



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

- (1) In the Health, Welfare and Deprivation of Liberty Report: holding the risk in medical treatment cases; capacity to marry under the spotlight; and mental health conditions, cancer investigation and capacity;
- (2) In the Property and Affairs Report: the general costs rule in property and affairs cases under pressure, and a guest post on appointeeship;
- (3) In the Practice and Procedure Report: fact-finding in the Court of Protection and recommendations about mediation in medical treatment disputes;
- (4) In the Mental Health Matters Report: progress of the Mental Health Bill, community mental health services under pressure and a new website with Nearest Relative resources;
- (5) In the Children's Capacity Report: brain stem death testing and procedural fairness, and children in complex situations at risk of deprivation of liberty;
- (6) The Wider Context: suicide prevention and assisted dying / assisted suicide;
- (7) In the Scotland Report: questionable guardianship.

We have also updated our unofficial update to the MCA / DoLS Codes of Practice, available [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](#).

We will be taking our usual break for the January report, but will be back in February; any urgent things requiring dissemination will be available via Alex's [website](#). In the meantime, for a gentle provocation, you may care to watch this '[in conversation with](#)' between Alex and Professor John Coggon as to whether mental capacity law is, in fact, law.

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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 Bill progress

The Mental Health Bill moves ever closer to passage, although we understand that it is likely that Royal Assent will not be until the start of next year. At the first stage of 'ping pong' (and drawing on Tim Spencer-Lane's extremely helpful [summary](#)), the Lords agreed to the removal of the following amendments: (1) the extension of police detentions powers to health and care professionals, (2) limits on renewing community treatment orders (CTOs), and (3) debriefing meetings with discharged patients by IMHAs.

On each of those issues, the Government agreed the following concessions:

- (1) Police powers – the Government agreed to launch a consultation into emergency police powers. This will look at the powers available to different professionals in different situations and settings, in particular but not limited to sections 135 and 136 of the MHA 1983.<sup>1</sup>
- (2) CTOs – the Government agreed to review the statutory CTO forms, make regulations to require that statutory Care and Treatment Plans specify any CTO conditions and their

justifications and issue guidance on how responsible clinicians should respond to tribunal recommendations on CTO conditions

- (3) Debriefing – the Government said it will use the Code to explain that the processes of care planning and supporting someone to make an Advance Choice Document should include the opportunity for the individual to reflect on past experiences.

The House of Lords also agreed to the Commons amendments on the following:

- (1) Extending the remit of the Human Rights Act to cover private care providers delivering section 117 services and to informal psychiatric hospital patients.
- (2) Further clarifying the duties on NHS bodies to make arrangements regarding Advance Choice Documents.

At the second stage of 'ping pong,' the Commons agreed to the Government's amendment, tabled in the Lords, to the nominated person appointment process for patients under 16 where the AMHP is tasked with selecting the nominated person. In effect, the amendment

<sup>1</sup> Note, as we have previously flagged, the HSSIB are also conducting an [investigation](#) into *Mental Health Crisis: Care of patients in emergency departments*,

which we anticipate is very likely to flag up problems with the law as well as practice.

gives priority to those with parental responsibility.

### Nearest Relative resources

A very helpful new [website](#) has been launched providing resources for Nearest Relatives on their role and rights under the MHA 1983. The website launch took place online on Carers Rights Day 2025 (20th Nov) and was supported by the Carers Trust. The resources have been co-created with, and for, Nearest Relatives and the project has been funded by the UKRI. There is a [blog](#) on the website about the launch event, which includes a link to the launch recording on YouTube.

The resources include information about NR rights, how it fits with other roles they might have, the NR journey through the MHA 1983, and sources of further information, advice and support, including short films, downloadable tools and info leaflets.

The project team (lead by Professor Judy Laing) would welcome any feedback / comments ([via here](#)) to help them to refine it and also to prepare for the new Nominated Person role in the Mental Health Bill.

