



Welcome to the September 2025 Mental Capacity Report. Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: an update on *Cheshire West 2*, non-withdrawal of treatment in two very different contexts and SCIE sounds the alarm;
- (2) In the Property and Affairs Report: the OPG annual report and increases to LPA fees;
- (3) In the Practice and Procedure Report: the Court of Protection (Amendment) Rules 2025, a route map for anorexia cases relating to detained patients, and taking evidence from abroad;
- (4) In the Mental Health Matters Report: the police, Article 2 and suicide risk, and an evaluation of the HOPE(S) programme;
- (5) In the Children's Capacity Report: *Gillick* does not provide a universal test, and jurisdictional issues in the making of deprivation of liberty and wardship orders;
- (6) In the Wider Context Report: anonymity, vulnerability and the open justice principle, and learning disability and social murder;
- (7) In the Scotland Report: an apparently open and shut guardianship case and an update on Adults with Incapacity Act reform.

The progress of the Terminally Ill Adults (End of Life) Bill can be followed on Alex's resources page [here](#).

You can find our past issues, our case summaries, and more on our dedicated sub-site [here](#), where you can also sign up to the [Mental Capacity Report](#).

Editors

Alex Ruck Keene KC (Hon)
Victoria Butler-Cole KC
Neil Allen
Nicola Kohn
Katie Scott
Arianna Kelly
Nyasha Weinberg

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

Short note: the police, suicide risk and Article 2 ECHR.....	2
Long-term segregation – an evaluation of the HOPE(S) programme.....	2
The CRPD and the MHA.....	3

Short note: the police, suicide risk and Article 2 ECHR

Hill J in *R (Ferguson) v HM Assistant Coroner for Sefton, Knowsley and St Helens* [2025] EWHC 1901 (Admin) pulled few punches when it came to the approach taken by a coroner to Article 2 in the context of an inquest following a suicide after police contact.

Finding that the coroner had erred in concluding that Article 2 was not engaged, her judgment provides a helpful tour d’horizon of the Strasbourg and domestic case law as regards the circumstances under which the positive obligations of the police to secure life in the face of suicide risk are engaged. As Hill J found that the coroner had erred both in his analysis that there was no “real and immediate risk” to life, and that his analysis that the deceased was not within the control of the police, the judgment is helpful for its analysis of both of these issues.

Of note amongst much else is that her robust rejection of the reliance by the Chief Constable on the proposition that the deceased did not lack capacity (to do what was not explained) (see paragraph 187).

Long-term segregation – an evaluation of the HOPE(S) programme

Researchers at Manchester Metropolitan University have published the [evaluation](#) of the National HOPE(S) Programme to end long-term segregation (LTS) for children and young people,

autistic adults and/or adults with a learning disability in inpatient hospital settings. The roll-out concluded at the end of March 2025, and as the abstract explains

Long-term segregation (LTS) is a restrictive practice used in mental health services that disproportionally affects autistic people, individuals with a learning disability, and children and young people. LTS is often experienced as traumatic, isolating and dehumanising. Despite strong policy commitments to reduce the use of coercion in care, LTS continues to be widely used across the system in England. This report presents the findings of the first national evaluation of HOPE(S): a rights-based, trauma-informed intervention designed to reduce the use of LTS and improve outcomes for individuals, families, and staff. Conducted by Manchester Metropolitan University, the study used a mixed-methods approach across 40 NHS-commissioned organisations and 68 hospital settings in England. Results are based on a large sample (n=73) of in depth semi-structured interviews and focus groups and secondary analysis of routine clinical data and key outcome measures for 122 individuals in LTS, 11 family members and 388 staff. Quantitative results show that the HOPE(S) intervention was associated with: (i) Significant reductions in the use of physical and chemical restraint and seclusion; (ii) Improvements in quality of life for individuals; (iii) Increases in

access to fresh air and meaningful activity; and (iv) Improved staff wellbeing, including reduced burnout and secondary trauma. Qualitative findings, co-produced with stakeholders, highlight HOPE(S) as a catalyst for cultural change. It helped shift practice away from containment toward connection, dignity, and relational safety. However, significant systemic barriers remain, including inconsistent definitions of LTS, service resistance, and the need for long-term relational continuity. This study provides robust, rights-based evidence to support national reform of restrictive practices in mental health and related services. The HOPE(S) model is scalable, impactful, and aligned with international human rights frameworks, including the UN Convention on the Rights of Persons with Disabilities (CRPD) and WHO guidance.

