

Welcome to the May 2026 Mental Capacity Report. Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: *Townsend* updated, sex before the Court of Protection again, and a profoundly disturbing report on dementia in acute hospitals;
- (2) In the Property and Affairs Report: new OPG investigation requirements and the consequences thereof;
- (3) In the Practice and Procedure Report: importance guidance on instructing experts, when habitual residence can be revisited, and a very useful new book on coercive control;
- (4) In the Mental Health Matters Report: the legal gaps for those in mental health crisis in ED and misunderstandings of the MCA in the mental health context;
- (5) In the Children's Capacity Report: deprivation of liberty of children in statute and in unregulated placements and what procedural fairness (does) not require in assessment;
- (6) In the Wider Context Report: the MCA and suicide, and new guidance on consenting to clinical trials.
- (7) In the Scotland Report: an update on the new AWI accreditation programme being run by the Law Society of Scotland.

We offer our hearty congratulations to Sir Stephen Cobb on his appointment as President of the Family Division and of the Court of Protection. For anyone who wants reassurance that the new President truly 'gets' the Mental Capacity Act, we suggest reading his judgment in the case of *'Stitch'*, his last decision as a Tier 3 judge of the Court of Protection.

A reminder that that whilst Chambers have launched a new and zippy version of our [website](#) which may look unfamiliar, all the content that you might need – our Reports, our case-law summaries, and our guidance notes – can still be found via [here](#).

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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Welfare deputyship to be considered by the Court of Appeal

In our observations on the flurry of recent cases concerning welfare deputyship in the [April Report](#), we noted that we hoped that it would be possible for the appeal in *HDEB* to go to the Court of Appeal. We are therefore very pleased to see the [news](#) that Theis J has provided for exactly such a ‘leap-frog.’ Views may vary as to what the right outcome would be, but we anticipate that there will be consensus that the question of when welfare deputies are to be appointed is an issue which requires appellate level determination.

Instructing experts (and contested deprivation of liberty)

Bristol City Council v CC & Ors [2026] EWCOP 19 (T3) (Theis J)

Court of Protection jurisdiction and powers – experts

Summary

This is both an important and an interesting decision. It is important because Theis J set out a clear set of expectations instructing experts, and interesting because it is an example of what is now a rare beast, a contest as to whether

circumstances gave rise to a deprivation of liberty. It also includes what is now an increasingly standard reminder that dividing care and residence decisions can frequently be artificial.

Instructing experts

The guidance provided by Theis J requires reproduction in full.

10. At the invitation of the court the parties have liaised and produced an extremely helpful agreed note on the instruction of experts in the Court of Protection. This issue arose due to my concerns in this case as to (i) the length of the letter of instruction sent to the expert in this case (27 pages, 12 of which were under the heading ‘Legal Framework’), and (ii) the incoherent management of the way documents were sent to the expert prior to this hearing by the local authority (he was sent large pdf bundles with no agreed guide as to what he should read/focus on). As a result, I hope what follows will be a useful reminder of the framework in which experts are instructed in the Court of Protection and how such instructions should be managed. Those willing to give expert evidence in cases in the Court of Protection are an invaluable resource to assist the parties and the

court reach decisions in these difficult cases. The parties and the court need to ensure that all necessary steps are taken to enable them to undertake that important role.

11. The procedural rules on the instruction of experts in the Court of Protection are contained in rule 15 of the Court of Protection Rules 2017 ('COPR 2017'), as supplemented by Practice Direction 15A. The test is 'necessary' (rule 15.3(1) COPR 2017) and permission may only be given if it is necessary to assist the court to resolve the issues in the proceedings and could not otherwise be provided by a rule 1.2 representative or in a report pursuant to s49 MCA 2005 (rule 15.3(2) COPR 2017).

12. When making an application for the instruction of an expert on form COP9 the application must include a draft letter of instruction to the expert (rule 15.5 (2)(f) COPR 2017). The expectation is that the draft letter of instruction should be approved by the court or, if not (due to urgency or some other reason), clear directions in the order for the letter to be finalised with the questions for the expert being approved or overseen by the court.

