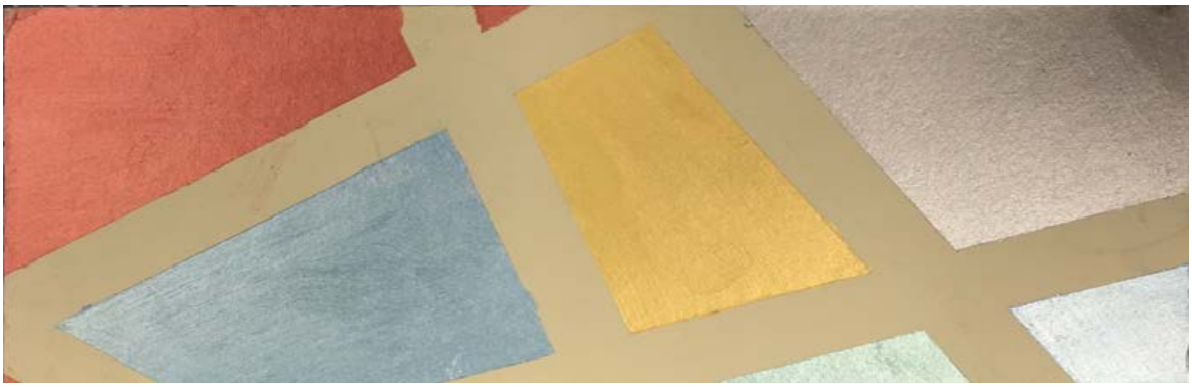

Welcome to the April 2026 Mental Capacity Report. It takes a different form to normal as our editors' commitments means that we cannot do more than provide an overview of some key matters, with more to follow (where necessary) in May. We do, however, have a bumper Scotland Report to make up for the lack of such a Report last time – and we would, commend the Scotland report to readers from other jurisdictions as it contains both comparative matters of interest, and research of wider reach than just Scotland.

A reminder that we have updated our unofficial update to the MCA / DoLS Codes of Practice, available here, and that, whilst Chambers have launched a new and zippy version of our website, 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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HEALTH, WELFARE AND DEPRIVATION OF LIBERTY

Sir Andrew McFarlane

Sir Andrew McFarlane has stood down as President of the Family Division and the Court of Protection, having served in both roles for 8 years. Whilst much of the attention is likely to be focused on Sir Andrew's role as the President of the Family Division, we would like to say a 'thank you' on behalf of the Court of Protection as well for all the work that he has done in different ways (often behind the scenes) to support the Court. Alex, in particular, will never forget his first proper encounter with Sir Andrew by the bedside of (probably) the most complex 'P' either will ever come across. His ability to remain entirely human in his interactions with those at the centre of proceedings, whilst never losing sight of his position and responsibilities as judge, was one that he demonstrated again and again in different contexts, to the benefit of us all.

Thank you very much, Sir Andrew.

Townsend

The ramifications of the *Townsend* decision continue to be felt across healthcare, and many are waiting with very considerable interest to see whether the matter goes further. In the meantime, readers may be interested to see this webinar in which three members of Chambers consider the case.

Capacity as a social construct

The decision of HHJ Rogers in Nottinghamshire *County Council v JW & Anor* [2026] EWCOP 13 (T2) is both a very useful analysis of an expert

report on capacity, and a – rare – case in which the judge examines in detail both the causative nexus and whether an impairment or disturbance (in JW's case, essentially low IQ) is sufficient to satisfy the test in the MCA 2005. For more, see here.

Deprivation of liberty statistics

The DoLS statistics for England (now under the management of DHSC) and for Wales for 2024-2025 have now been published. They show, as ever, that those charged with discharging assessment functions are (to use a technical term) working their socks off, but the system is still entirely unable to cope. By way of example, the average length of time to complete the authorisation procedure in England was 126 days. Whilst that is undoubtedly an improvement on the previous figure of 144 days, it makes a mockery of the statutory timeframe of 21 days. All discussions of whether 'proportionate' assessments are appropriate (including, for instance, whether sight of the person is actually needed for all repeat authorisations) need to take place against a backdrop of the fact that it is distinctly unlikely that anyone who is not actively objecting to their deprivation of liberty will have their situation scrutinised.

Separately, the Court of Protection statistics for the most recent quarter have now been published. They show that for October – December 2025, 1,315 applications were made under the so-called *Re X* process for authorising deprivation of liberty for those who are too young or in the wrong place for DoLS. Even taken together with the 276 applications for s.16 orders relating to deprivation of liberty, these figures undoubtedly pale into insignificance compared to the numbers who – according to *Cheshire West* – are deprived of their liberty.

PRACTICE AND PROCEDURE

Personal welfare deputies

There having been no substantive decisions about the personal welfare deputies for a while, three have now come along at once. We discussed the decision in *Parr* in the last Report; since then we have:

1. *Re XY* 2025] EWCOP 55 (T2), on the scope of the authority of personal welfare deputies;
2. *Re HDEB* [2026] EWCOP 12, taking a rather different approach to the appointment of personal welfare deputies than did *Parr*.

The second of these decisions is under appeal – we hope that it can be routed directly to the Court of Appeal, as otherwise we will have a further, potentially inconsistent, Tier 3 decision about appointment. For more on both of these, see here.

