



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

SCCO procedure – P died or regained capacity..... 2

OPG investigations – clarification..... 2

Can you lie about your own capacity?..... 3

SCCO procedure – P died or regained capacity

The SCCO has introduced a new procedure for costs have not been agreed in matters where P has either died or regained capacity. We reproduce it below.

Where the protected party (P) has passed away

As soon as the Deputy is aware of the death of P, they should inform the SCCO via email to scco@justice.gov.uk of the date of death.

If either:

(1) It proves impossible for the Deputy to agree any outstanding costs with the executors of the estate; or

(2) The Deputy is also the executor

Then the Deputy should complete the form titled **Senior Courts Costs Office – Court of Protection matters – Costs not agreed** so that the outstanding costs can be progressed. The form should then be sent to SCCO@justice.gov.uk with the following wording in the subject heading – **SCCO COP costs not agreed – SCCO reference and P's name** (e.g. SCCO COP Costs not agreed SC-2020-COP-000001/1)

If, on the other hand, there are bills already awaiting provisional assessment by the court and the outstanding costs are agreed with the

executors please inform the court by email confirming that costs have been agreed and requesting that the pending bills be withdrawn.

Where the protected party (P) has regained capacity

The same approach should be taken to dealing with the outstanding costs where P regains capacity. The SCCO should be informed of the date on which the order was discharged and whether any outstanding costs, including those awaiting provisional assessment, have been agreed or not.

The form titled **Senior Courts Costs Office – Court of Protection matters – Costs not agreed** should also be used for this purpose.

This note should be read in conjunction with the note re: Post-Death Costs in the Court of Protection dated 13th May 2024 and section 27.16 of the SCCO Guide 2025.

The process will be reviewed at the end of December 2026

OPG investigations – clarification

In our May report, we noted a new policy adopted by the OPG in relation to requirements to trigger investigations. In evident response to concerns raised by that policy, the OPG has published a letter outlining more detail about background to and implications of the policy change, in

particular in relation to solicitors. The OPG has sought to emphasise that:

The changes we are making are intended to ensure we are in the strongest possible position to complete an investigation, with all relevant information that may be available shared at the outset when a concern is reported to OPG. It is not our intention to prevent investigations from taking place where there are genuine concerns, nor to set requirements that professionals cannot reasonably meet because of a lack of access to P or to financial information.

Instead, these changes are to make sure our investigation team are equipped with the information available to investigate by asking for the relevant information at the point the concern is raised, rather than later in the process. Professionals usually have access to the information that we are requesting, but if they do not, that would not prevent the concern still being raised with us and being considered for investigation.

Can you lie about your own capacity?

UK Insurance Ltd v Hassankhail [2026] EWHC 1020 (KB) (High Court (King's Bench Division (Master Šabić KC))

Other proceedings – civil

Summary

Setting aside a court-approved settlement on the ground of fraud is not straightforward. The settlement carries real weight, and before the fraud allegations can be tested, the party bringing the claim has to secure disclosure of the documents it needs to do so.

UK Insurance Ltd v Hassankhail [2026] EWHC 1020 (KB) was an application for wide-ranging disclosure in the context of a fraud claim which

has not yet been heard. At its core is an allegation that Hassankhail dishonestly represented himself as lacking capacity to manage his financial affairs, and that this misrepresentation infected both the expert evidence and the approval hearing itself.

Background

The proceedings arose out of a road traffic accident in 2016. The defendant, Bahader Hassankhail, brought a personal injury claim in which he alleged that he had sustained a moderate to severe brain injury. As Master Šabić KC noted at paragraph 11, his case in the original proceedings was that he lacked capacity both to litigate and to manage his property and affairs as a result of his injuries, such that the Official Solicitor was appointed as his litigation friend at the approval hearing.

His final schedule of loss totalled £12,702,415, including more than £1.8 million for the costs of a financial deputy arising from that lack of capacity, and over £7.8 million for past and future care and case management, a figure which also rested, at least in part, on his presentation as a person unable to manage his affairs independently. A settlement of £2.5 million was approved by the court on 29 June 2022.

