

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](#).

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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.

Contents

Incapacity Law and Practice Certification Course..... 2

Incapacity Law and Practice Certification Course

Improvement of law and improvement of practice have been constantly headlined over several years as the principal AWI needs.

At the political level, law reform has been paused for the election. The Ministerial-led Oversight Group waits to know who will be the Minister to lead it. However, such has been the momentum for law reform sustained ever since the “gearing-up”, that we reported in March 2025, that the Expert Working Group has been quietly continuing with its monthly schedule of work, progressing as planned through all the successive workstreams that were identified.

Improvement of practice is a wide-ranging issue. One could define the range simply by saying that it covers everyone and every institution or entity that engages with the lives of those actually or potentially within the scope of our AWI regime, with their families and carers, and with people seeking to make appropriate future provision for themselves. The story across the board has been one of unacceptable variations, ranging so often from excellent practice to unacceptably poor practice.

Many significant initiatives have been created and implemented to address that issue for different main groups, and they continue. In all cases, the need is for education and training. Perhaps the initiative that has addressed, and continues to address, the largest constituency is the joint work of Health Education Scotland and the Mental Welfare Commission for Scotland through the Turas “One for Scotland” training

initiative, which – we understand – is now to be funded for another year. Training is being pursued by various professions. It is being delivered by the Office of the Public Guardian, by such means as are open to it, to guardians and attorneys. There has been a discreet but substantial gearing-up of judicial training: despite record levels of recruitment to the shrieval bench, the policy has been sustained on including compulsory AWI training in the inductions for all new sheriffs.

What about the solicitors’ profession? Last year an initiative was commenced by the Law Society of Scotland: to be precise, it has been led by Rachel Steer, CPD Project Manager with the Society, in conjunction with Sandra McDonald, former Public Guardian for Scotland and now author and adviser on everything AWI, who needs no introduction to readers of this Report; and who among other things is a proactive member of the Society’s Mental Health and Disability Committee. We go to press as they are mid-way through delivering the first running of the Incapacity Law and Practice Certification Course which they conceived, planned and structured, and for which (by dint of personality and persuasion, one must assume) they have secured a range of most suitable speakers to deliver.

We are indebted to Rachel Steer for kindly writing an account and assessment of this initiative. Direct quotations from her appear in italics. She confirms that the Law Society embarked on the creation of the course after identifying AWI law:

“as an appropriate area for certification to add to our growing programme of professional certifications. This decision reflected both the high number of practitioners engaging with incapacity work in some form, and the wide variation in experience, confidence and approach seen across the field. While some solicitors and firms practise almost exclusively in incapacity law, others encounter it as an adjunct to broader practice, often without access to structured training.

“With work undertaken under the [Adults with Incapacity (Scotland) Act 2000] occupying a distinctive and demanding space within legal practice, frequently intersecting with some of our most vulnerable people in society, the Society aimed to create a course which goes beyond technical knowledge, and consolidates the specialist skill, defensible decision making and ethical judgement required of practitioners operating in this area.”

Rachel's first paragraph above points towards the diversities in standards referred to above, but in terms suitable for a Society that represents and has in its membership all practising solicitors in Scotland, and is there to serve all of them. In similar broad terms, she highlights the particular significance of AWI work, and its attraction for those who feel themselves challenged by an area of practice that tends both to attract lawyers of the highest standard, and to need them.

Rachel continues as follows:

“Early consultation with the Law Society of Scotland’s Mental Health and Disability Sub-Committee was integral to the development of the course, enabling the Society to draw on specialist insight, address potential concerns, and ensure the certification

reflects the realities of practice and the standards expected of solicitors working with vulnerable adults. The Society chose to partner with Sandra McDonald, former Public-Guardian for Scotland, author and adviser, to aid them in course design and delivery, drawing on her extensive experience and unique perspective.

“The course was shaped in recognition of the uncertainty facing incapacity practitioners as a result of the Scottish Mental Health Law Review and the prospect of significant reform to the existing legislative framework. Alongside reinforcing statutory principles, the programme takes a forward-looking approach, addressing emerging areas of law, significant case law and anticipated reform. It is recognised that the course will need to remain fluid as reform progresses.”

That law reform has proceeded so unacceptably slowly at times, sometimes going nowhere at all for years, but is now moving steadily ahead as mentioned above, which has all been particularly challenging for those delivering legal services in the AWI field on a daily basis over that timescale. What is the best that current law and good practice enable me to deliver right now? Yes, I need to know where law reform is coming from, and where it is ultimately likely to go to, but in the meantime – right now – I have to perform to the full all my professional obligations to my clients.

The following is an indicative outline of the current course (not the full course programme).

Module 1: The Foundations of Incapacity Law, 2.45 HR – 23/04/2026

Welcome, introductions, housekeeping, motivations for joining the course

AWI Principles

POA Fundamentals

Access to Funds – and alternatives to financial guardianship (DWP appointee, intervention orders)

- What is it?
- How to recognise when it may be appropriate
- Application
- CTF

Public Guardian

- Code of Practice
- Role
- Investigation
- Reporting duties
- Importance of developing a relationship with OPG

Module 2: Guardianship in Practice, 3 HR – 30/04/2026

Guardianship process: Getting it right

Managing a Financial Guardianship

Module 3: Understanding and Assessing Capacity, 2 HR – 07/05/2026

Legal v Medical Definitions

Assessing Capacity: Practical application

- Insight v capacity
- SIDMA – assessing for POA and capacity for guardianship

Safeguarders, Curators and Guardianship Court Applications, a View from the Bench

Module 4: Emerging Challenges, 2 HR – 14/05/2026

Deprivation of Liberty

- Theory
- Use in practice
- What changes can we expect, and when
- Case law

Practical Update

Module 5: Advanced AWI Issues, 2 HR 10 – 21/05/2026

s.47 (Advance choices/Statement of wishes)

- Capacity to make decisions for medical treatment

s.13ZA

Advanced Powers of Attorney

Scott Review

On-demand:

- Cross-border issues and considerations

Module 6: Client (and Self) Care Workshop, 3 HR – 28/05/2026

Communicating effectively with incapacitated clients and their families

The solicitor’s role in communicating difficult messages with incapacitated clients and their families

- Influence?
- What if you’re unsure on capacity?

Independent advocacy skills: Good practice

Managing conflict

Looking after yourself – self-care and professionalism

On-demand:

Wellbeing module: The Cost of Caring: introduction to vicarious trauma

Can one say, half-way through the first delivery of this certification course, whether both the concept of the course and this delivery of it are proving to be successful? Let the final words be Rachel's:

"Launching formally in February 2026, uptake for the first delivery of certification exceeded expectations, with the course selling out within two weeks, necessitating an increase in places to meet demand. Delegates represent a broad mix of firm sizes and levels of experience, with strong representation from smaller high street firms in particular.

"As the course progresses, feedback and engagement has been positive. Many delegates cited the lack of in-depth incapacity-specific training and the opportunity to receive Law Society certification as key reasons for enrolling, valuing the ability to upskill and receive a recognised signal of competence that both the public and wider profession recognises."

Adrian D Ward

(with the assistance acknowledged)

[Editorial note by Alex: both Adrian and Jill have been involved in delivering the course; Alex has recorded the 'on demand' session on cross-border issues and considerations]

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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](#).



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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. 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](#).



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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. 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](#).



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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](#).

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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](#).



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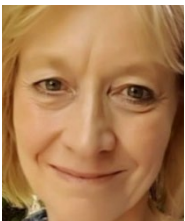
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Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services 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.



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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.

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