



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

- (1) In the Health, Welfare and Deprivation of Liberty Report: coverage of 'year zero' as regards deprivation of liberty following the *AGNI* case;
- (2) In the Property and Affairs Report: the SCCO and costs where P has died or regained capacity, and can you lie as to your own capacity;
- (3) In the Practice and Procedure Report: the Court of Appeal resets transparency;
- (4) In the Mental Health Matters Report: nominated persons resources and 20 years of Mental Health Law Online;
- (5) In the Children's Capacity Report: overseeing consent;
- (6) In the Wider Context Report: well-being and wishes, and capacity and divorce;
- (7) In the Scotland Report: Scottish reactions to *AGNI*.

Nyasha Weinberg's practice having taken in a new direction, we say a farewell and thank you to her this issue; we are, however, delighted to welcome [Alex Cisneros](#) to the team.

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

Short note – overseeing consent.....	2
SPROCKET	3
A DoL House	3

Short note – overseeing consent

Summary

The decision of Keehan J in *University College London Hospitals NHS Foundation Trust v GH & Ors* [2026] EWHC 1064 (Fam) provides a useful reminder that the legal capacity of children is different to their cognitive capacity. The case concerned investigation and treatment of leukaemia in relation to a 15 year old girl, GH. Keehan J framed matters as regards competence (the relevant test for those under 16) thus:

6. [...] A consultant child and adolescent psychiatrist, concluded that it was not evident that GH explicitly or obviously lacked Gillick competence.

Until shortly before the hearing, both GH and her mother had questioned and doubted whether GH required any further medical treatment; however, after further test results were explained,

26 [...] they now both accept that there is no option other than for GH to undergo the treatment plan advised by GH's treating consultant, which is strongly supported by Dr YX.

27. This has been a frightening and very difficult time for GH. She knows the treatment plan will, at times, be painful and difficult for her. Once the harvesting of the cells has been completed and they have been

prepared she will have to spend a prolonged period of weeks as an inpatient at hospital. She quite understandably has her doubts and reservations. Nevertheless, she knows and understands that the only alternative to this treatment plan is her death. She was clear in the views that she expressed to her guardian that she very much wants to live and to live a normal, happy and fulfilling life. She has, therefore, agreed to undergo the cell replacement therapy treatment.

There was, therefore, some doubt as to whether it was really necessary for the court to make the declarations originally sought. However,

9. [...] The trust submitted that because of the past history it was necessary and appropriate for the court to make a best interests decision in case GH changed her mind and withdrew her consent.

10. In any event, I was invited by the mother to give a judgment which would provide a base line in respect of any future application to discharge or revise a best interests decision in the event that GH withdrew her consent.

Keehan J was persuaded to make the declarations sought:

29. There are two important points to make. First, the medical evidence and the opinions of GH's treating consultant and Dr YX are clear and unequivocal.

The treatment plan is GH's only possible course to achieve a cure and long-term recovery from her cancer. Once embarked upon it is essential that it proceeds without any interruption. In these circumstances, it is entirely right and appropriate that the court approves the treatment as being in GH's best interests, not least to endorse and support her decision to proceed with the treatment. Second, it is imperative that everyone involved with GH gives her the support and encouragement she needs to enable her to embark upon the treatment plan and to engage with her treating clinicians so that she may successfully complete the treatment.

30. At the request of all parties, I wrote a letter to GH explaining why the court considered it to be in her best interests to undergo the cell replacement therapy and to endorse her decision to consent to the treatment.

Comment

This case is another in a long line of cases which might be thought to show that *Gillick* is crumbling as a meaningful concept. The CAMHS psychiatrist in this case (and, it appears, Keehan J) appeared perfectly happy to proceed on the basis that GH was to be presumed competent until shown otherwise. 'Conventional' approaches to *Gillick* would have required GH to jump through significant hoops to prove the direct opposite – i.e. that she could overcome the presumption that she lacked the ability to give consent.

The case is also interesting as a reminder that the court's oversight obligations extend to situations where there is a purported consent by a child just as much as an attempted refusal. A child is therefore viewed, legally, as a very different being to an adult in terms of their decision-making authority, even if, almost 40

years after *Gillick*, we are still struggling to explain why and how.

SPROCKET

We note here the launch of SPROCKET, a research, innovation and co-creation hub, led by University College London, that will transform key but challenging transition points for children with complex health needs, such as starting school or returning home from hospital. To sign up for the newsletter, see [here](#).

A DoL House

Those in or around London later this month or in July will want to attend *The DoL House*, a play about deprivation of liberty as experienced by children. For tickets and more details see [here](#).

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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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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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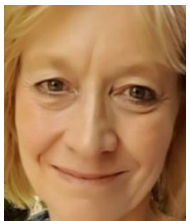
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Alex regularly appears in health and welfare and property and affairs cases in the Court of Protection. He has appeared in leading cases to do with deputyship and published a textbook about LPAs. His recent doctoral thesis explores the impact of changes to mental capacity law in England and Wales. To view a full CV, click [here](#).



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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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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 July. 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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