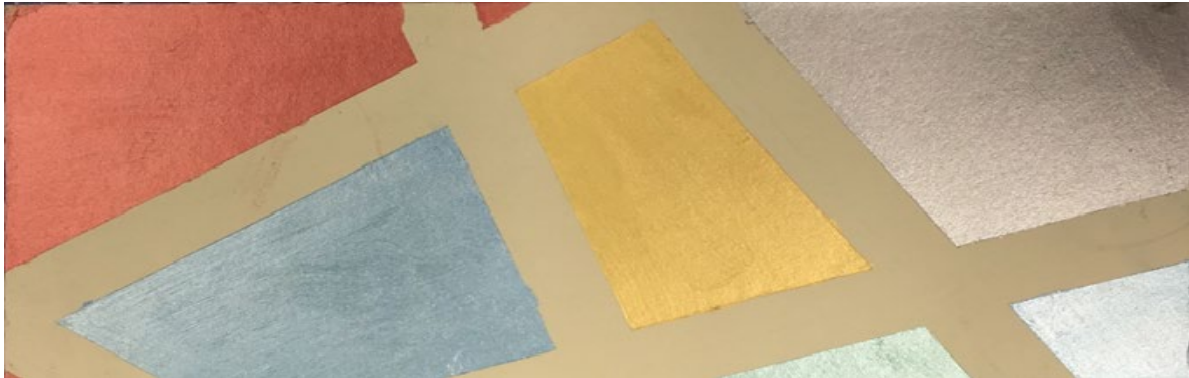




Welcome to the September 2026 Mental Capacity Report. Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: an update on post-AGNI developments, two capacity conundrums in one case and 'over-litigation' in a PDOC case;
- (2) In the Property and Affairs Report: an update from the Property and Affairs Court User Group meeting and the OPG is recruiting lawyers;
- (3) In the Practice and Procedure Report: the Court of Appeal resets the approach to personal welfare deputies, and cross-border cases involving Scotland;
- (4) In the Mental Health Matters Report: recent cases concerning the relationship between the MHA and the MCA and a excoriating judgment on "detainability;"
- (5) In the Children's Capacity Report: AGNI and children and the Joint Committee on Human Rights reports on the human rights of children in care;
- (6) In the Wider Context Report: litigation capacity complexities, and recent medical guidance documents concerning consent, voluntarily stopping eating and drinking, and eating disorders and critical care.
- (7) In the Scotland Report: a Practice Note that has caused some consternation.

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

Property and Affairs Court User Group – 1 July 2026	2
OPG recruitment.....	2

Property and Affairs Court User Group – 1 July 2026

A Court of Protection User Group meeting for Property and Affairs was held on 1 July 2026. These meetings are held regularly and are chaired by Senior Judge Hilder. The next meeting is on 21 October 2026.

The [minutes](#) show that the headline updates from the Court¹ were:

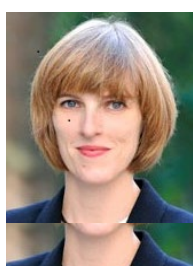
- **Caseload:** Around 200 new P&A applications are awaiting logging, currently around 7 days old. Orders are being issued approximately 15 days after they are made. Additional Birmingham-based staff are being trained with the aim of reducing this to a 5-day turnaround.
- **Costs order errors:** A number of lay deputy orders were issued with incorrect provisions relating to professional deputy costs. Corrective COP9 applications are currently taking 4–8 weeks to process. The underlying templates have now been corrected.
- **Draft orders welcomed:** HMCTS has asked applicants to submit a draft order up front for streamlined applications seeking non-standard powers.

- **Digital:** The “We Are Group” support service has launched. The New Trustee digital journey is awaiting Practice Direction sign-off, with a summer go-live planned. The P&A pro bono duty desk, which has operated monthly since May, is going well.

OPG recruitment

The OPG are growing their legal team due to increasing demand in the MCA context. There are three positions open for suitably qualified lawyers: for more details and to apply, see [here](#); you can also [contact](#) Peter Boyce at the OPG if you have specific queries.

¹ This excludes the update around the response to AGNI, which we have included in the Health, Welfare and Deprivation of Liberty section of the Report.



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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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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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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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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](#).



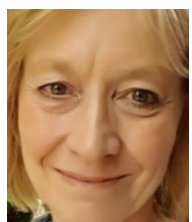
Alex Cisneros: alex.cisneros@39essex.com

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.



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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](#).

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 October. 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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