CHILDREN'S CAPACITY

Deprivation of liberty and children

The Court of Appeal in *Re T (Inherent Jurisdiction: Deprivation of Liberty)* [2026] EWCA Civ 307 reviewed the (spiralling) number of cases coming to the so-called National DoL list, in a context where there is an acute shortage of secure accommodation. Baker LJ (giving the sole reasoned judgment of the court) identified that:

> *29. Frequently in these cases* […] *the court is faced with the problem that the placement is not capable of meeting all of the assessed welfare needs of the child but, by reason of a lack of appropriate resources, is the only placement available. In those circumstances:*
>
> > *"The child's welfare needs must be considered both holistically and realistically, which approach*

> *demands that the court consider the likely consequences of any order it does or does not make. Within that context, to leave out of the best interests equation the lack of availability of an alternative course of action with respect to L's welfare would be to artificially constrain the court from evaluating fully the extent to which it is in L's best interests for the court to authorise the current restrictions that constitute a deprivation of his liberty"* (ibid, paragraph 74).[1]

Further, in such circumstances, it was necessary to courts to *"grapple with the actual consequences for [the child] if an order was not made authorising measures which would enable [them], in the short-term at least, to remain in [their] current placement," such that, on the facts of the case "[t]he 'imperative considerations of necessity' required the court to authorise the deprivation of T's liberty at L House notwithstanding that it is currently unregistered, provided there is compliance with the PFD's Guidance" (paragraph 46).*

For a further example of the problems that are occurring at the moment, see the judgment of McKendrick J in *Re BA (A Child) (DOLS in Hospital)* [2026] EWHC 653 (Fam), discussed further here, concerning a child who, since January 2026

> *has been deprived of her liberty in an accident and emergency ward of an acute hospital in London. That is to say she has been detained in a windowless room in a busy hospital for nearly two and a half months. She is accommodated and cared for there, as there is nowhere else to do so.*

For further discussion of the case, including the necessity clearly to identify the basis for Article 5 purposes of the deprivation of liberty, see here.

Working Together and the myth of 'non-statutory' services

The Department for Education has published an updated version of Working Together to Safeguard Children ('Working Together'), the statutory guidance on multi-agency working to support and protect children in England. It is a very important, wide-ranging document; it does, however, perpetuate a problematic myth that services (including Family / Early Help) can be provided on a 'non-statutory' basis. For more as to why this is wrong, and the implications, see here.

THE WIDER CONTEXT

The Frontal Lobe Paradox: Practical Guidance for Lawyers

Following on from a multi-disciplinary webinar put on by the Court of Protection Bar Association, a multi-disciplinary group of experts has produced *The Frontal Lobe Paradox – a Practical Guide for Lawyers*. Whilst the webinar materials are restricted to members (cue the thought that if you are a barrister, we strongly urge you to join the association), the Practical Guide is free to all to use – and is hopefully useful for more than just lawyers.[2]

Mental capacity, homelessness and multiple disadvantage

As it enters its closing stages, the project leaders of at a KCL-led project looing at the use of the Mental Capacity Act 2005 with people

[1] A quotation from *Tameside Metropolitan Borough Council v C & Ors* [2021] EWHC 1814 (Fam).

[2] See also the "Frontal Lobe Paradox Field Guide" produced by Dr Ben Marram which has also, coincidentally, recently come out.

experiencing multiple exclusion homelessness in England held a webinar on 25 March. The presentation can be found here to share emerging findings; further homelessness events in this series are listed here.

Stronger visiting rights in England

The Government has announced plans to strengthen visiting rights in health and care settings following a review of the relatively recently introduced regulatory change which was supposed to have brought this about.

Resources that health and care settings will receive include:

- An explainer sheet or poster for people that details their visiting rights under Regulation 9A and routes to complain if they feel these are not being followed
- Draft advice for care homes, hospitals and hospice providers to use to explain any necessary restrictions to residents, patients and family members
- A public-facing decision-making process map which sets out important considerations for providers when making decisions about restrictions

The announcement also states that

> *Ministers are exploring bringing forward proposals for legislating visiting rights as part of wider reform work. This would further strengthen the framework around visiting rights - embedding a culture of open visiting and reinforcing the right to be supported by loved ones in settings across health and social care.*

Adult safeguarding, Dame Louise Casey and gaps in the law

Dame Louise Casey, leading an independent commission into adult social care, has recently (3 March) written to the Secretary of State for Health and Social Care, asking for immediate action on safeguarding, dementia and motor neurone disease. In relation to the former, she has asked that the DHSC:

> *Lead an urgent review of existing adult safeguarding statutory duties and powers, to test whether the current framework provides sufficient clarity and leverage in high-risk situations.*

In the appendix to her letter, she identifies that this could include:

- *clarifying what triggers the Section 42 duty for local authorities to make inquiries if it is suspected an adult with care needs is experiencing, or is at risk of, abuse or neglect*
- *considering whether mechanisms such as powers of entry would strengthen safeguarding while remaining consistent with adults' rights;*
- *strengthening the links between safeguarding, inspection and regulation, potentially through clearer pathways for how SAR findings can inform regulatory action and the focus of inspections.*

Wes Streeting has written to confirm that this review will be carried out.

As is discussed here, it might be thought that the Law Commission would be very well placed to carry at least some of this work.

The COVID-19 inquiry

The most recent report published, addressing the impact on healthcare in the UK, contains two recommendations made by Baroness Hallett that resonate extremely strongly with our experiences at the time, the first relating to triage and the second to DNACPR recommendations. For more, see here.

SCOTLAND

"Scots law? An astonishing Opinion from the SAC"

On 19th December 2025 a bench of the Sheriff Appeal Court comprising two Sheriffs Principal and an Acting Sheriff Principal issued what can reasonably be described as the most extraordinary decision regarding a power of attorney ever issued by a Scottish court, not only since relevant provisions of the Adults with Incapacity (Scotland) Act 2000 came into force on 2nd April 2001, but also over the several decades preceding that.

The case was an appeal by *Kevin Gray, Purser and Appellant, against (First) Marion Dixon and (Second) Helen Palmer or Laird or Heredia, Defenders and Respondents*, [2026] SAC (Civ) 3 (Court Reference HAM-A140-18), an appeal from Hamilton Sheriff Court. The bench of the Sheriff Appeal Court comprised Sheriff Principal N A Ross, Sheriff Principal G A Wade KC, and Temporary Sheriff Principal E MacDonald. The decision is entitled "Opinion of the Court", and must be taken as unanimous. It was delivered by Sheriff Principal Ross.