13. The letter of instruction must be focussed and adapted to the facts of the particular case. Previous cases provide helpful guidance (such as *Poole J in AMDC v AG and CI* [2020] EWCOP 58 [28 (b)] "28... (b) [t]he letter of instruction should, as it did in this case, identify the decisions under consideration, the relevant information for each decision, the need to consider the diagnostic and functional elements of capacity, and the causal relationship between any impairment and the inability to decide. It will assist the court if the expert structures their report accordingly. If an expert witness is

unsure what decisions they are being asked to consider, what the relevant information is in respect to those decisions, or any other matter relevant to the making of their report, they should ask for clarification." [emphasis added]). Lengthy and unwieldy recitations of the background facts and procedural history are to be avoided, as well as detailed descriptions of previous case law.

14. It may be helpful to keep in mind the following as the key components of a letter of instruction to an expert:

(1) A brief neutral statement of the essential facts of the case.

(2) A list of materials with which they are being provided for the purpose of the assessment the expert is undertaking.

(3) A core legal framework setting out the central principles of the MCA 2005, a summary of the relevant sections of the MCA 2005 should suffice and, if appropriate, to reflect, for example, the order in which a capacity assessment should be approached, as set out by the Supreme Court in *A Local authority v JB* [2021] UKSC 52. Any such references should be kept succinct and must be relevant.

(4) If assessing capacity, identification of the relevant decisions to be assessed, with the relevant information for each decision as agreed between the parties. If required there can be a brief explanation as to where the information derives, providing confirmation that what the relevant information consists of should ultimately be a matter for the relevant expert to determine when undertaking the assessment, and a reminder of the importance that the expert is not an arbiter of fact.

(5) Confirmation as to whether the proceedings are in public or private and details of any Transparency Order in place.

(6) Details of any person(s) the parties consider the expert should or may meet with, and remind the expert of the importance of there not being any unrecorded/informal discussions.

(7) The letter should clearly identify timescales for the report, dates of hearings/oral evidence, confirmation of who the report will be disclosed to, and a reminder about the ability to pose questions of clarification (rule 15.7. COPR 2017). It should also contain information about the expert's fees.

15. Questions to the expert after the filing of their report should only be done in accordance with rule 15.7(2) COPR 2017 or by order of the court (rule 15.7(3) COPR 2017). In accordance with rule 15.7(2)(c) COPR 2017, any such questions must be for the purposes of clarification only.

16. In addition to ensuring experts have all the relevant documents at the point of their instruction, the parties should keep under active review what further evidence or documents should be sent to the expert with a suitable covering message identifying the relevant documents. If agreement is not possible, a COP9 application will need to be issued setting out the issue and the parties' competing positions with a draft order attached. This will enable the court, if appropriate, to determine the issue on the papers.

17. If an expert is going to give oral evidence at a hearing, they should be provided with the following in advance of the hearing by the lead instructing party:

(i) An updated court bundle at the same time as the bundle is lodged with the court.

(ii) A list of updating documents that have been filed since their instruction, which should highlight the specific documents that the parties consider that they should review in advance of the expert giving oral evidence.

(iii) Any further 'loose leaf' documents filed immediately prior to the hearing, that the parties will likely refer to in the course of their questioning of the expert.

Deprivation of liberty

Official Solicitor sought to argue that the individual in question was not deprived of their liberty, whereas the public authorities (in this case the local authority, the NHS Trust and the ICB) argued that he was. The Official Solicitor's position was founded on her contention that the acid test was not satisfied, on the basis (paragraph 82)

CC's professional support is limited to 30 hours per week, CC has no outside support over the weekend at all or at times during the week when the professional support is not present. Ms Sutton submits that whilst CC's grandmother is aware of where CC is when support staff are not with him she does not supervise him for that time. There is no evidence that CC has attempted to abscond or refused to return when he is out. The doors and windows are not locked at CC's grandmother's home. CC has a key. He is not subject to personal searches or any other restrictive practices when in the property. He has access to all rooms and is able to move around the house.

