



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](#).

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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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Adult Social Care Reform

On 22 June 2026, DHSC wrote to Baroness Casey (who is chairing the Independent Commission on Adult Social Care) to update her on progress against the recommendations that she set out in her letter on 3 March 2026 (echoed in a speech to the Nuffield Foundation on 5 March 2026.) DHSC highlighted:

- The establishment of a new national adult safeguarding board ‘chaired by the Chief Social Worker, Sarah McClinton, reporting directly into Minister Kinnock, as the Minister of State for Care. It has a broad membership, with the seniority and experience required to drive change - including sector leaders, people with lived experience, experts and innovators.’ The board’s priorities are to

- ‘...update the Care Act statutory guidance on adult safeguarding to drive better implementation and practice across a wide range of issues, including homelessness, drugs and alcohol, and transitional safeguarding...’
- ‘...oversee an urgent review of the legal framework for safeguarding. This will:
 - identify any improvements needed to ensure that the legal

framework is robust enough to respond to serious safeguarding risks

- examine the current mechanism for escalating local safeguarding concerns to national level
- identify what statutory powers the board might need to operate most effectively
- the board will work to strengthen national oversight of local Safeguarding Adults Boards and improve the quality of adult safeguarding practice’
- The creation of ‘a new modern service framework for dementia and frailty, published by the end of the year...Progress will be championed and accelerated by a new dementia tsar. They will work within and alongside the system, to catalyse progress. We will begin recruitment shortly.
 - In parallel, we will review how we approach dementia within the Department of Health and Social Care (DHSC) and its arm’s length bodies (ALBs) - so that we have one

coherent strategy, that spans from research to practice and brings together the right capability and capacity to make progress, and the full ambition of the modern service framework, a reality.

- *We agree with your call for urgent investment in dementia trials. That's why I'm pleased to confirm we have adopted the recommended target to scale participation in UK dementia trials to 2,000 people within the next 5 years, up from 377 in 2025 to 2026...'*
- *Speeding up and improving coordination of care and support for people with Motor Neurone Disease.*

The Muckamore Abbey Hospital Public Inquiry Reports

In a tragically familiar account to the findings of the inquiries into Ely Hospital, Longcare, Whorlton Hall and Winterbourne View, and Yew Tree Hospital (among other inquiries and safeguarding reports chronicled at length in the report), the lengthy, in-depth and harrowing report of the Muckamore Abbey Hospital Public Inquiry was published on 18 June 2026. Muckamore Abbey Hospital is a large hospital in Northern Ireland which treats people with learning disabilities and mental illnesses. Following evidence inquiry was established in 2020 and '[i]n total the Inquiry heard from 235 witnesses including a number of service users and over 90 relatives of service users. Approximately 40,000 documents were provided and considered by the inquiry.' The inquiry found that:

Patients were abused at Muckamore Abbey Hospital (MAH). It is important to state that bold and simple fact. The abuse did not involve every patient nor every member of staff, nor a majority of the staff. But many patients had their lives made miserable by systematic bullying by certain members of staff whose job it was to look after them. It also appears that some patients suffered a high number of incidents, others very few or none. It is also important to state, however, that no adjudication is made by the Panel in this report in respect of individual incidents in relation to which evidence was heard.

Institutions caring for people with learning disabilities and autistic people are known to be high-risk environments. Across the United Kingdom and Northern Ireland, abuse of people with learning disabilities has recurred in institutional, hospital and community settings over many decades. There have been numerous well-publicised Serious Case Reviews and Inquiries into such abuse. The Inquiry found that many of the conditions found in previous abuse inquiries, both in Northern Ireland and in Great Britain, existed at MAH, yet were not identified as signals of heightened risk, despite the setting itself and the patient cadre being at obviously high risk...

The patients were vulnerable in the sense that the vast majority of them had learning disabilities and/or were autistic people, which made it far easier for them to be abused. Many of the patients were non-verbal. They were easy targets for those with malign intent. It would however be too easy simply to blame the individuals involved and to say, where there are those with bad intent it is practically impossible to stop them acting on it. The reality is that

there were multiple contributory factors allowing the circumstances that put the patients in this position and that contributed to the reason why some staff acted as they did.