However, while this contribution by me is generally critical, the Appeal Court's Opinion nevertheless re-focuses attention upon some important practical points, not infrequently overlooked. Indeed, their significance for practitioners is such that the Scotland Report team agreed to ask Sandra McDonald whether she would be willing to provide a guest contribution. As most readers are aware, Sandra was Public Guardian for 14 years, during which her contribution to adult incapacity law and practice was immense, as well as initiating the process of modernisation and improvement of the Office and of the service that it provides (a process which her former deputy, and now successor, Fiona Brown, fortunately has continued). Sandra is now a highly respected trainer, and author of "Power of Attorney: the one-stop guide", accurately subtitled as providing "All you need to know: granting it, using it or relying on it", Souvenir Press, 2021. She continues to share her knowledge, abilities and experience in other roles. We are delighted that she has not only accepted our invitation, but has contributed a perceptive and wide-ranging item for this Report that follows mine. Hers and mine each complement the other. I do not cross-refer to hers, because – quite simply – it is essential reading for every practitioner in the field.

The pursuer and appellant in the *Gray* case ("Kevin") raised an action against the defenders and respondents of count, reckoning and payment, a son of the late Hugh Gray ("Hugh"). The defenders and respondents were executors-nominate under Hugh's Will, the date of which is not provided, and were joint attorneys under a power of attorney by Hugh that was registered with the Office of the Public Guardian on 13th November 2009. We refer to them as "the executors" in their role as executors-nominate, and "the attorneys" in that role. We are told that Hugh was admitted as an emergency admission to a care home on 8th February 2013, whereupon the attorneys first started to act. Hugh died on 1st December 2015.

Kevin sought a full accounting direct from the attorneys for their intromissions as attorneys from 13th November 2009. By amendment to his pleadings, Kevin introduced an alternative crave for an order that the executors seek a full accounting from themselves as attorneys for their intromissions as attorneys. It would appear that that amendment was made only after completion of the proceedings at first instance, described by Sheriff Principal Ross as follows:

> *"Following extensive procedure the action was appointed to a proof on the disputed nature and extent of the*

> *obligation to account. The sheriff proceeded to hear evidence and issued a brief decision. He stated that the attorneys were obliged to account to the appellant but determined that, following Currie v Currie's Exr 2023 SLT 113, the appellant had no title to sue the attorneys. We have not been able to reconcile these two statements. The sheriff proceeded to ordain the respondents qua attorneys to produce an account of their intromissions, presumably to the appellant. The sheriff found that the attorneys' obligation to account arose on the date they first started to act (8 February 2013) and not earlier. He did not pronounce any order ordaining the respondents qua executors-nominate to demand an accounting from the attorneys. He found that the second respondent had never acted as attorney, and assoilzied her, notwithstanding that he had ordained her to produce an accounting. The subsequent interlocutor was limited to an order against the first respondent only."*

Apart from *Currie v Currie's Exr*, the only statutory or other authority cited in the Appeal Court decision was Macleod: *Contentious Executries: Commissary and Executry Litigation in Scotland* (2nd ed), and sections 15, 16 and 81 of the 2000 Act.

The issues which fell to be determined by the Appeal Court encompassed the extent of the obligations, and the respective obligations, of the attorneys to account for their intromissions, to whom they were obliged to account, and thus from whom Kevin was entitled to seek an accounting; when such obligations to account commenced; and the extent of those obligations, including what they covered and from what date they arose.

There would normally be two principal sources by reference to which such questions would be determined: interpretation of the power of attorney document, and the relevant law. It is unhelpful that the Appeal Court Opinion is unclear as to which of those was the source of each of its relevant pronouncements. It is remarkable that we are given no information about the terms of the power of attorney document except as narrated above; and except for the references mentioned above, which were generally peripheral to the main issues, no authority is cited for the pronouncements of the Appeal Court. To the extent that those pronouncements were derived from the power of attorney document, it must have been a most unusual document, and in some respects one would have expected a robust exposition of the reasoning by which the Appeal Court concluded that the document achieved the quoted outcomes, successfully and sufficiently robustly, in the face of settled law and procedure that would render that outcome surprising. To the extent that the Appeal Court's pronouncements were intended to represent the position under Scots law of powers of attorney, one cannot avoid commenting that they were unrecognisable as such, and that at the very least one would have expected a full explanation of how they had been arrived at, and by reference to what authority, particularly as in some respects they appear to contradict what has been settled law and practice either ever since Part 2 of the 2000 Act and related provisions became law, or in some cases for more than a century.

In the absence of such explanations and such reasoning, the Opinion of the court is not only surprising: it reasonably has to be described as astonishing, for particular reasons including those now outlined here.

Currie v Currie's Exr resolved previous concerns about the position of a beneficiary who has concerns about the actings in financial matters of an attorney who is also the deceased's

executor. Pending law reform, it has been the position of successive Public Guardians that they have no status to investigate complaints posthumously. *Anderson v Wilson*, [2019] CSIH 4; 2019 SC 271, established that such a beneficiary has no status to sue the former attorney as such. In *Currie*, the dissatisfied beneficiary sued the executor as such. It was argued for her that an action calling on an executor to realise and account for an unrealised asset of the estate was not only competent, but the "usual remedy". The executor owed a fiduciary duty, as executor, to the beneficiary as beneficiary in the estate, and could not lawfully become *auctor in rem suam* by refusing to seek an accounting in respect of the actings of himself as former attorney. It was irrelevant that the same individual was both former attorney and executor. That argument persuaded the Inner House. That has become the standard procedure in such situations since then. The Appeal Court was entitled to be mystified as to why Kevin raised an obviously incompetent action against the respondents as attorneys, yet succeeded in obtaining decree limited to an order against the first respondent. The reference to Macleod on *Contentious Executries* was of little relevance. According to it, it might have been possible for Kevin to have sued the attorneys in "exceptional circumstances", but the sheriff had been right to reject that submission because the circumstances were not unusual, and what has become the usual remedy was available.

