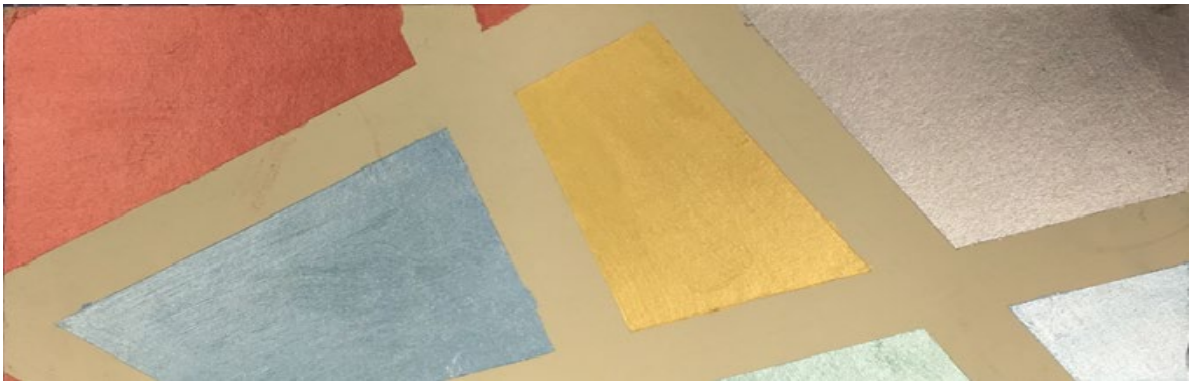


Welcome to the November 2026 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: key themes from post-AGNI caselaw to date, and two medical treatment decisions showing doctors getting it right;

(2) In the Property and Affairs Report: self-dealing in the rearview mirror, dismay at deputy delegation and blithe ignorance of the obligations on a deputy as regards settlement of monies;

(3) In the Practice and Procedure Report: personal welfare orders after HB;

(4) In the Mental Health Matters Report: the Mental health conditions, ADHD and autism prevalence review; and Royal College of Psychiatrists on coercion and human rights;

(5) In the Children's Capacity Report: information-sharing as regards children, and new procedural rules relating to children in ECtHR cases;

(6) In the Wider Context Report: deprivation of liberty before Strasbourg, guidance on eating and drinking at acknowledged risk, and an important change of position relating to Jehovah's Witnesses;

(7) In the Scotland Report: the death of a Bill that never was, and a new appointment for the Mental Welfare Commission.

With huge thanks to Neil Allen, we have set up a running table of post-AGNI cases allowing rapid identification of the types of scenarios being considered, and the results. The case-tracker can be found here, a page where we also host an 'AGNI annex' summarising and commenting on the cases decided in October.

All our other content that you might need – our Reports, our case-law summaries, and our guidance notes – can 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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Legal Director appointed for Mental Welfare Commission

In the September Report, Julie Paterson, Chief Executive of the Mental Welfare Commission, kindly provided an explanation of the new role created by the Commission of Executive Director (Legal & Policy). Julie explained that this would be a key new senior leadership position, created to strengthen legal expertise and policy capability across the work of the Commission. This can now be seen as a "stop press" item because the news that the Commission has now made an appointment to the new position has entered the public domain, though the formal announcement of that, no doubt with supporting information, is awaited. It is of massive, double significance that Professor Jill Stavert has been appointed to the new position, and in consequence is leaving Edinburgh Napier University. Jill Stavert's expertise, experience and standing across all areas of law that encompass the work of the Commission is massive, and indeed can reasonably be described as second to none. Her achievement and contribution in establishing Edinburgh Napier University's Centre for Mental Health and Capacity Law (a title recently altered, but still accurate) has been unique. It would not be entirely accurate to describe the Commission's gain as being balanced by Edinburgh Napier's loss. Her departure from Edinburgh Napier will leave a huge gap, including externally in the perceptions of many organisations and individuals engaged in the field, and the public generally. Nevertheless, the massive capability and reputation of the Centre should prove to be robust. Following Jill's departure, Professor Thanos Karatzias will be the Interim Centre Lead. Dr Amy Zarins continues as Centre Manager. In her intimation of these changes, Jill has confirmed that: "*The Centre will be in excellent and very capable hands.*"

Adrian D Ward

Second AWI certification course

We are grateful to Sandra McDonald, former Public Guardian, for providing the following update:

> *"In the Scotland section of the May 2026 Report, we provided a comprehensive overview of the then new Incapacity Law and Practice Certification: a six-week course, delivered online for three hours each week, designed to explore the full range of challenges an adult capacity practitioner may face. The course is provided by the Law Society of Scotland in conjunction with Sandra McDonald, the former Public Guardian for Scotland. At that time, the first course had just launched. Places were initially limited to 20, then increased to 25 in response to demand. Numbers were deliberately kept low to encourage interaction and networking. Despite the increased number, the first course was oversubscribed, selling out within two*

weeks. I am delighted to report that feedback from the first cohort showed extremely high levels of satisfaction—no doubt reflecting the outstanding calibre of the expert speakers. Delegates were also encouraged to offer constructive criticism and, with some persuasion, suggested several ways to make the experience even better. To their credit, the course providers embraced that feedback and have adjusted the second course accordingly. We are now two-thirds of the way through a fully subscribed second course which appears to be receiving an equally positive response, judging by the enthusiastic participation of its delegates. Sandra McDonald commented: 'The Law Society of Scotland, and particularly the course leader Rachel Steer, have shown a real commitment to wanting to improve adult capacity practice, developing this course in an area of law that had little in-depth training available. I'm hoping the course gives participants a feeling of increased confidence, even if that is from positive reinforcement, and that longer term it will be a recognised signal of competence which will increase public confidence.'

