



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

(1) In the Health, Welfare and Deprivation of Liberty Report: Permission to appeal granted in *Townsend*; post-AGNI guidance; and a new Guidance Note on Capacity for Care Providers

(2) In the Property and Affairs Report: Statutory wills; charging for being an appointee; and guidance on assessing financial capacity

(3) In the Practice and Procedure Report: Court of Protection and child deprivation of liberty statistics; court fees rising; reasons challenges in the Court of Protection; medical treatment cases – whether to issue, and the consequences of waiting too long

(4) In the Mental Health Matters Report: EU Recommendation of the Committee of Ministers to member States on respect for autonomy in mental healthcare

(5) In the Children's Capacity Report: A CAMHS psychiatrist's view on child deprivation of liberty cases – and what interventions can help to break the 'vicious cycle' of restrictions and institutionalisation

(6) In the Wider Context Report: Adult social care reform; the Muckamore Abbey Inquiry Report is published; and what becomes of solicitors whose clients lacked capacity

(7) In the Scotland Report: Circumvention and undue influence

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
Annabel Lee
Alex Cisneros

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.

Contents

EU Recommendation of the Committee of Ministers to member States on respect for autonomy in mental healthcare..... 2

EU Recommendation of the Committee of Ministers to member States on respect for autonomy in mental healthcare

Recommendation CM/Rec(2026)8 of the EU Committee of Ministers to member States on respect for autonomy in mental healthcare was published on 17 June 2026, and may signify a turning point on the influence of the UNCRPD. A recommendation was given that the governments of member states implement a number of recommendations on autonomy in mental healthcare in the next five years:

...Chapter II – General principles

Article 3 – General rule

1. *Mental healthcare should only be provided with the free and informed consent of the person concerned or, where according to law the person does not have the capacity to consent, by respecting their will and preferences.*

2. *Any exception to the general rule laid down in the preceding paragraph should be subject to strict legal safeguards that respect human dignity.*

Article 4 – Access to mental healthcare

Persons with mental health problems should have equitable access to mental healthcare, including community-based care. They should have access to mental healthcare as early as possible.

Chapter III – Policies and practices

Article 5 – Guiding principles

Policies and practices should reflect the goal of ensuring respect for the autonomy of the persons concerned in mental healthcare. Responsibilities for achieving this goal should be defined at all levels.

Article 6 – Involvement of persons with lived experience

Persons with lived experience of mental healthcare should be involved, individually or via representative organisations, in developing laws, policies and practices relevant to mental health and in their monitoring and evaluation. Their involvement should be appropriately resourced.

Chapter IV – Mental healthcare

Article 7 – Information about rights and how to exercise them

The persons concerned should be individually informed of their rights in respect of mental healthcare and have access to assistance to enable them to understand and exercise such rights, including to express their will and preferences and make decisions about their care.

Article 8 – Advance care planning

The persons concerned should be encouraged to express their will and preferences for their future care and these should be documented.

Article 9 – Environment of mental healthcare facilities

The physical and social environment of mental healthcare facilities should be reviewed and, if necessary, adapted, taking into account the need to respect the autonomy of the persons concerned.

Article 10 – Service networks

Mental healthcare services should have close links with other services that can contribute to the promotion of and respect for the autonomy of the persons concerned.

Article 11 – Family and social network

Subject to respecting the confidentiality, privacy and autonomy of the person concerned, the potential benefits of involving the person's family and social network in their care should be taken into account.

Article 12 – Complaints procedure

1. The persons concerned should have effective access to a complaints procedure. They should be informed of this procedure and should receive an appropriate and timely response to any complaint.

2. Information arising from complaints should be used to improve care in the future.

3. Such information should be made available, subject to appropriate protection of the privacy and confidentiality of the person concerned, to bodies responsible for quality assurance and monitoring.

Chapter V – Public understanding and prevention of stigma**Article 13 – Public understanding**

Public understanding should be promoted in relation to:

- a. the importance of respect for autonomy as a human rights principle;
- b. the prevention and care of mental health problems, and the potential for recovery; and
- c. the benefits of early access to mental healthcare.

Article 14 – Non-stigmatisation and non-discrimination

Measures should be taken to address the stigma and prejudice associated with mental health problems, and to prevent and eliminate discrimination against persons with such problems and to promote their inclusion in society.

Chapter VI – Education and training**Article 15 – Education and training**

1. All staff involved in mental healthcare and those who, in their professional capacity, come into contact with persons with mental health problems, should receive, as appropriate to their role:

a. education on respect for autonomy as a human rights principle; and

b. training in practices that respect the autonomy of such persons.

2. Healthcare professionals in primary care should receive appropriate training in the early identification of mental health problems and initiation of appropriate care that respects autonomy.

Chapter VII – Research and sharing of good practice

Article 16 – Research

Research aiming to promote respect for autonomy in mental healthcare should be supported.

Article 17 – Sharing of good practice

Mental healthcare services should share good practice in view of ensuring respect for autonomy in mental healthcare.

Chapter VIII – Review of practices and monitoring

Article 18 – Review of practices

Those providing mental healthcare should regularly review their practices, with a view to ensuring respect for the autonomy of the persons concerned.

Article 19 – Monitoring

1. There should be systems for monitoring compliance with the principles set out in this Recommendation.

2. The results of such monitoring should be made publicly available

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](#).



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](#).



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](#).



Alex Cisneros: alex.cisneros@39essex.com

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](#).



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](#).

Neil's training dates are available 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 September. 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

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

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

The Legal 500 UK
 Court of Protection and
 Community Care
Top Tier Set

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

39 Essex Chambers is an equal opportunities employer.

39 Essex Chambers LLP is a governance and holding entity and a limited liability partnership registered in England and Wales (registered number 0C360005) with its registered office at 81 Chancery Lane, London WC2A 1DD.

39 Essex Chambers' members provide legal and advocacy services as independent, self-employed barristers and no entity connected with 39 Essex Chambers provides any legal services.

39 Essex Chambers (Services) Limited manages the administrative, operational and support functions of Chambers and is a company incorporated in England and Wales (company number 7385894) with its registered office at 81 Chancery Lane, London WC2A 1DD.

[For all our mental capacity resources, click here](#)