From here on, however, we enter strange territory. The case concerns continuing powers only, though we are not told whether Hugh's power of attorney also conferred welfare powers. As to when a continuing power of attorney becomes operable, in [9] of the judgment it is asserted that: "A financial power of attorney under the Adults with Incapacity (Scotland) Act 2000 comes into force immediately upon execution (section 15) …"; and, later, that: "An attorney (at least, under a financial power of attorney) has power to act from the date of appointment". In its "disposal" [14], the Appeal Court confirmed that it would:

> *"… pronounce an interlocutor making an order directed against both respondents qua executors, ordaining them to seek an accounting from both respondents qua attorneys of their intromissions with the estate of the deceased Hugh Melvin Gray from the date of their appointment as attorneys (13 November 2009) to the date of death."*

Those assertions are plainly wrong. They seem to conflate a series of relevant and necessary steps. A continuing or welfare power of attorney which has been executed and duly certified has no effect at all immediately upon execution. Only when the attorney has accepted appointment is a contract of mandate established, but to be operable it requires to be registered with the Public Guardian, and it is open to granters to provide that registration be deferred pending occurrence of a specified event (section 19(3), which explicitly applies to continuing or welfare powers). More commonly, granters wish to ensure that any alleged doubts or defects picked up by OPG during the process of registration can be remedied while the granter is still capable of doing that, so instead of directing that registration be deferred, granters specify the preconditions for some or all of the powers conferred to become operable (under a power of attorney by then already registered). The Act expressly recognises that this may be done (and it is of course common practice that it be done) – for example, where a granter specifies that the trigger should be the granter's relevant incapacity, then in the case of continuing powers of attorney section 15(3)(6a) is engaged.

In practice one often sees alternative triggers, such as certification of incapacity by a specified professional; in a case of urgency, a verbal opinion by such; or (in relation to continuing powers) a request by the granter that the attorney should commence to act. These may all refer to matters generally, or particular matters to be specified. The third alternative quoted from the judgment above, indicating power to act and liability to account from "the date of their appointment", begs the question – against the background explained above – of when is the "date of appointment". In any event, it is incorrect. Power and liability must surely only arise from when the attorneys actually commence acting, or perhaps when they ought to have done in cases where they had a responsibility to do so but neglected that responsibility. In relation to all of the above, one has to comment that the dicta of SAC in this case appear to be quite alien to well-established Scottish law and practice.

At [11] of the judgment it is asserted that: "An attorney is empowered to carry out all nature of transactions, including those which require no openness as to appointment: for example, everyday shopping transactions". That is not, and never has been, the position in Scots law: indeed, it asserts quite the opposite of the long-established and always accepted position in Scots law. The grant of a power of attorney does not confer any powers at all, apart from some possible limited exceptions. There is no such thing as a "plenary power of attorney", and there never has been. It is for granters in each case to decide what powers they want to confer. A century ago Menzies wrote: "A general factory or mandate confers only powers of general management, such as the collection of rents, interests, and such acts of ordinary administration as are necessary to preserve an estate and render it productive" (see *Goodall v Bilsland*, 1909 SC 1152; *Park v Mood*, 1919 1 SLT 170). The traditional rule, however, is that powers of attorney are strictly construed, so that despite the general and often comprehensive wording with which general powers commence, in the absence of law reform or judicial authority indicating otherwise, Halliday's advice remains sound: "The safe practice therefore is to express specifically all powers that may be required since nothing more will be implied" (Halliday *Conveyancing Law and Practice*, 2nd Edition, para 13-03). Powers of attorney may include general wording designed to cover everything that can competently be conferred upon an attorney, which will generally be effective up to a point, provided that such general wording nevertheless is sufficient to amount to grant of the relevant desired powers. That, however, is not comprehensively effective. There are of course some powers which cannot be conferred upon an attorney at all. There are some powers, in the taxation field, linked to obligations that are imposed by statute upon continuing attorneys. The principle that an attorney has only the powers that the granter chooses to confer was well established in relation to general powers of attorney as they were in use prior to 1990, and has subsisted without query or challenge ever since. See cases such as *Goodall v Bilsland* (above); and every edition going right back to the first of Jack Halliday's *Conveyancing Law and Practice* (the quotation above is from the 2nd edition). On this point, one cannot avoid saying that the assertion by the Appeal Court quoted at the beginning of this paragraph does not describe the position as it ever has been, under the Scottish legal system. See paragraph 6-26 of *Adult Incapacity* for a list of powers that require to be conferred expressly and explicitly, with for each of them the relevant case authority.

Setting aside the question of the date from which attorneys act and have obligations, and the extent, what are the attorneys' obligations in respect of matters that the attorney is

empowered to act and does act? What is a "full accounting" and what should it cover? What are the liabilities of an attorney? Here, it is remarkable that the judgment of the Appeal Court makes no reference at all to relevant provisions of the 2000 Act. It is appropriate to take account of section 17: "A continuing or welfare attorney shall not be obliged to do anything which would otherwise be within the powers of the attorney if doing it would, in relation to its value or utility, be unduly burdensome or expensive". A key issue throughout all the work leading up to preparation and enactment of the 2000 Act was that then existing law was potentially unworkably burdensome, and that there required to be a balance between the obligations placed upon such individuals as voluntarily took upon themselves duties to look after the property and finances of someone with impairments of capacity, and – provided that they were acting in good faith – not to make the task so burdensome as to amount to a deterrent from so acting. The example adopted and repeatedly quoted was the complaint of a pre-Act appointee that: "We cannot buy her an ice cream cone without obtaining a receipt for it". That this should not be required exemplified the unanimous view of all engaged in that law reform process, which so far as this writer is aware has never been challenged ever since. So if Kevin bought Hugh an ice cream cone, was Kevin obliged to obtain a receipt and cross-refer to it in a meticulous accounting? One would suggest that the answer is "no". If this was part of miscellaneous matters charged against the adult's funds, one would suggest that a global figure, provided that it was modest, for "miscellaneous expenditure on behalf of the adult" would suffice.

But if, in hindsight, an attorney were held to have got it wrong, what then? It is curious that the Appeal Court referred to section 81, but not to section 82, providing that *inter alia* a continuing attorney has no liability "for any breach of any duty of care or fiduciary duty owed to the adult" if the attorney has (a) acted reasonably and in good faith and in accordance with the general principles set out in section 1; or (b) failed to act and the failure was reasonable and in good faith and in accordance with the said general principles. That takes us to the section 1 principles (again – remarkably – not referred to by the Appeal Court, though of course relevant to every action by the attorney as such). In this context, what would be "the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention"? Buying the ice cream cone would be. Incurring the cost of accounting in detail for each such transaction, such costs being chargeable to the adult and likely significantly to exceed the cost of the item in question, would not be.