Sandra McDonald
30th October 2026

The Law Society of Scotland now has a long record in supporting and encouraging the emergence of adult incapacity law as a subject, and area of practice, in its own right. Of particular significance have been the establishment of the Society's Mental Health and Disability Committee in 1989; provision of Update and CPD training from the 1990s onwards; establishment of specialist accreditation in incapacity and mental disability law (at the same time as the parallel accredited specialism in mental health law); the provision and updating of powers of attorney guidance, and the related vulnerable clients guidance; and now – this year – the introduction of a specialist incapacity law and practice certification course. Sandra McDonald is to be commended for applying her huge experience of the subject, along with her organisational abilities, in structuring and delivering the first two courses, in quick succession. One must also commend Rachel Steer, CPD Projects Manager, Law Society of Scotland, for acting as course leader in close collaboration with Sandra, and her colleagues who have ensured the practical delivery of the courses. Also to be commended are all the busy practitioners who have nevertheless recognised the value of the courses and have taken up the challenge of devoting significant professional time and energy towards building their competence, and collectively increasing the standard of service by their profession, in the crucially vital area of adult incapacity law. Sandra's contribution above was reviewed by Rachel.

Adrian D Ward

Law reform: the Bill that never was

On 1st September 2026, Maree Todd MSP, Minister for Mental Wellbeing, Public Health, Sport, Alcohol and Drugs, circulated a letter providing "an update on the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill", in which the key messages at the outset were as follows:

"As set out in the Programme for Government, Ministers remain strongly committed to improving outcomes for people with learning disabilities, autistic people and neurodivergent people through a programme of reform, service improvement and investment.

"While legislation can be an important tool for driving change, Ministers have concluded that progress is needed

> *now through policy reform, service improvement and targeted investment, rather than a legislative process which would take several years to complete and implement. Our focus is therefore on delivering practical improvements now, while retaining the option of future legislation should evidence show that additional statutory measures are required."*

There never has been an "LDAN" Bill, so far as one can ascertain – neither introduced to the Parliament, nor even issued in draft form. That is not surprising. The issues identified under the description "LDAN Bill" are real and require to be addressed, but unclear throughout to many lawyers has been the question of what useful role could be played by new legislation. The concept that legislation was required has seemed to many to be travelling along the wrong track, perhaps an example of the public misconception that all such problems can be solved by throwing new laws at them. That would seem to be acknowledged by the steps now taken by the Minister and her advisers. It is a step that has caused widespread disappointment and concern, and indeed in some quarters dismay, but sooner or later the apparent misconception that this was a matter to be addressed by legislation had to be confronted. The Minister has "grasped the nettle" and done what had to be done. As a matter of policy and provision, rather than law reform, one will wish to follow the development of the work already underway "in a number of key areas". As described by the Minister, these include:

- improving neurodevelopmental support so people can access the right support at the right time;
- expanding Learning Disability Annual Health Checks;
- delivering the Coming Home Action Plan;
- increasing the availability of Changing Places Toilets; and
- continuing improvement work across health, education and wider public services.

One would tentatively suggest that appropriate AWI law reform will be a better vehicle for updating the law, and among other things it will be the better for addressing the needs of all people anywhere within its wide scope, rather than artificially limited to those intended to come within particular definitions such as "Learning Disabilities, Autism and Neurodivergence", which among other things would create a wholly unhelpful need to try to define who is in and who is out by reference to such descriptions, rather than by reference to circumstances and needs.

The one potential concern which is not addressed in the Minister's letter, but which one hopes will be promptly and adequately addressed, is a commitment that although the "LDAN Bill" has been abandoned, AWI reform still has the Minister's full support and will continue to be pressed ahead on no longer than the timetable necessary to do it properly. In this regard, the most that we seem to have so far is the following, lacking any firm acknowledgement or commitment in relation to the urgency of the need to pass appropriate legislation and bring it into force. The September 2026 Mental Health and Wellbeing Delivery Plan identifies that:

> *The Scottish Government will deliver a staged approach to mental health and capacity law reform following the Scottish Mental Health Law Review, with an initial focus on Adults with Incapacity policy development and preparation for updated legislation. The Scottish*

> *Government expect to complete policy development on Adults with Incapacity reform by summer 2027, with the timing of a future Bill subject to agreement of the wider legislative timetable.*

We can confirm that the work of the Expert Working Group, and of the officials with whom it works, continues; we also understand that the Ministerial Oversight Group will be reconvened in January 2027.

In the meantime, we now have confirmation that the Bill that never was has become the Bill that – in all probability – never will be.

Adrian D Ward

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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.



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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.



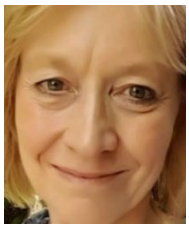
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Alex regularly appears in health and welfare and property and affairs cases in the Court of Protection. He has appeared in leading cases to do with deputyship and published a textbook about LPAs. His recent doctoral thesis explores the impact of changes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



Jill Stavert: j.stavert@napier.ac.uk

Jill is the inaugural Executive Director (Law and Policy) at the Mental Welfare Commission, having previously been Professor of Law, Director of the Centre for Mental Health and Capacity Law and Director of Research, as well as a long-standing member of the Law Society of Scotland's Mental Health and Disability Committee. 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 December. 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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