Conversely, the public authorities founded themselves on the approach of the local authority:

67. The local authority submit CC's current and proposed care arrangements amount to a deprivation of liberty and rely on the following matters. CC is effectively prevented from leaving home and is kept under continuous supervision and control there. The restrictions in the various plans require CC to reside at his grandmother's property, must be accompanied in the community by a responsible adult save for specific relaxations, he is cared for by two carers for 30 hours per week and the police will be immediately notified if CC accesses the community other than in accordance with the restrictions and be returned to his grandmother's property. These restrictions amount to a significant amount of control preventing CC from accessing other places and it is this control, submit the local authority, that meet the requirements of control in the acid test. The fact that it is imposed by the family for part of the time does not prevent it from being control as CC is not free to leave in the way described by Lady Hale in *Cheshire West* at [48]. Mr Auburn submits the fact that the majority of care and supervision (i.e. outside the care package of weekdays) is by CC's family is relevant to the issue of State imputability, but not to whether the acid test is met. He submits the deprivation of liberty is imputable to the State as it is decided upon, arranged, funded, overseen and reviewed by the State in the form of the local authority.

68. Mr Auburn recognises there has been, and may be, some relaxation to CC's care plan that will permit him to undertake certain trips independently but satisfying the acid test does not require the supervision and control to be 24 hours a day 7 days a week. He

submits this is based on the Strasbourg cases that Lady Hale relied upon when reaching her conclusion in Cheshire West (see Ashingdane v UK (1985) 7 EHRR 528; HL v UK (2004) 40 EHRR 761 and Stanev v Bulgaria (2012) 55 EHRR 22).

Theis J found the question to be a finely balanced one:

95. Turning, finally, to consider whether the current care arrangements amount to a deprivation of liberty that requires the authorisation of the court. This issue is finely balanced. I am satisfied in the particular circumstances of this case that CC is deprived of his liberty. That requires the authorisation of the court. Whilst I accept in part the submissions on behalf of DD and the Official Solicitor, I do consider on the particular facts of this case that the objective element of the test set out in *Cheshire West* is met, namely that CC is [49] 'under continuous supervision and control and was not free to leave' and [54] 'under the complete supervision and control of those caring for [him] and is not free to leave the place where [he] lives'.

96. It is acknowledged the combination of the care plans that set out the structure of care for CC mean, as a matter of fact, it could be said he is not under continuous supervision and control. It is a question of fact and degree in each case. I recognise CC is on his own in the home for three hours each weekday morning whilst EE is at work before the carers arrive, the windows/doors are not locked, there are no restrictions on his movement within the home, he is not the subject of any restrictions in the home (such as searching) and he is able to leave within the care framework (such as visiting a local shop). However, there is a continuous element of control

provided by the care plans such as the requirement to spend each night at his grandmother's home and part of the care plan includes a protocol with the police, who are to be notified if CC accesses the community (save in accordance with the care framework), they are to find him and he is to be returned to EE's home. EE is aware of where CC is when the support staff are not present, although I recognise she does not supervise him for all the period. However, the overall effect of the care plan is that the police are to be contacted if CC accesses the community other than in accordance with the care arrangements. This is for the specific purpose of finding him and returning him home.

97. I accept the local authority submission that when looked at as a whole the effect of these care arrangements is that CC is not free to leave in the way considered by Lady Hale in *Cheshire West* at [48] as in reality CC "is not free to go anywhere without permission and close supervision". I agree that whether or not CC in fact attempts to leave is not the point. In *Cheshire West* MIG had never attempted to leave her foster home but the fact steps would have been taken to restrain her had she done so was sufficient. As Lord Kerr observed in *Cheshire West* at [76] "Liberty...does not depend on one's disposition to exploit one's freedom." The court needs to proceed on the basis that the care arrangements upon which CC's residence and care are arranged will be observed. The limited and prescribed relaxation built into CC's regime does not prevent a deprivation of liberty arising. Article 5 does not require total supervision 24 hours a day, 7 days per week.

98. The parties agree the deprivation of liberty is imputable to the State as the care arrangements set out in the care plans are decided on, arranged, funded, overseen and reviewed by the State in the form of the local authority and the ICB jointly arranging and delivering the s 117 MHA 1983 care arrangements. Also, there is no issue between the parties regarding consent. The Supreme Court has heard argument and reserved judgment in the Northern Ireland reference *UKSC/2025/0042*, concerning the issue of consent. No party in this case is contending that CC consents to the restriction on his liberty of the police being called, finding him and returning him home should he access the community other than in accordance with the care plan.