Finally, the Appeal Court held that both respondents as attorneys should be ordained to provide the accounting. That, once more, is not related to any specific provisions in the power of attorney document. If it is an assertion that both attorneys jointly carry full responsibility for the actings of both, that would not appear to accord with accepted practice. It is for granters to decide about such appointments; to specify the extent to which consultation and/or joint acting is or is not required; what are the respective accounting and other obligations of the joint attorneys; and whether it should be permissible for one, by agreement, to step aside from involvement and liability for a particular period (with the strong message: do not resign, because it may no longer be possible for you to be re-appointed, and this could lead to frustration of the granter's fundamental purpose in granting a power of attorney if the granter ends up with no attorney at all). And of course, the formulation of appointments as "joint and several, or several" or similar is, for reasons that I have previously

explained, completely inappropriate, and inconsistent with any acceptable level of practice.

Sandra McDonald's contribution follows next.

Adrian D Ward

Gray case commentary, Sandra McDonald

Thank you for inviting my guest comments on the *Gray* case (citation above). Adrian has provided his usual thorough academic review. As the former Public Guardian for Scotland my focus was its practical implications.

The Pursuer (Kevin Gray, son of the deceased) requested accounting from the Respondents, as joint attorneys and now executors nominate.

A power of attorney (PoA), and so responsibilities of the attorney, cease on the death of the adult, thus attorneys do not owe a duty to account to beneficiaries. Executors should obtain an accounting from the attorney as at the date of death of the adult / transfer of the estate. If the executors are not satisfied with the way in which the estate has been managed by the attorneys it is for them to challenge and take remedial action as may be required.

In a guardianship, the Public Guardian requires a final/closing accounting from the guardian which can then be forwarded to the executor. Attorneys of course do not report to the Public Guardian. It set me thinking, do attorneys know of their obligation to offer final accounting to the executors? Do they even know they have to keep accounts and records? The Code of Practice, of which the majority of attorneys are unaware anyway, makes only a one-line reference to the obligation to report to an executor (Chapter 6.12).

As in *Gray*, the attorney(s) proceeding to become executor(s) is not unusual. The principle that there is a date of transfer of the estate between the attorney and executor becomes muddied in such situations. And, of course, if the attorney has been acting inappropriately with the estate, they are not going to challenge themselves when they assume the position of executor. Sadly, this is more common than we may like to think.

There are a number of potential solutions, none of which are necessarily attractive and all of which would require law reform, so I'm not going to rehearse them here.

A second discussion in the case which caught my attention was the view that as the second named attorney had not acted she was assoilzed. Liability of attorneys is joint and several, even if attorneys are permitted to act individually. There is a protection in having more than one attorney. If a 'sleeping attorney', knows their liability can effectively be set aside it has the potential to increase the number of passive attorneys and so reduce the protection gained / increase the risk of abuse.

The final discussion which interested me was the central point about the date from which attorneys are "appointed". The options being from the date of registration of the PoA with the OPG, or from the date the attorneys start/started acting in an official capacity – which could be many years later.

This is an age-old debate and can be argued either way. There are pros and cons with both. The practical difficulty with attorneys being 'appointed' [and thus accountable] from the date they start acting officially is, we don't know what date that is. In Scotland, unlike in England and Wales, there is no formal activation of the PoA. If we wish to offer clarity, and avoid a future 'Gray debate', we need a statutory remedy; again, a matter for SG/law reform not for legal practitioners.

So what messages can legal practitioners take from this case?

The key learning is to advise attorneys to keep records of any decisions or actions they take *as attorney* from the date the PoA is registered.

If an attorney has maintained records from the date of registration but these records show no activity during the period before they commence acting as attorney, then if required to account for the entire span since registration, they can simply provide evidence stating "no intromissions" between the registration date and the date they first took official action as attorney.

This inevitably leads to another question - how much detail needs to be in the record? Are we truly expecting attorneys to keep a record of every penny spent? It would become [an even more] cumbersome responsibility for them. There needs to be a balance between pragmatism and evidencing fiduciary responsibility. That said, this is not a question that practitioners need to address directly, they should signpost the attorney to the Code of Practice or to the OPG for information and advice.

In conclusion, *Gray* changes nothing substantively for practitioners but should leave us with heightened awareness of the need to attorneys to keep records.

Sandra McDonald

"When decision-makers have obligations to more than one person"

An important lesson for AWI practice is contained in two cases addressing quite different areas of law, but which by coincidence have been reported in the same issue of Scots Law Times. Over a decade ago my article "Two 'adults' in one incapacity case? – thoughts for Scotland from an English deprivation of liberty decision", 2013 SLT (News) 239-242, pointed out that in an application under the Adults with Incapacity (Scotland) Act 2000 a decision-maker may be obliged to comply with the section 1 principles not only in relation to the applicant, or the subject of the application, but also to some other person falling within the definition in section 1(1) of that Act of people in respect of whom there must be compliance with the section 1 principles. Those two recent cases emphasise the persistence of the unfortunate converse of that proposition. Among some decision-makers and advisers, there continues to be an entirely inappropriate tendency to concentrate unthinkingly upon the rights of the person who is the applicant or subject of proceedings, and to consider solely the decision-maker's consequent obligations to that person, heedless of anyone else to whom those obligations also apply. The two recent cases are *X, Petitioner*, [2026] CSOH 15; 2026 S.L.T. 239, a decision of Lord Braid sitting in the Outer House, issued on 27th February 2026; and *East Dunbartonshire Council, Appellant*, [2026] SAC (Civ) 17; 2026 S.L.T. (SAC) 33, a decision of Appeal Sheriff D O'Carroll in the Sheriff Appeal Court, issued on 4th March 2026. In both cases, it was necessary upon appeal to correct such a focus upon one person only. *X* was a child welfare decision: both siblings had rights under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. The *East Dunbartonshire Council* case concerned rights under the United Kingdom General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018: the data in question "belonged" to both a father and his daughter, therefore both had rights in relation to it.