The overall recommendation is that:

There is a strong consensus across stakeholders that HOPE(S) should be sustained, expanded, and embedded across health and social care systems. Without HOPE(S), or a comparable, values and rights- driven alternative, there is a serious risk that services will continue to fall short in meeting the needs of autistic people and people with a learning disability, resulting in ongoing harm, institutional trauma, and irreparable damage to people in LTS and their families. Commissioning HOPE(S) or an equivalent rights-based model of care is not optional. It is a matter of justice, ethics, and human rights. It is urgent for the children and young people who will otherwise enter a revolving door of mental health detention, poor physical and mental health, and a system which will strip them of any skills/independence to enjoy a meaningful life close to their loved ones. It is crucial for their families whose life is

on hold and suffer in silence while their loved ones are in LTS. It is also a matter of evidence: this programme is not only effective, but transformative. What we do next will determine whether we repeat the failures of the past, or finally create a system capable of supporting, not segregating, the people it serves.

At least one trust has adopted the model on an ongoing basis, but at the time of writing, we have not seen anything to suggest that it will be maintained on a national basis. The NHSE website simply says:

The HOPE(S) model is a human rights-based approach which was developed by Mersey Care NHS Foundation Trust to reduce the use of long-term segregation that is sometimes experienced by autistic adults, adults with learning disability and children and young people when in mental health hospital. HOPE(S) Model: Mersey Care NHS Foundation Trust.

The National pilot has now concluded, and commissioners can discuss the HOPE(S) model in more detail and explore costings for local areas by contacting: hopes@merseycare.nhs.uk

The CRPD and the MHA

As part of the (slow-moving) process of the Committee on the Rights of Persons with Disabilities' second examination of the UK's compliance with the CRPD, the UK Government has published its response to questions raised by the CRPD Committee concerning the Mental Health Bill. It makes the – slightly surprising – suggestion that the MHA 1983 already complies with the CRPD. As former legal adviser to the MHA review, Alex has more than a few reservations about that proposition. He is also confident that the answers given by the Government as to the Mental Health Bill's

compliance with the CRPD will not find favour with the Committee, albeit (as discussed in [Annex B to the MHA Review report](#)), that is not determinative of the answer as to whether, in fact, they comply with the UK's obligations under the Convention.

Editors and Contributors



Alex Ruck Keene KC (Hon): alex.ruckkeene@39essex.com

Alex 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 Visiting Professor at King's College London, and created the website www.mentalcapacitylawandpolicy.org.uk. To view full CV click [here](#).



Victoria Butler-Cole KC: vb@39essex.com

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 Vice-Chair of the Court of Protection Bar Association and a member of the Nuffield Council on Bioethics. To view full CV click [here](#).



Neil Allen: neil.allen@39essex.com

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 and created the website www.lpslaw.co.uk. To view full CV click [here](#).



Arianna Kelly: Arianna.kelly@39essex.com

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 Court of Protection Practice (LexisNexis). To view a full CV, click [here](#).



Nicola Kohn: nicola.kohn@39essex.com

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 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](#).



Nyasha Weinberg: Nyasha.Weinberg@39essex.com

Nyasha has a practice across public and private law, has appeared in the Court of Protection and has a particular interest in health and human rights issues. 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.



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

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.

Sheraton Doyle
Senior Practice Manager
sheraton.doyle@39essex.com

Peter Campbell
Senior Practice Manager
peter.campbell@39essex.com

Chambers UK Bar
Court of Protection:
Health & Welfare
Leading Set

The Legal 500 UK
Court of Protection and
Community Care
Top Tier Set

clerks@39essex.com • [DX: London/Chancery Lane 298](#) • 39essex.com

LONDON

81 Chancery Lane,
London WC2A 1DD
Tel: +44 (0)20 7832 1111
Fax: +44 (0)20 7353 3978

MANCHESTER

82 King Street,
Manchester M2 4WQ
Tel: +44 (0)16 1870 0333
Fax: +44 (0)20 7353 3978

SINGAPORE

Maxwell Chambers,
#02-16 32, Maxwell Road
Singapore 069115
Tel: +(65) 6634 1336

KUALA LUMPUR

#02-9, Bangunan Sulaiman,
Jalan Sultan Hishamuddin
50000 Kuala Lumpur,
Malaysia: +(60)32 271 1085

39 Essex Chambers is an equal opportunities employer.

39 Essex Chambers LLP is a governance and holding entity and a limited liability partnership registered in England and Wales (registered number 0C360005) with its registered office at 81 Chancery Lane, London WC2A 1DD.

39 Essex Chambers' members provide legal and advocacy services as independent, self-employed barristers and no entity connected with 39 Essex Chambers provides any legal services.

39 Essex Chambers (Services) Limited manages the administrative, operational and support functions of Chambers and is a company incorporated in England and Wales (company number 7385894) with its registered office at 81 Chancery Lane, London WC2A 1DD.