Comment

In relation to the approach to experts, the [precedent letter of instruction](#) on the Court of Protection Handbook website will be amended to capture the guidance of Theis J when Alex and his fellow authors have a moment (although the amendments will be relatively minor, luckily).

Given that the Supreme Court's decision is awaited in '*Cheshire West 2*,' and the involvement of a number of us in that case: we will limit comments to (1) suggesting that Theis J's approach to the 'acid test,' in line with earlier [domestic caselaw](#), recognises that the question is not how long the leash might be, but that there is a leash; (2) noting that the very existence of the 'acid test' has been put in issue by the DHSC in *Cheshire West 2*; and (3) recognising that some might note with a wry smile that, in contradistinction to the position before the Supreme Court, the public bodies in this case were arguing for the expansive approach to

deprivation of liberty, and the Official Solicitor for the restrictive approach.

When and how can the Court of Protection revisit habitual residence?

Neath Port Talbot County Borough Council v CK & Ors [2025] EWCOP 47 (T3) (Morgan J)

International jurisdiction of the Court of Protection – other

Summary

The case of *Neath Port Talbot County Borough Council v CK & Ors* [2025] EWCOP 47 (T3) is the sequel to this [decision](#), in which HHJ Miller set out a helpful worked example of determining whether a person's habitual residence has changed following a loss of capacity, and where the move has not been at the behest of professionals, but family members. At the point of delivering that judgment, HHJ Miller concluded that – on the facts of the case – the subject of the proceedings, CK, accommodated in a care home in Wales, was still habitually resident in Spain. By the time the matter came before Morgan J for determination as to CK's best interests as regards his future residence and care arrangements (including a potential return to Spain), the issue of his habitual residence came back to the fore.

As Morgan J identified:

18. This court has in my view to be careful not either inadvertently to approach its task as if acting as an appellate court in respect of the decision made on 10 June, or to substitute its own different decision on the same factual situation because it sits more easily with a best interests analysis. I recognise of course that as the determination stands, this Court retains a temporary jurisdiction pursuant to Schedule 3 MCA 2005 (7)(1)(d) but in

circumstances where what is contemplated in terms of living and care arrangements for CK is for the rest of his life it seems to me that it would be stretching a reasonable understanding of what is intended to be understood by the word 'temporary' to embrace 'life-long'

*19. Both the applicant and the litigation friend at this hearing remind the Court that there is authority for the proposition that the Court of Protection must keep the issue of habitual residence under review to ensure that it retains jurisdiction at the date of the final substantive hearing, as to which reliance is placed on London Borough of Hackney v P [2023] EWCA Civ 1213, [116]; Re LM [2023] EWCOP 69, [37-38] and on behalf of the applicant to TD BS v KD QD [2019] EWCOP 56. Developing on from that submission, the Litigation friend submits that the doctrine of *perpetuatio fori* does not apply to cross-border incapacity cases regardless of whether or not the 2000 Convention applies and in support of and to illustrate that submission relies on Re O (Court of Protection: Jurisdiction) [2013] EWHC 3932 (COP), [2014] Fam 197, [21]. I accept that it is right that the jurisdiction of the Court may change during the duration of proceedings. What is more problematic in relation to those authorities to which the court's attention was directed in argument at this hearing when considering the obligation that the Court of Protection must keep under review the issue of habitual residence, is that it was noteworthy that in each of those authorities cited it was so as to ensure that it retains jurisdiction and not, as must be the situation with CK, so as to consider a situation where a determination that Habitual Residence is elsewhere with consequence that the court does not have jurisdiction (other than temporary protective). It follows*

that the court is not reviewing whether it retains it but considering whether the factual landscape has in the intervening period altered such that CK's habitual residence now lies in (England and) Wales. I note that in QD [2019] EWCOP 56 in which Cobb J as he then was in strikingly similar factual circumstances contemplated at para [32] not the prospect of a change in the factual basis which might cast habitual residence in a different light and lead to the English Court thereby acquiring jurisdiction but that it was possible that it might be acquired by the conferring of jurisdiction on the courts of England and Wales by Spain. It was common ground amongst counsel at this hearing that there was no authority in which the situation was as presents here.