The "Two 'adults'" article considered how Scots law might appropriately have been applied to the facts of the English case of *NCC v WMA* [2013] EWHC 2580 (COP), a decision of His Honour Judge Cardinal.

WMA lived with his mother MA. A local authority sought an order that it was in his best interests to move to a small residential unit, and to live there – apart from MA – with two other residents. WMA had been diagnosed with autistic spectrum disorder. He had always lived with MA. He was adamant that he wanted to continue to do so. He did not like having carers visit him at home, nor did he like mixing with other people. The court accepted that his level of functioning was high for a *person with a learning disability*, and that in consequence his wishes and feelings should be accorded greater weight than those of some adults. The court nevertheless held that WMA was "unable to understand the merits of [the proposed move] compared with his remaining with MA". Local authority social workers could not provide appropriate care for him because of his refusal, and also the interference of the mother MA. There was continuing cause for concern about MA's care for WMA. Local authority efforts to engage more fully with both had led to an unacceptable degree of conflict. WMA lived an isolated lifestyle. His relationship with MA was "a frustrated one" and he was "at times, *beyond control*". He rarely went out except for dog walking and shopping. The home of MA and WMA was kept "to a very low standard of cleanliness". There was "a plain history of neglect of WMA by his mother". The outcome of the English case was that HHJ Cardinal held that it was without doubt in WMA's best interests to move to a residential unit. To achieve that, he authorised deprivation of WMA's liberty and conferred ancillary powers to enable the move to be enforced. He held that deputyship (the nearest equivalent of Scottish guardianship) was not required.

Significant if the facts of that case were transposed to Scotland is that MA was strongly opposed to WMA living away from her. Her own health was failing and he was often her "eyes and ears". Reading the narration of the facts gave rise to the thought that she herself might well have been somewhere on the autistic spectrum, with issues similar in nature if not in degree to WMA's.

See the article referred to for full discussion of how the facts might be analysed and addressed under Scots law and procedure. The main point for the purposes of this article is that any Scottish court considering an analogous application in relation to WMA would clearly have required to comply with the section 1 principles in relation to both WMA and MA. To deny the desire of both to continue living together would be a very significant "intervention in the affairs of" each. It would have been an intervention "under or in pursuance of this Act". In terms of section 1(2) the sheriff would have been "the person responsible for authorising or effecting the intervention". As has frequently been pointed out, it would therefore have been the obligation of the sheriff to comply with the section 1 principles (in these circumstances, in relation to both adults) regardless of what might be averred, produced or pled before the sheriff.

Viewed now, comparison is invited not only between English law and Scots law, but also between the growing prominence, now in 2026, of elements derived from the role of human rights in interpreting relevant law, and making decisions, compared with 13 years ago. That comparison is considered at the end of this article, after the two recent cases referred to.

The case of "X" concerned two siblings, the elder referred to as X and his younger sister as Y. X appealed against a decision of a children's hearing on 18th September 2025 about contact between him and his sister. Both X and Y were subject to compulsory supervision orders under the Children's Hearings (Scotland) Act 2011. In the course of a decision extending to some 15

pages, Lord Braid dealt with a range of issues, only one of which is relevant to this article.

Lord Braid described the principal underlying issue in the first paragraph of his judgment, where he referred neutrally to "child A" and "child B". Because of the limited purpose for which this article refers to his judgment, for simplicity we have substituted for A and B the references in his decision to X and Y, as the children in his decision were designated. With that substitution, Lord Braid's introductory paragraph reads as follows:

> *"The importance of sibling contact where children are in care is well recognised. In many, perhaps most, cases the interests of siblings will coincide: it will be in the interests of all that they have the same level of contact with each other. The problem lying at the heart of this case is what happens when the interests of the siblings do not necessarily coincide; where it is in the interests of child X to have contact with child Y, but not in the interests of child Y to have contact with child X. Assuming both are the subject of a Compulsory Supervision Order (CSO), how are those competing interests to be reconciled? What happens where the children's hearing for child X orders contact with child Y, but the children's hearing for child Y orders that there be no contact with child X?"* (page 241 of SLT Report [1])

The following paragraph contains *inter alia* Lord Braid's description of the issue relevant to this article, and one of the subjects of X's appeal:

> *"One of the measures imposed [upon X] is a direction that contact between himself and Y is to be a minimum of once per month, supervised to the satisfaction of the social work department for the area in which they reside. Y is likewise the subject of a CSO, necessary for her protection, guidance, treatment or control. On 18 September 2025, the children's hearing in her case made a direction that Y should have only letterbox contact with X, supervised by the social work department and at Y's discretion. Thus, there are conflicting decisions of the children's hearing system." (page 241 [2])*

Such a child welfare case obviously requires to address the "best interests" of affected children, a concept rejected for the 2000 Act in favour of reliance upon the section 1 principles (see Scottish Law Commission Report No 241 on Incapable Adults, 1995, para 2.50). Also, section 25 of the Children's Hearings (Scotland) Act 2011 applies "where by virtue of this Act a children's hearing … is coming to a decision about a matter relating to a child", whereas section 1(1) is not focused upon the subject of any particular application, referring instead generally to "any intervention in the affairs of an adult under or in pursuance of this Act". Section 25 continues (in subsection (2)) "The children's hearing … is to regard the need to safeguard and promote the welfare of the child [i.e. the child about whom the hearing is 'coming to a decision'] throughout the child's childhood as the paramount consideration". Nevertheless, the interests of any child affected by a children's hearing decision had to be taken into account as a primary, though not paramount, consideration. Thus in an application concerning Y, Y's welfare throughout her childhood was "a paramount consideration" but X's welfare was "a primary, although not paramount, consideration" (see section 6 of the 2024 Act, incorporating Article 3 of the Convention on the Rights of the Child). The difference between a best interests test and a benefit test, or between a focus upon the person subject to an application giving rise to the distinction between a "paramount consideration" and a "primary consideration", are not relevant to the point addressed in this article. On the point that X's welfare, though not the "paramount

consideration" in an application concerning Y, ought nevertheless to have been treated by the children's hearing as a primary consideration, Lord Braid provided the answer that is relevant for the purposes of this article:

> *"… the reasoning given in the decision of 18 September 2025 cannot be read as showing that the welfare of the petitioner was taken into account at all, let alone as a primary consideration. In any event, it falls foul of paragraph 6(c) of the General Comment No 14, since it contains no evaluation of the possible impact of the decision on the petitioner, nor does it show that his right to have his interests evaluated has explicitly been taken into account. The decision is therefore not UNCRC compliant, and as such, it was unlawful by virtue of section 6 of the 2024 Act. For that matter, the decision taken at the petitioner's review of 8 May 2025 was equally unlawful, in that the hearing on that occasion failed to respect Y's UNCRC rights."* (page 256 [52])

That makes the relevant point with sufficient clarity to render further comment on the X case unnecessary.