It is perhaps obvious that the factors that allow for a situation in which a member of staff chooses to abuse a patient, and that set the culture in which such abuse is witnessed by others but not prevented or reported by them, are many and complex. We examine those factors with care in this report. We examine the management systems in place, the staffing of the hospital, the training of those staff, the governance of the hospital and the Belfast Trust that managed it, as well as the external agencies that might have spotted what was going on but did not.

The investigation of abuse of patients at MAH was triggered by the discovery of CCTV footage that had retained recordings of public parts of the hospital between March and September 2017. Examination of that footage led first to an internal investigation and shortly thereafter to the involvement of the Police Service of Northern Ireland (PSNI)...

Every Public Inquiry has its complexities but, in addition, this Inquiry faced the significant issue of contemporaneous criminal proceedings. By the time I was appointed to Chair this Inquiry in June 2021, the PSNI had already been investigating allegations of abuse of patients at Muckamore for some three years. Those investigations have continued as the Inquiry proceeded. We were told that it was the largest adult safeguarding investigation ever conducted in this jurisdiction and possibly in the UK. We understand that there are five

committed trials waiting to start in the Crown Court here in Belfast, and there may be other trials thereafter. But no Crown Court trial has yet been held and none of the committed trials currently has a start date; that is, eight years after the investigations began and five years after this Inquiry was announced. The reality may be that criminal trials will not conclude either this year or quite possibly next year.

The inquiry made over 100 recommendations for the Northern Irish government; the progress of these recommendations will certainly be worth watching.

How far does a solicitor's duty to assess a client's mental capacity extend?

How far does a solicitor's duty to assess a client's mental capacity extend? This was a question the Court of Appeal pondered in *R(Aina Khan Law Ltd) v Legal Ombudsman* [2026] EWCA Civ 773 – the conclusion being: far enough to protect them from themselves.

In this case, Aina Khan Law Ltd, an experienced and well-respected one-woman-band practice, was instructed by CXV to assist in divorce proceedings including child arrangements for the two children of the marriage, and a freezing injunction against her husband's assets.

The firm's original notes of the case included that CXV had mental health issues; that she was 'emotionally raw' and would need a good deal of support. In addition, 'she has to be careful to keep an eye on the costs and make sure that they are proportionate to what she is seeking to achieve.' [2].

Proceedings ensued and quickly became complex and fraught, with CXV accusing her husband of grooming and sexually abusing their six-year-old daughter and of drugging or poisoning both her and the child and using

electronic surveillance on them. The allegations were denied by the father who argued that CXV was having a mental health breakdown following a diagnosis of ADHD and prescribed treatment by way of amphetamines. The father applied for an occupation order of the family home and sole custody of the children; CXV applied for an occupation order in turn, plus a non-molestation order and sole custody.

A court ordered psychiatric assessment concluded that CXV was indeed suffering from paranoid psychosis and that her allegations were in fact part of her paranoid delusional system, likely precipitated by the prescribed amphetamine use. The expert advised the court that he did not consider CXV could properly engage with the proceedings as a result of her delusions. Following these findings, the Family Court declared CXV to lack capacity in relation to the proceedings [7] and CXV's sister was proposed as her litigation friend.

Solicitors then wrote to the litigation friend, advising them of likely costs estimates going forward. Having said that it would maintain costs reviews throughout proceedings, CXV's solicitors had, by this point, already charged her a total of £113,963 including VAT – having originally estimated a cost of £43,500.

CXV's sister complained to the firm, and then to the legal ombudsman on the grounds that the firm had 'failed to adequately assess CXV's litigation capacity' [10] and that it had charged excessive costs for the work completed.

The Ombudsman upheld the complaint and proposed compensation of £51,192.60 arising out of what were effectively two complaints.

Aina Khan Law challenged the ombudsman's decision by way of judicial review. It claimed the ombudsman had exceeded her "remit" and had made a disproportionate and thus discriminatory award against such a small firm; it also issued an irrationality challenge - The ombudsman made a decision that was "so fundamentally flawed and

unreasonable that no regulator should be allowed to impose such judgments, particularly when there is no right of appeal".

The court at first instance rejected the discrimination complaints and the complaints on costs so one element of the award of costs - £35,500 – remained unchallenged; the judge accepted the rationality challenge regarding litigation capacity however, and thus set aside the £15,692.60 element of the costs award.

