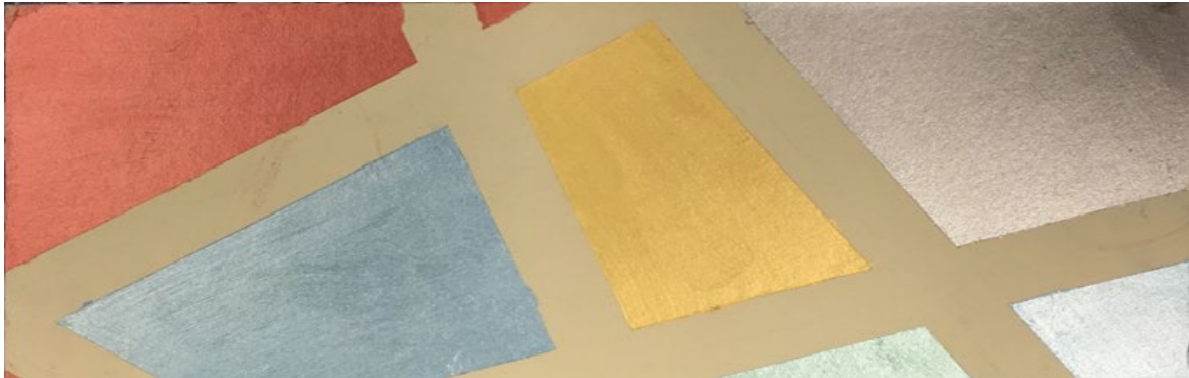




Welcome to the October 2026 Mental Capacity Report. Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: capacity, presumptions and the Care Act 2014; and the most comprehensive first instance 'run' at AGNI so far;
- (2) In the Property and Affairs Report: deputies and direct payments, and the Court of Protection and the validity of wills;
- (3) In the Practice and Procedure Report: the AGNI effect starts to show in the statistics;
- (4) In the Mental Health Matters Report: HSSIB's investigation into mental health care in the emergency department;
- (5) In the Children's Capacity Report: desperate deprivation of liberty and consenting to confinement;
- (6) In the Wider Context Report: Anglo-Welsh legal differences and asserting your own capacity;
- (7) In the Scotland Report: what listening to children tells us about listening to adults.

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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Mental health crisis care: care of patients in emergency departments

The Health Services Safety Investigations Body (HSSIB) has published its second report into crisis care in emergency departments (following an interim report in April 2026). Mental health crisis care: care of patients in emergency departments makes a number of findings on the experience of people experiencing mental health crises in emergency departments. It notes that while people in mental health crisis constitute only 3% of ED attendances, but typically remain there twice as long as other patients. The report finds that:

- The experiences of people experiencing mental health crisis in ED can increase their distress, deterioration and risk to others.
- 'Safety risks were not experienced equally. Protected characteristics, communication and sensory needs, neurodevelopmental needs, trauma, previous experiences and wider circumstances could affect how people experienced the ED environment, how their distress and needs were understood, and how able they were to participate in care and decision making.
- Children and young people could experience prolonged waits in EDs or paediatric settings while assessments continued, when responsibility for care was unresolved, or while suitable onward provision was sought.
- EDs were often not designed or resourced to provide prolonged therapeutic mental health crisis care. Dedicated mental health spaces

varied in availability, design and suitability, and there were no nationally defined service standards or built environment standards. Some mental health assessment rooms did not meet Royal College of Psychiatrists' Psychiatric Liaison Accreditation Network standards.'

The report finds that ED staff did not always have the skills and training to care for people in mental health crises. *"Liaison psychiatry provision was variable, with differences in staffing resources, commissioning and delivery of Core 24 standards limiting timely mental health input in EDs. Limited availability of approved mental health professionals (AMHPs) and Section 12 doctors, particularly out of hours, delayed Mental Health Act assessments and exposed gaps in national oversight of statutory workforce capacity and resilience."* And *"[f]amilies and carers were not consistently involved in a person's assessment, safety planning or discharge decisions in EDs, and information shared by family members was not always used to support safety."* The exclusion of families was not always recognised.

There were significant gaps in interagency working. Information often was not consistently shared between public bodies, and ED staff and liaison psychiatrists did not have all relevant information about patients. *"Interfaces between services including police, ambulance, drug and alcohol, social care, voluntary sector and other services were inconsistent, increasing operational risk and leaving EDs managing needs beyond their intended role. Section 136 pathways were not always supported by clear ownership across police, health and local authority services, timely*

access to health-based alternatives, shared risk management, effective transfer of care or sustained multi-agency learning. This is reported to have become more challenging following Right Care, Right Person implementation."

HSSIB made the following recommendations:

- HSSIB recommends that the Department of Health and Social Care/NHS England works with relevant national stakeholders, to set out and support national minimum operational service standards and build design expectations for emergency departments. This will help reduce unwarranted variation and meet the therapeutic needs of individuals who attend emergency departments in a mental health crisis.
- HSSIB recommends that the Department of Health and Social Care/NHS England works with relevant national stakeholders, to ensure people in mental health crisis in emergency departments are kept safe by addressing the findings of this report. This programme of work should provide further support and/or guidance to address:
- clear expectations for roles, responsibilities and accountability for clinically appropriate, co-ordinated Mental Health Act assessment pathways;
- effective shared care, governance and escalation arrangements and processes to identify, escalate and review delays related to assessment, bed availability and onward care;
- arrangements to assess, plan for and assure the capacity, capability and resilience of the workforce, including access to relevant specialist and statutory professionals;

- agreed measures and reporting arrangements to monitor workforce and pathway pressures, evaluate improvement actions, identify variation in access, waiting, experience, use of restrictive interventions, and address inequalities between population groups.

This will support safe care by addressing issues in relation to clinical ownership, transfer of care, governance and escalation of patients in mental health crisis in emergency departments.

HSSIB also made observations that "[o]rganisations with responsibilities for regulation, oversight and assurance of urgent and emergency mental health crisis care can improve patient safety by using the findings of this report to review how they monitor the safety and effectiveness of care for people in mental health crisis who attend emergency departments" and "[o]rganisations with responsibilities for regulation, oversight and assurance of mental health crisis care can improve patient safety by reviewing the extent to which patients, families and carers are involved in care and decision making for people in mental health crisis who attend emergency departments. Understanding why family and carer involvement is not consistently achieved will help organisations identify opportunities to improve assessment, safety planning and discharge processes, to help keep people safe."

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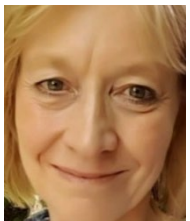
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Alex regularly appears in health and welfare and property and affairs cases in the Court of Protection. He has appeared in leading cases to do with deputyship and published a textbook about LPAs. His recent doctoral thesis explores the impact of changes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