detailed, and thoroughly depressing report has been published, commissioned by the Department for Education, and written by Research in Practice and the National Children's Bureau (with a case law briefing chapter on deprivation of liberty and children written by Camilla Parker KC (Hon)<sup>1</sup>). The report includes a thematic summary, an evidence review, a case file review, a case study review and a case law briefing.

The authors suggest that "[t]he evidence this project presents indicates that promising solutions lie in policy and service systems – in health and social care in particular - taking shared responsibility for reducing the complexity that lack of integration generates for these children and young people." The bulk of the rest of the report shows just what an uphill struggle this will be given – in very high-level summary – (1) escalating use of Deprivation of Liberty Orders;<sup>2</sup> (2) insufficient early help and fragmented services; (3) complexity of needs and adversity; and (4) placement instability and market failures.

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<sup>1</sup> Full disclosure, Alex was on the advisory group for that chapter.

<sup>2</sup> See also here the most recent statistics published by the Nuffield Family Justice Statistics (drawn on in the report).

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## Editors and Contributors



**Alex Ruck Keene KC (Hon):** [alex.ruckkeene@39essex.com](mailto:alex.ruckkeene@39essex.com)

Alex has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court. He also writes extensively, has numerous academic affiliations, including as Visiting Professor at King's College London, and created the website [www.mentalcapacitylawandpolicy.org.uk](http://www.mentalcapacitylawandpolicy.org.uk). To view full CV click [here](#).



**Victoria Butler-Cole KC:** [vb@39essex.com](mailto:vb@39essex.com)

Victoria regularly appears in the Court of Protection, instructed by the Official Solicitor, family members, and statutory bodies, in welfare, financial and medical cases. She is Vice-Chair of the Court of Protection Bar Association and a member of the Nuffield Council on Bioethics. To view full CV click [here](#).



**Neil Allen:** [neil.allen@39essex.com](mailto:neil.allen@39essex.com)

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](#).



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

Arianna practices 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 inherent jurisdiction matters. Arianna works extensively in the field of community care. She is a contributor to Court of Protection Practice (LexisNexis). To view a full CV, click [here](#).



**Nicola Kohn:** [nicola.kohn@39essex.com](mailto:nicola.kohn@39essex.com)

Nicola appears regularly in the Court of Protection in health and welfare matters. She is frequently instructed by the Official Solicitor as well as by local authorities, CCGs and care homes. She is a contributor to the 5<sup>th</sup> edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2022). To view full CV click [here](#).



**Katie Scott:** [katie.scott@39essex.com](mailto:katie.scott@39essex.com)

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](#).



**Nyasha Weinberg:** [Nyasha.Weinberg@39essex.com](mailto:Nyasha.Weinberg@39essex.com)

Nyasha has a practice across public and private law, has appeared in the Court of Protection and has a particular interest in health and human rights issues. To view a full CV, click [here](#)

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**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

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.

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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).

**Sheraton Doyle**

Senior Practice Manager  
[sheraton.doyle@39essex.com](mailto:sheraton.doyle@39essex.com)

**Peter Campbell**

Senior Practice Manager  
[peter.campbell@39essex.com](mailto:peter.campbell@39essex.com)

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[clerks@39essex.com](mailto:clerks@39essex.com) • [DX: London/Chancery Lane 298](#) • [39essex.com](http://39essex.com)

**LONDON**

81 Chancery Lane,  
London WC2A 1DD  
Tel: +44 (0)20 7832 1111  
Fax: +44 (0)20 7353 3978

**MANCHESTER**

82 King Street,  
Manchester M2 4WQ  
Tel: +44 (0)16 1870 0333  
Fax: +44 (0)20 7353 3978

**SINGAPORE**

Maxwell Chambers,  
#02-16 32, Maxwell Road  
Singapore 069115  
Tel: +(65) 6634 1336

**KUALA LUMPUR**

#02-9, Bangunan Sulaiman,  
Jalan Sultan Hishamuddin  
50000 Kuala Lumpur,  
Malaysia: +(60)32 271 1085

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