20. By reference to *The Practical Handbook on the Operation of the 2000 Protection of Adults Convention* counsel for the applicant developed her submission, supported by the litigation friend that it is permissible and appropriate to review, by considering whether there has been a change in the Habitual residence of the adult concerned. In particular there is express consideration within paras 4.13 et seq *What happens when the "habitual residence" of the adult changes?* of the prospect that such a change may be, including during pending proceedings for a measure of protection. (Explanatory Report to the convention para 51). Given the clarity of analysis which appears in QD I have paused to reflect carefully on whether I should accept that, HHJ Miller having reached the conclusion he did in June of this year, it is in the peculiar circumstances of this case right for me to look again at CK's Habitual residence now. I have narrowly concluded that it is and whilst there is much that is on all fours factually with the situation facing Cobb J in QD, very different here is the

very long passage of time between the reaching of the conclusion and the best interests decision to be taken at this hearing. I accept Counsel's joint submission that it is permissible and appropriate to review (in the sense discussed, rather than by critique of HHJ Miller's original judgment) the question of CK's Habitual residence. That review is properly done by consideration of significant changes in the factual landscape or the emergence now, of facts which were not known in June 2025.

Adopting that approach, Morgan J found that CK was now habitually resident in England and (more to the point) Wales. This made her task jurisdictionally very much easier. On the facts of the case, the best interests decisions it now fell to take to take on the basis of the 'full original jurisdiction' of the Court of Protection in relation to CK were relatively straightforward. Morgan J's closing observations on the case resonate strongly with our experiences:

35. It is not uncommon, sadly, for families to find themselves in situations where one of their members is diagnosed with conditions similar to CK, or is otherwise in failing health and where there are questions over their capacity, and that person is living outside of England and Wales. The parties have been at pains to emphasise that neither at this hearing or before HHJ Miller has any party invited the court to determine that the move of CK from Spain to the Z care home was made in bad faith. It is explicitly accepted by the Local Authority at this hearing that EK and JS did what they considered to be in CK's best interests. CK's circumstances have however illustrated all too clearly how the well intentioned can go wrong. At the outset of this hearing the litigation friend made the following overarching submission

which encapsulates the wide anxiety: 'While the litigation friend considers that CK's habitual residence will revert to England and Wales, the litigation friend is troubled by a conclusion which ostensibly authorises CK being removed from the country where he had chosen to live, and the perverse incentives this may create for future individuals to avoid processes which protect vulnerable adults internationally. It should be emphasised that the circumstances confronting this court are unusual and confined to their own facts'.

Morgan J was asked to give guidance as to future cases; she expressed reservations about doing so, but the observation set out below are undoubtedly of relevance for any cross-border case:

37. Consideration of capacity at an early stage should be at the forefront of everyone's mind. Specifically, if what is under consideration involves a decision to leave one country and go to live in another, the person's capacity to decide that, must be considered at an early stage. There may be all sorts of instances in which the family members doing what they think is right, regard it as the best - or perhaps even the only - decision to be made, but that does not obviate the need to ask the question, does the person have the capacity themselves to make the decision.

38. If a public body becomes aware that there is a prospect of a person returning from a country where they are resident to the United Kingdom to be placed within a registered care setting, that public body should alert those involved of the need for the person to consent to that process and to follow the laws of the country in which they are habitually resident.

39. Registered care settings, should, before granting admission to a person who is resident in another country, satisfy themselves either that the person is consenting (i.e. that they have the capacity so to consent) to a return to the United Kingdom and placement within a care setting or that the return follows a lawful process in the country in which they are resident or there is a valid substitute or surrogate decision making power governing the process under that country's law.

40. Where a person has moved from one jurisdiction to another in circumstances such as CK did here, supervisory bodies for the purposes of Schedule A1 of the MCA 2005 should not authorise a deprivation of liberty by means of the administrative process of DOLS but should make urgently an application to the Court of Protection, within which application should be highlighted for the purposes of gatekeeping decision making that there is or is likely to be an issue to be determined in respect of habitual residence.