The *East Dunbartonshire* case is also described here only to the extent appropriate to the purposes of this article. Appeal Sheriff O'Carroll commenced his judgment with a reference to "this somewhat unusual appeal". That might result in his decision being viewed as largely fact-specific. The aspect described here, however, has broad general relevance.

The Appeal Sheriff narrated that he had "pseudonymised the names of" the parties to protect their identity. He referred to "the claimant" also as "father"; and referred to his daughter as "Caitlin" (which, the Appeal Sheriff emphasised, "is not her real name"). Caitlin had experienced unpleasant episodes of bullying at her primary school. Her father raised concerns about that with the head teacher who, acting as risk assessor, prepared a draft risk assessment on a standard form, requiring "hazards" to be identified and each assigned a "risk priority rating" of "high", "medium" or "low". Caitlin's hazards were identified as a risk to her physical safety, and a risk to her emotional wellbeing. Issues arose between father and the Council about the grading of the hazards. As the Appeal Sheriff put it: "*Unfortunately, all did not go well from there*". As matters progressed, the Council prepared a "second version" of the risk assessment form, dated 31st May 2019. According to the Appeal Sheriff, it was "in similar terms to the previously mentioned risk assessment" except that it:

> *"… differed from the first version in two significant respects. First, the risk priority rating as regards Caitlin's emotional well-being was rated as low (rather than medium). In addition, the "recommended control measures" were boosted by an additional two sentences setting out actions which Caitlin's parents were advised to continue taking. The second version had not previously been provided to the claimant. It was the second version which was provided to the Ombudsman by the Council during the Ombudsman's investigation of the claimant's complaints."*

On 19th June 2024 father wrote to the Council's complaints unit. His sole complaint was that the second risk assessment incorrectly recorded Caitlin's priority rating for emotional wellbeing as "low". He sought rectification of that inaccurate data. The Appeal Sheriff narrated that:

> *"The Council conceded that the risk priority rating as regards emotional well-being was wrongly recorded in the second version. However, the Council decided that it would not rectify that*

> *version and gave the claimant that decision in July 2024."*

At that point, father raised proceedings claiming compensation, relying on Article 82 of UK GDPR, Article 16 of which gives a data subject (as defined) "*the right to obtain from the [data] controller without undue delay the rectification of inaccurate personal data concerning him or her*". Under Article 82.1 of UK GDPR "*any person who suffered material or non-material damage as a result of an infringement of this regulation shall have the right to receive compensation from the controller or processor for the damage suffered*". The key point of dispute was that father's claim relied on the proposition that the data which he claimed was false or inaccurate was his personal data. The Council changed its position, conceded that the disputed data was incorrect, and agreed to rectify it; but maintained that because the data in question was not the father's personal data, his claim for compensation had to fail. After explaining, partly by reference to English authority, the steps to be taken to determine whether personal data belonged to someone (in [16]), the Appeal Sheriff identified the key point for our purposes that:

> *"In this appeal, the parties and the sheriff narrowed the issue in dispute to a single question: was the disputed data the personal data of the claimant or of Caitlin? In doing so, all concerned appear to have assumed that the question was binary, that the data could be the personal data of only one or the other. However, as frequently occurs in practice, any given piece of information may amount to personal data simultaneously of more than one person." (at [17])*

The Appeal Sheriff concluded that the data was Caitlin's personal data (at [18]), but that it was also her father's:

> *"That data was also the personal data of the claimant, in the particular and unusual circumstances of this case. The data by reason of its content, purpose or effect related to the claimant in that the information linked to the claimant …" (at [19])*

Father was accordingly entitled to compensation. The Council's appeal failed.

Finally, reverting to the "Two adults" article and the hypothetical importation of the facts of *NCC v WMA* for consideration by a Scottish court in relation to an application under the 2000 Act, what is the effect of the comparison referred to above between the growing prominence, now in 2026, of elements derived from the role of human rights in interpreting relevant law, and making decisions, compared with 13 years ago? The most prominent of several developments over that period, in the context of this article, has been the substantially increasing significance of the UN Convention on the Rights of Persons with Disabilities ("UN CRPD"). The history of acceptance of UN CRPD, and the weight accorded to it in interpreting both Scots law and the relevant law of many other countries, has to be described as "a bumpy ride". Initially, the Convention was "captured" by the UN Committee on the Rights of Persons with Disabilities ("the UN Committee") which offered in its interpretations and other vociferous pronouncements a "hard line" view of the provisions of the Convention, largely not reflected by the Convention itself, and in some cases inconsistent with the consensus achieved in the course of drafting the Convention, as recorded in the travaux préparatoires, as to all of which see (for example) the "Three Jurisdictions Report: Towards compliance with CRPD Art. 12 incapacity/incapacity legislation across the UK", a position paper for the guidance of UK governmental and other authorities in achieving compliance with Article 12 of CRPD (Essex

Autonomy Project, 6th June 2015). However, the UN Committee collectively has in practice largely retreated from that position, even although almost ritualistic repetition of the original "hardline position" continues on occasion.

