



Welcome to the March 2020 Mental Capacity Report. Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: a cautionary tale about re-using material for DoLS assessment and capacity complexities in the context of medical treatment;
- (2) In the Property and Affairs Report: an important case on the limits of powers of professional deputies to act without recourse to the Court of Protection;
- (3) In the Practice and Procedure Report: medical treatment – delay, neglect and judicial despair, developments relating to vulnerable parties and witnesses, and Forced Marriage Protection Orders under the spotlight;
- (4) In the Wider Context Report: Mental Capacity Action Days, when not to presume upon a presumption, and a number of important reports from bodies such as the CQC;
- (5) In the Scotland Report: the DEC:IDES trial.

We have also recently updated our capacity guide and our guide to the inherent jurisdiction. You can find them, along with our past issues, our case summaries, and more on our dedicated sub-site [here](#).

If you want more information on the Convention on the Rights of Persons with Disabilities, which we frequently refer to in this Report, we suggest you go to the [Small Places](#) website run by Lucy Series of Cardiff University.

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The picture at the top, "Colourful," is by Geoffrey Files, a young man with autism. We are very grateful to him and his family for permission to use his artwork.

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The DEC:IDES Trial: Developing the supported decision-making evidence base

[We are pleased to be able to include here an article on this important project, co-written by Amanda Woodrow, Research Assistant for DEC:IDES & Professor Jill Stavert, Co-Investigator for DEC:IDES]

People who develop a psychotic illness such as schizophrenia can often be faced with the consequences of being judged to lack treatment decision-making capacity. This can leave them vulnerable to the receipt of involuntary psychiatric care, which may be life-changing and traumatic.

Where this capacity is assessed as actually or potentially lacking clinicians are obliged to support its return, so their patients can take part in decision making and avoid involuntary treatment. However in their scrutiny of the English Mental Capacity Act 2005 implementation, the House of Lords concluded: "Our evidence suggests that (supported decision-making) is rare in practice"¹ and the United Nations Committee on the Convention on the Rights of Persons with Disabilities (UNCPRD)

makes it clear that having access to appropriate supported decision making is essential if the UK is to be compliant with Article 12 of the UNCPRD.² In response, the Scottish Government is devising a national strategy on supported decision-making, legislation in Scotland and England is being reviewed with UNCPRD compliance in mind, including a strengthened emphasis on supporting capacity, and the 2018 NICE Guideline requires all practitioners and organisations to document what they have done to support decision-making capacity.³

Despite the importance and legal obligation to support capacity there is a lack of evidence on how to do this effectively in practice, and there is a lack of effective and acceptable psychological interventions to aid this. Recent research indicates that a lack of capacity is likely to stem from interactions between cognitive, emotional and social factors, the effects of which are moderated by a person's awareness of them; suggesting that psychological therapies may particularly relevant to the improvement of these potential causal factors.

The aim of DEC:IDES (DEcision-making Capacity: Intervention Development and Evaluation in

¹ House of Lords Select Committee on the Mental Capacity Act 2005. *Mental Capacity Act 2005: Post-Legislative Scrutiny*; 2014.

² United Nations Committee on the Rights of Persons with Disabilities. *General Comment No. 1; Article 12: Equal Recognition before the Law*; 2014.

³ National Institute for Health and Care Excellence. *Decision making and mental capacity, NICE Guideline NG108*; 2018.

Schizophrenia-spectrum disorder) is to address this gap in evidence. It is the first funded randomised controlled trial (RCT) of its kind to focus on supporting decision-making in people with psychosis. DEC:IDES is running as an 'umbrella' trial, comprising three small scale concurrent RCTs, each delivering one of three psychological interventions. The interventions target low self-esteem, high levels of self-stigma, and the 'jumping to conclusions' bias – a tendency for patients with psychosis to make decisions quickly, based on reduced or incomplete evidence. Participants in DEC:IDES will have a 50% chance of receiving either 6 weekly 1-hour sessions of therapy to help them with decision-making, or 6 weekly 1-hour sessions of more in-depth assessment of what helps or hinders their decision-making.

This phase of the research is focused primarily on feasibility; gathering information on whether people with psychosis are interested in taking part, and monitoring adherence and attrition rates. The data gathered will help inform the design and acceptability of a full-scale trial in the future.

DEC:IDES is funded by the Chief Scientist Office, sponsored by Edinburgh Napier University and supported by NHS Lothian, Pennine Care NHS Foundation Trust, and Lancashire Care NHS Foundation Trust, with recruitment taking place from March 2020 to March 2021. The Chief Investigator for DEC:IDES is Dr Paul Hutton, Associate Professor of Therapeutic Interventions at Edinburgh Napier University.

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Alex is recommended as a 'star junior' in Chambers & Partners for his Court of Protection work. He has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court. He also writes extensively, has numerous academic affiliations, including as Wellcome Research Fellow at King's College London, and created the website www.mentalcapacitylawandpolicy.org.uk. 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. Also a Senior Lecturer at Manchester University and Clinical Lead of its Legal Advice Centre, he teaches students in these fields, and trains health, social care and legal professionals. When time permits, Neil publishes in academic books and journals. To view full CV click [here](#).



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Annabel has experience in a wide range of issues before the Court of Protection, including medical treatment, deprivation of liberty, residence, care contact, welfare, property and financial affairs, and has particular expertise in complex cross-border jurisdiction matters. She is a contributing editor to 'Court of Protection Practice' and an editor of the Court of Protection Law Reports. 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, CCGs 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 2019). To view full CV click [here](#).

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Simon has wide experience of private client work raising capacity issues, including *Day v Harris & Ors* [2013] 3 WLR 1560, centred on the question whether Sir Malcolm Arnold had given manuscripts of his compositions to his children when in a desperate state or later when he was a patient of the Court of Protection. He has also acted in many cases where deputies or attorneys have misused P's assets. To view 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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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

Approaching complex capacity assessments

Alex will be co-leading a day-long masterclass for Maudsley Learning in association with the [Mental Health & Justice](#) project on 15 May 2020, in London. For more details, and to book, see [here](#).

2020 World Congress in Argentina

Adrian will be speaking at the 6th World Congress to be held at Buenos Aires University, Argentina, from 29th September to 2nd October 2020, under the full title “Adult Support and Care” and the sub-title “From Adult Guardianship to Personal Autonomy.” For more details, see [here](#).

Other conferences and events of interest

Mental Diversity Law Conference

The call for papers is now open for the Third UK and Ireland Mental Diversity Law Conference, to be held at the University of Nottingham on 23 and 24 June. For more details, see [here](#).

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 April. 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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