Comment

This decision is important for reminding practitioners that the position in relation to adults lacking capacity is very different to the position regarding children, and it is not possible to 'freeze' habitual residence by initiating proceedings. It is also helpful for flagging the relatively recent (2024) [Practical Handbook](#) to the 2000 Hague Convention on the International Protection of Adults. Despite the fact that for complicated and rather unsatisfactory reasons England & Wales is not a 'Hague State,' the way in which Schedule 3 to the MCA 2005 mirrors the Convention and the body of cases that have been decided under Schedule 3 means that it was possible for Alex to feed in that experience to do his bit to make the Practical Handbook actually practical.

One small caveat to / clarification of Morgan J’s otherwise admirably clear judgment. To the extent that paragraph 40 could be read as suggesting that a local authority cannot authorise the deprivation of liberty of a person who is not habitually resident in England and Wales, that is incorrect: the requirement for DoLS purposes is simple physical presence in the hospital or care home; if the person is not ordinarily resident in the area of a supervisory body applying the rules set out in Schedule A1, then the supervisory body will be that for the area where the hospital / care home is located. However, what Morgan J meant – we suggest – is that a local authority must be astute to the potential that there is an issue as to whether the person has been brought to England & Wales in circumstances meriting further consideration; at that point, they should simply not close their eyes to that issue and authorise the deprivation of liberty, but ensure that steps are taken to resolve the issue.

Book Review

Oliver Lewis, *Coercive Control and Vulnerable Adults: Law and Practice in the Court of Protection and the Inherent Jurisdiction of the High Court* (Bloomsbury, 2026, 242 pp, hardback / ebook, £48.60)

If I have done one useful thing in the past few years, it was to have a conversation with the barrister (and CRPD specialist) Dr Oliver Lewis about a book idea he was working on. The rest is down to him (and to Bloomsbury, who have done an excellent job from the publishing side), but it is incredibly pleasing to see the end result – namely this extraordinarily practical and comprehensive book which should be on the bookshelf of every practitioner who appears before the Court of Protection. I say ‘every’ practitioner because one of the most important aspects of

the book is how it highlights the pervasiveness of the potential for coercive control, far beyond ‘obvious’ domestic abuse situations. Reading Chapter 2, in which this is set out, should be required to enable practitioners to be on the alert for the potential for coercive control to be in play (especially where the coercion is framed as ‘care’); the following chapters then set out clearly how the law can be made to respond. Similarly, Chapter 10, setting out the traumatic effects of coercive control, is also an exceptionally useful summary of some often very complex clinical literature, enabling those acting in such cases have a clearer understanding of the minefield that they are crossing.

The book straddles both the Court of Protection and the inherent jurisdiction of the High Court: anyone who has anyone had any involvement with a case such as the ones that Lewis describes will know, capacity can be exceptionally difficult to navigate given the interaction between any impairment that the person might have and the ‘spider’s web’ effect of the pressure from the abuser. Lewis gives (in chapters 3 and 4) a very straightforward set of tools for those seeking to identify which side of the line the person is as regards their decision-making capacity in material domains, but is clear-eyed about the challenges involved. In many situations, the case may end up before the High Court on the basis that the person has capacity but is vulnerable. Lewis is a defender of the inherent jurisdiction – or, perhaps, to be precise, recognises that, since it exists (notwithstanding those who suggest that it should not), it can and should be used in ways which support the autonomy of those subject to coercion. The chapter on law and procedure under the inherent jurisdiction, together with guidance on fact-finding and remedies under the inherent jurisdiction are

exceptionally helpful for Court of Protection practitioners who may find themselves very much out of their comfort zone in a case which either starts or moves into that jurisdiction (a jurisdiction which is governed by a set of procedural rules – the CPR – singularly ill-suited for the purpose).

Practicality is a hallmark of the book. It benefits from Lewis' deep and sustained work in international human rights (see, in particular, the discussion in the concluding chapter about the inherent jurisdiction, capacity and disability rights), but never at the expense of becoming abstract or theoretical. If I could single out three chapters in particular in this regard, I do hugely wish that when I first started doing these cases I had had sight of the three chapters on representing the victim / survivor, the local authority, and the controlling person respectively, as they are sure-footed, thoughtful, and above all eminently applicable to some of the most difficult cases to appear in.

