



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.

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Short note: well-being and wishes

In *BNF v Newport City Council* [2026] EWHC 1212 (Admin), a (rare) reported decision relating to the Social Services and Well-Being (Wales) Act 2014, HHJ Jarman KC (sitting as a High Court Judge) has emphasised that – even where a person lacks capacity – their wishes and feelings must be taken into account when making plans to meet their eligible needs. The case is also of interest as – although not immediately obvious on first reading – it is clear that the judicial review proceedings were taking place in parallel with Court of Protection proceedings: it is unclear whether the judicial review proceedings were being brought (in effect) to expand out the options for BNF. If so, they provide a reminder that the Court of Protection cannot ‘magic up’ options that would not exist for a person with capacity – the remedies for public law failures in this regard lie in the Administrative Court.

Short note: capacity and divorce

In *SL v SM* [2026] EWFC 109, Trowell J had to consider (in the Family Court) whether Ms L had capacity to decide to divorce her husband. Perhaps because both parties were litigants in person, he did not have brought to his attention the decision of Hayden J in *D v S* [2023] EWCOP 8, in which this issue was considered in some detail (by the Court of Protection). In that earlier case, Hayden J had considered that the relevant information was, in effect, the inverse of the

information relevant to marry. In *SL v SM*, Trowell J proceeded on a slightly different tack (although in reality getting to what is very likely to be the same destination), noting that:

29. *I have now had the advantage of two hearings in which I have heard extensively from the wife and the advantage of reading a statement and a position statement prepared by her. She has been clear at all of the hearings before me that she wants a divorce. She has explained to me why she wants a divorce: she does not want the husband to refer to her as his wife and she does not want to be his wife. She is aware that she would have a financial claim against him on a divorce but tells me that she does not want any of his money. She tells me that she has discussed the divorce with her partner, Mr D, and he has said that she should not bother with continuing to pursue one because it will not make much difference because they live together at any rate.*

30. *Her understanding of the consequences of a divorce I find at least as good as an ordinary persons. She does not present with any difficulty understanding the relevant information, retaining the information, using or weighing the information or communicating the information. She has missed a court appointment. She does appear to*

have had second thoughts about the divorce having initiated it. Neither suggest she does not have capacity to make the decision to divorce.

Trowell J also refused to accede to the husband's request that the court seek out the papers relating to (much earlier) proceedings before Hedley J in which the wife's capacity to marry had been considered, as well as subsequent care proceedings, on the basis that "[i]t is not appropriate for me to trawl through the wife's life when I have the opportunity of hearing from her and the reassurance of the letter from her GP.

Ceilings of treatment in context

The Health Services Safety Investigation Body (an independent arms-length body of the DHSC, formed in October 2023, who investigate patient safety concerns across the NHS in England) are conducting an investigation into the risks to patients in the community who self-administer insulin and who may be at risk of increased harm because of their circumstances.

The investigation focuses on the insulin-related harm to adults with (i) mental health diagnoses at risk of suicide; (ii) those with a disability; and (iii) those with a learning disability. They have published reports for those in the first two groups. They are due to publish reports for those with a learning disability as well as a separate report for those with memory difficulties later this year. The first report, on those with mental health diagnoses, is available [here](#). The report has a particular focus on adults with type 1 diabetes and disordered eating – a group of patients who often come before the Court of Protection and in respect of whom there is a real lack of community services equipped to manage their particular needs. The report makes a series of findings and a number of recommendations, including that NHS England/DHSC develop a

strategy for improving collaboration between mental health services and specialist diabetic services; that the National Institute for Health and Care Research map the knowledge gaps around type 1 diabetes and disordered eating and assess the priority and feasibility of commissioning research to address those gaps; and that ICBs formalize collaboration between mental health and specialist diabetes services in their local systems.

The second report, into those with a disability, can be found [here](#). Its findings include that

- Healthcare workers may not identify when a patient's mental capacity to make decisions in relation to their insulin may be compromised, meaning a more in-depth assessment in line with the Mental Capacity Act (2005) may not occur.
- Limited education and practical support for application of the Mental Capacity Act (2005) by healthcare staff means its principles are sometimes misunderstood.
- Patients with diabetes (who require insulin) and who experience fluctuations in their mental capacity, are at risk of harm when services do not proactively plan for a time when the patient may lose the ability to manage their insulin safely.

It recommends that:

National bodies can improve patient safety by providing clarity on expectations around 1) how staff recognise that a patient's mental capacity may be compromised in relation to decisions about their self-management of insulin, and 2) the undertaking of a mental capacity assessment by the most appropriate person. This should include clarification on the practical application of the Mental Capacity Act (2005) to situations

where a patient's capacity may fluctuate and where sharing confidential information to support patient safety may be appropriate.

The EU and cross-border cases

The EU Council and Parliament have moved closer to replicating (albeit some potentially quite significant variations) the 2000 Hague Convention on the International Protection Adults as a regulation governing cross-border matters between EU states. We – slightly vainly – hope that this will place further pressure on Ministers in London to ratify the 2000 Convention in respect of England & Wales (as opposed to just Scotland), to ensure that we do not get left even further behind than we have to when it comes to effective protection of rights across borders.

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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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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](#).



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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](#).



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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](#).



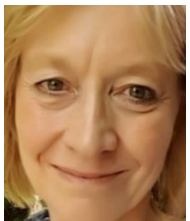
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Alex regularly appears in health and welfare and property and affairs cases in the Court of Protection. He has appeared in leading cases to do with deputyship and published a textbook about LPAs. His recent doctoral thesis explores the impact of changes 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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