The appeal to the Court of Appeal was heard on the basis that the court had imposed an "excessively legalistic and ... unduly onerous obligation on the ombudsman to give reasons in relation to each of the matters identified in his judgment" and that the judge had "erred by reviewing the ombudsman's decision as if: (i) the ombudsman had purported to apply the legal concept of "capacity", alternatively (ii) the ombudsman had been obliged to apply that legal concept, but failed to do so." [19]. A third ground, that the award of compensation was tainted by irrationality, was also considered as well as a fourth ground concerning costs.

The Court of Appeal in its reasoning (which is delivered in a leading judgment by Lord Justice Holgate rather than Lord Justice Baker, who also sat on the bench) did not consider it necessary to delve into the law on incapacity to resolve the issues in the appeal [41]; it did, however, look closely at the SRA code of conduct, and in particular the Guidance regarding meeting the needs of vulnerable clients. It noted in particular:

44. *In the section dealing with the first group, "Identifying vulnerable clients", the Guidance gives a list of 25 different indicators of vulnerability which range widely from advanced age to young age and include "mental health problems" and "psychological or emotional factors, such as stress":*

"One or more of these risk factors may mean that your client is vulnerable and may need your help to express their wishes, understand relevant advice and give you instructions, or that they may lack capacity to make relevant decisions and to give your instructions."

This passage relates the risk factors to the same two broad groups, vulnerable clients and clients who may lack capacity. Where a solicitor is aware of "risk factors" he or she should help their client inter alia to "overcome any difficulties to understand relevant advice" and "give valid instructions". The Guidance indicates that family members may be able to assist.

45. Under the heading "clients who may lack mental capacity", the Guidance states:

"Under paragraph 3.4 of the SRA's Code of Conduct for Solicitors, RELs and RFLs, you must consider and take account of your client's attributes, needs and circumstances. As such you must satisfy yourself about their capacity if you have any doubts about whether your client has the capacity to give instructions.

This is also important as it can enable the client to make decisions or protect them from making a decision when they lack capacity, and reduces the risk of any subsequent complaint or challenge." (emphasis added)

46. Thus the Guidance makes it clear that a person who begins to instruct a solicitor may have mental health issues making them "vulnerable" in the broad sense explained in that document, but without lacking mental capacity, and that such a person may need assistance e.g. from a relative or friend. It is well-recognised that mental capacity is both issue-specific and time-specific. It may fluctuate over time. A person may lack mental capacity at one point in time and be in the broader sense "vulnerable" at another. In other words

mental health issues may relate to a spectrum of conditions and problems

The Court of Appeal noted that while the Ombudsman's decision referred in part to mental capacity, it was also clear that it was looking more broadly at the issue of vulnerability and that, on that basis, it was rational for the ombudsman to consider whether or not CXV might have required assistance from a relative [55]. It held: *"the ombudsman examined whether, from September 2020 onwards, AKLL ought to have considered not only whether CXV lacked mental capacity but also whether she was a "vulnerable client" with mental health problems. This was in the context of a person who, viewed objectively, suffered from paranoid psychosis involving a complex delusional system and lacked litigation capacity from August 2020 onwards. In addition, CXV was facing complex and costly litigation where she needed to be able to understand the issues involved in order to make decisions and give instructions. The ombudsman rightly had regard to the Law Society's Guidance that a solicitor should consider whether a vulnerable client requires support, for example from family members, even if she does not lack litigation capacity and require a litigation friend."* [76]

Comment

This judgment does not have anything much to say on capacity – and in fact the Court of Appeal is quite careful to resist any suggestions of its having raised any issues *"which are either new or of wide-ranging importance"* [22]. It does, however, reiterate the importance, for both solicitors and counsel, to consider issues of both capacity and vulnerability throughout proceedings, particularly where costs estimates are exceeded.

Terminally Ill Adults (End of Life) Bill returns

On 14 June 2026, Lauren Roberts MP announced that she would use her position

(second) in the Private Members Ballot to re-introduce the Terminally Ill Adults (End of Life) Bill. It appears from her announcement that she intends to bring back the Bill introduced by Kim

Leadbeater MP. Alex maintains a full page of resources on the bill and its predecessor, which is available [here](#).

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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](#).

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.

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