I have in this review highlighted the importance of this book for legal practitioners. It is, however, equally important, I would suggest, for social workers and others who are working with victims / survivors of coercive control as an entirely reliable guide as to the law that they will be applying outside court, and also for understanding of when and how they should be seeking to take matters to court to secure the rights of those victims and survivors.

Few books can really be said to matter; this one does.

Alex Ruck Keene

[Full disclosure: I had sight of and made comments on the legal chapters in draft stage;

I am also grateful to the publishers for providing me with a copy of this book. I am always happy to review works in or related to the field of mental capacity (broadly defined)]

Anonymity even from the litigants

A Local Authority v CD & Ors [2026] EWHC 980 (Fam) is – as Peel J identified – an 'exceptional' case. It is, however, an example of two (linked) phenomena that are showing themselves equally in the Court of Protection context: (1) litigants in person who are (to put it mildly) operating in a parallel legal universe; and (2) whether in consequence of (1) or otherwise, are so opposed to the professionals involved that they pose active risks to those professionals. In *CD*, Peel J found that the risks posed to the professionals (of both psychological and physical harm) were so high that their names and identities could and should be withheld from the parents in the context of ongoing care proceedings. We trust, but sadly without much hope, that the complex jurisdictional route that Peel J had to follow to provide for their protection is not one that Court of Protection judges will find themselves having to follow.

'Cuckooing' to become an offence

In particular for cases which straddle the Court of Protection and the High Court's inherent jurisdiction, it is always important to have in mind what other remedies might be available to address abuse. In that regard, it is helpful to note that the Crime and Policing Act 2026 which recently received Royal Assent includes a new offence of 'cuckooing.' When commenced, the relevant section of the Act will make it an offence to exercise control over another person's dwelling without their consent for the purpose of enabling the dwelling to be used in connection

with the commission of specified criminal activity.

The specified criminal activity includes the types of criminal activity that cuckooing is typically used to facilitate, for example, drugs offences, sexual offences and offensive weapons offences. The Act provides for a power for the Secretary of State to amend the list of specified offences to future-proof this new offence against exploitative criminals who might adapt cuckooing to other crime types.

It will be an offence to control a person's dwelling in connection with criminal activity without that person's consent. A person cannot consent to control of their dwelling if: they are under 18 years old; do not have capacity to give consent; have not been given sufficient information to enable them to make an informed decision; have not given consent freely; or have withdrawn their consent. The consent of an occupant may not freely be given where it is obtained by coercion, deception or other forms of abusive behaviour.

The offence will carry a maximum penalty on indictment of five years' imprisonment or a fine (or both).

Editors and Contributors



Alex Ruck Keene KC (Hon): alex.ruckkeene@39essex.com

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



Victoria Butler-Cole KC: 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 a former 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

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. He trains health, social care and legal professionals through his training company, LPS Law Ltd. When time permits, Neil publishes in academic books and journals and created the website www.lpslaw.co.uk. To view full CV click [here](#).



Arianna Kelly: 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 the Court of Protection Practice (LexisNexis). To view full CV, click [here](#).



Nicola Kohn: 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, ICBs and care homes. She is a contributor to the 5th edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2022). To view full CV click [here](#).

Annabel Lee: annabel.lee@39essex.com



Annabel has a well-established practice in the Court of Protection covering all areas of health and welfare, property and affairs and cross-border matters. She is ranked as a leading junior for Court of Protection work in the main legal directories, and was shortlisted for Court of Protection and Community Care Junior of the Year in 2023. She is a contributor to the leading practitioners' text, the Court of Protection Practice (LexisNexis). To view full CV click [here](#).



Katie Scott: 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](#).



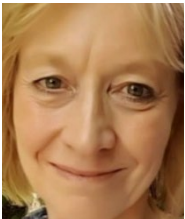
Nyasha Weinberg: Nyasha.Weinberg@39essex.com

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](#)



Adrian Ward: 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

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.

Our next edition will be out in June. 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.

Sheraton Doyle
 Director of Clerking
sheraton.doyle@39essex.com

Chambers UK Bar
 Court of Protection:
 Health & Welfare
Leading Set

Peter Campbell
 Director of Clerking
peter.campbell@39essex.com

The Legal 500 UK
 Court of Protection and
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clerks@39essex.com • [DX: London/Chancery Lane 298](#) • 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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