The insurer's case, as presented at the disclosure hearing, was built on three distinct strands of alleged fraud.

- *Drug use and misrepresentation to medical experts.* The insurer placed before the court 37 text messages sent by or to Hassankhail, showing regular use of crystal methamphetamine, GHB, and other substances throughout the period covered by the personal injury proceedings. According to the insurer's case, Hassankhail had consistently

denied any drug use throughout the proceedings, and those denials had informed the expert assessments on which the claim was valued.

Master Šabić KC found that it was the "cascading effect" of this false reporting on the expert assessments which took the conduct outside the ordinary run of cases, noting at paragraph 41 that the drug use was directly relevant to the assessment of:

"the severity of Mr Hassankhail's cognitive impairments, their impact on day to day functioning, ability to manage property and affairs and the valuation of Mr Hassankhail's injury related needs and losses, all of which are or at least can be affected by significant and frequent drug taking."

- *The capacity claim.* The claim that Hassankhail lacked financial capacity had justified more than £1.8 million of the settlement. His financial deputy had reported that he spent all of his benefits money on taxis and pizza, could not estimate his outgoings even roughly, and that cash found in his room was *"consistent with his lack of understanding about budgeting or his own vulnerability."* Master Šabić KC set out, at paragraph 44, the evidence which on the insurer's case contradicted that picture entirely:
 - The available phone records showed Hassankhail managing his own finances and travel arrangements independently and without support.
 - Within two months of the approval hearing, he applied to the Family Court for a non-molestation order,

in proceedings in which he asserted that he had capacity to litigate.

- Within four months, he sought and obtained a COP3 declaration from his GP confirming that he had regained financial capacity.
- At a subsequent assessment in Court of Protection proceedings in September 2023, it emerged that he had also secured a tenancy without the knowledge of his deputy.
- *The false witness statement.* The third strand concerned a witness statement provided by a third party, David Mansour, in the original proceedings. Mansour's statement had been filed in response to surveillance footage gathered by the insurer. After the settlement, Mansour contacted the insurer to say that the statement was false, and subsequently signed a further statement apologising to the court for the earlier one. The insurer's case was that Hassankhail had known from the outset that Mansour's original statement was untrue.

Master Šabić KC found, on the balance of probabilities, that fraud had likely occurred across all three areas, a finding sufficient to justify the wide-ranging disclosure order the insurer was seeking. The order was wide-ranging, extending to bank records, medical files, the COP3 and supporting documents, the tenancy agreement, and privileged communications, the latter on the basis of the *Cox and Railton* principle that fraud defeats privilege. Master Šabić KC also ordered disclosure of the advice prepared for the approval hearing and the instructions given and

received by Hassankhail's legal representatives, finding both to be *"central to this claim."*

The ruling did not, however, go entirely in the insurer's favour. Master Šabić KC found that a second email from Mansour, held on the servers of the Direct Line Group and known to the insurer's solicitors since at least July 2025, had never been disclosed to the defendant or to the court, meaning *"the basis on which the case was presented in Court on 16 March 2026 was false."* Master Šabić KC described the failure as *"deeply concerning"* and noted that no good reason had been given for it.

Comment

The full fraud trial remains to be heard. Nothing in Master Šabić KC's ruling amounts to a final determination of the underlying allegations; that will be a matter for trial.

However, this case will be of interest beyond the insurance fraud community. The central puzzle it raises is a simple one: how was a settlement of this size approved on a capacity basis, with the Official Solicitor acting as litigation friend, when, on the insurer's case, the contemporaneous evidence so thoroughly contradicted the picture presented to the court?

On the insurer's case, the approval hearing was conducted on a false evidential basis: the experts, the deputy and the approval judge were all working from a picture that other evidence now directly contradict. The case is a reminder that court approval of a protected party settlement is only as reliable as the evidence on which it rests and that those settlements can be unwound if that evidence is false. It also raises the interestingly existential question of whether you can lie about your own capacity.

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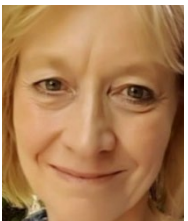
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Conferences

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 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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