### Community Mental Health Services

The House of Commons Health and Social Care Committee have published a [report](#) on Community Mental Health Services, highlighting how:

*Too many people with severe and enduring mental illness are continuing to fall through the gaps of our Community Mental Health Services. Many experience unacceptably long waits to*

*access care, are discharged without ongoing support while they are still in recovery, and are denied care because they do not meet arbitrary thresholds. Too often, support is only available when people reach crisis point.*

Of no little interest is the following:

*In June 2025, we visited Trieste, Northern Italy, to explore its internationally recognised model of community mental health care, which, as noted above, helped inspire the 24/7 Neighbourhood Mental Health Centre pilots. Trieste's system is built on principles of deinstitutionalisation, social inclusion, and integrated support across housing, employment, and health. The visit aimed to understand the structural, cultural, and political conditions that underpin the model, and to assess what lessons could inform the development of similar services in England.*

*78. We heard that the Trieste model was not something that could be "bought and sold easily." It is deeply rooted in local culture, values, and history, particularly the legacy of the Basaglia reforms which closed psychiatric asylums and prioritised social inclusion. The model is built on principles of minimal coercion, and co-production, with services designed around individual life plans rather than clinical pathways, where services are designed around the needs of the whole community rather than segmented by specialism. As Dr Roberto Mezzina explained, "[I]t means going beyond the medical approach," working with "the person, their stories, their lives, their networks" to develop "their life plans."<sup>2</sup>*

<sup>2</sup> As an editorial point, and based on Alex's comparative law excursions, it is perhaps important to note that the model also exists in a legal system which appears to take a very different attitude towards deprivation of

liberty to that in England & Wales. There may well therefore be many people who are in living in the community in Trieste who would be identified in England

79. While the system offers impressive integration of health, housing, employment, and social support, it faces challenges including workforce shortages, data fragmentation, and political pressures that threaten its sustainability—challenges which have been experienced by CMHS in England. We noted that data infrastructure was limited: service-level data was not routinely published or shared, and outcome measurement relied heavily on individualised health budgets rather than system-wide indicators.

The Committee strongly endorsed the model of 24/7 Mental Health Centres being piloted in East London, noting that:

*Delivering real change and achieving parity of esteem in mental health care requires dismantling the current fragmented system and reimagining service design and delivery. The 24/7 Neighbourhood Mental Health Centre pilots seem to be genuinely transformative. The experience from Trieste, and early evidence from Barnsley Street, show that radically different, individualised, community-based care gets results. We also heard that the model shows possible cost savings for the wider system. Realising large-scale reform will depend on sustained and ringfenced investment to enable stretched Integrated Care Boards to take the action needed. This must be matched by a profound cultural shift across the system from clinicians to commissioners to government.*

This meant, in turn, that the Committee recommended that:

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& Wales as confined, with the consequent necessity for legal authorisation. Whether this is a 'good' or 'bad' thing is an interesting question.

*the 24/7 Neighbourhood Mental Health Centre pilot programme must be extended by at least 12 months beyond April 2026, with additional service development funding to allow all sites to become fully operational and generate sufficient data for analysis. This will require NHS England to finalise the outcome measures and evaluation metrics for the pilots without further delay.*

### Independent review into mental health conditions, ADHD and autism

The terms of reference have been published for the Independent review into mental health conditions, ADHD and autism commissioned by the DHSC. As the relevant page [notes](#), the review will seek to understand:

- the factors behind trends in prevalence
- the impact of clinical practice, including social and cultural factors and the risks and benefits of medicalisation
- ways to promote the prevention of mental ill health
- ways to create resilience and improve early intervention

Professor Peter Fonagy will chair the review, supported by Professor Sir Simon Wessely and Professor Gillian Baird as vice-chairs. There will also be a multidisciplinary advisory working group to directly shape the recommendations and scrutinise the evidence.

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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.

**How to observe remote hearings in the Court of Protection**  
A one-hour webinar  
Monday 12<sup>th</sup> January 2026, 5.30pm-6.30pm

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*"Extremely clear and engaging"*  
(Abi Cheeseman, Clinical Psychologist)

*"The webinar really brought home how vital transparency is in keeping the Court of Protection accountable. I found the buddy system inspiring, as it gives new observers the confidence to get involved and contribute meaningfully through the blog"*  
(Shirley Vels, LLB, LLM)

*"Great webinar - good reminder of the importance of transparency, fairness and accountability in court of protection hearings. As a social care professional, observing more hearings will be invaluable for my professional development"* (Karen Barnes - Principal Social Worker)

Daniel Amanda

Our next edition will be out in January. 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](mailto:marketing@39essex.com).

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