It is not the function of such UN Committees to interpret Conventions, and even less so does the function include supplanting the language and intention of Conventions with its own ideas. The *de facto* retreat of the Committee from its previous position has proved to be greatly beneficial to general recognition of the high value of the Convention itself, and the lessons to be learned from it. Factors now recognised include that:

1. the United Kingdom ratified the First Protocol to UN CRPD, therefore any citizen can take a complaint to the UN Committee;

2. the United Kingdom is subject to reporting and monitoring requirements of the UN Committee;

3. the Strasbourg Court appears to be moving strongly towards treating the requirements of UN CRPD as applicable to any question of ECHR compliance in any matter addressed by ECHR, for a relatively recent example of which see *ET v Moldova*, [2024] ECHR 858 (ECtHR, Second Section);

4. the United Kingdom ratified UN CRPD, thus undertaking to comply, and engaging the principle of interpretation favouring compliance;

5. it is also a stated current policy of government to implement the recommendations of the Scottish Mental Health Law Review, as they appear in "the Scott Report", to replace the current AWI regime with a regime centred upon full human rights compliance; and

6. it is understood that it remains the stated policy of the current Scottish Government to incorporate UN CRPD into Scots law (though as to whether that remains the intention, and – if so – as to whether there should be any progress towards implementing it, must wait to be seen until after the forthcoming elections).

Applying that current status of human rights considerations in relation to our AWI regime, and in particular the combined effects as now viewed and interpreted of ECHR and UN CRPD, one would suggest that the following comments can reasonably be adopted in relation to the narration in the third paragraph of this article of the facts of *NCC v WMA*. Firstly, one would challenge the view that WMA's "level of functioning" was "high for a person with a learning disability". It is unlikely to be accepted nowadays, indeed if ever in the past, that the great variety and nature of everything encompassed within the current label of "learning disability" could possibly produce a standard "level of functioning". As to the assertion that WMA was "unable to understand the merits of [the proposed move] compared with his remaining with MA", one would, firstly, require to know whether there had been full compliance by the state with its obligation under Article 12.3 of UN CRPD to ensure that he received such support as he might require in order to be able to exercise his legal capacity in relation to that proposition. More fundamentally, however, is the question whether the ensuing narration was based upon group-think, by those professionally concerned in addressing the matter, as to a paternalistic approach as to what they thought was "best for him"? One suspects that the starting-point for consideration of the matter was not the central obligation under Article 12.4 of UN CRPD to respect his "rights, will and preferences", and equally to respect the rights, will and preferences of MA, his mother; and to ensure that exercise of any formal

measures should comply with the overriding requirement of Article 12.4 that they should be "proportional to the degree to which such measures affect the person's rights and interests". Was WMA "unable to understand the merits of the proposed move" because of some complete failure in comprehension on his part, or – more simply – did it not have obvious "merits" in his reality? Why was there no suggestion that the alternative was simply to let MWA and MA continue to live together in the circumstances critically described, because they both chose to live together in those circumstances? Is it really acceptable in society that intervention should be contemplated by authority for everyone who rarely goes out except for dog walking and shopping? As he writes this, this author surveys the concentric circles of clutter that surround him as he writes, and to wonder whether a similar authoritarian view would justify his abduction.

There is also the question of WMA being "beyond control", implying that his mother was not "controlling" him in ways that authority considered appropriate; and that there was "a plain history of neglect of WMA by his mother". Where, in the laws of either England or Scotland, are there obligations upon an adult mother to "control" her adult child, and not to "neglect" that child? It would appear that her "sin", in the eyes of authority, was not to enforce – albeit with no right or obligation in law to do so – authority's view as to what their joint lifestyle should be.

All those points fall to be considered in addition to the basic one that any decision-maker in Scotland, at any time since Part 1 of the 2000 Act came into force on 2nd April 2001, would have been acting unlawfully in terms of equalities legislation, as well as in terms of section 1 of the 2000 Act, in failing to proceed in the matter in accordance with the section 1 principles in relation to each of WMA and MA.

It is unsurprising that the law of England & Wales has developed over the last few years. I am grateful to Alex Ruck Keene for drawing to my attention, following submission of the foregoing text of this article, two relevant cases.

In *HH v Hywel DDA university Health Board and others*, [2023] EWCOP 18, a decision by Mr Justice Francis sitting in the Court of Protection at Cardiff dated 28th February 2023, the court was asked to determine "whether the same judge sitting in the Court of Protection has the jurisdiction under [the Mental Capacity Act 2005] to make best interests decisions pursuant to section 16(2)(a) in respect of more than one person at the same time or sequentially". The case in question concerned, adopting Scottish terminology, two adults, who were husband and wife living together. The first respondent Health Board considered that the proceedings should be consolidated before the same judge at the same time by the same judge, but the applicant objected to that. Mr Justice Francis concluded that:

> *"I am not in any doubt at all that it is not only possible for one judge to make a best interests decision in respect of each of these two [adults], but it is plainly right, in this case, that that judge should do so."*

The conjoined cases of *MA v A Local Authority and another* and *AA v A Local Authority*, [2023] EWCOP 65, decided by District Judge Simpson in the Court of Protection on 8th December 2023, also concerned a married couple, though unhappily in a situation where they had been moved to reside with each other in a care home, but then matters deteriorated and it was ultimately proposed to stop contact between them because of its distressing consequences. District Judge Simpson narrated (paragraph 24 of his judgment) the decision of Mr Justice Francis in the *HH* case, and proceeded

accordingly, deciding both of the conjoined cases before him in a single judgment.

Adrian D Ward

Mental Welfare Commission for Scotland and Healthcare Improvement Scotland unannounced visits to children and young people's units

Background

In February 2025 BBC Scotland aired the documentary *Kids on the Psychiatric Ward* which highlighted very concerning practices and experiences at the Skye House CAMHS inpatient unit in Glasgow. As a consequence of this, the Minister for Social Care, Mental Wellbeing and Sport requested that the Mental Welfare Commission for Scotland (MWC) and Healthcare Improvement Scotland (HIS) conduct visits/inspections across all three young people units in Scotland and Skye House. This resulted in the MWC and HIS making unannounced visits to Melville Unit, NHS Lothian in May 2025, to the National Child Psychiatry Inpatient Unit (Ward 4) and Skye House in August 2025 and Dudhope Unit, NHS Tayside, in October 2025. Previous articles in the Mental Capacity Report containing more detail about the issues and human rights challenges arising from the BBC documentary and first MWC/HIS unannounced visit to Melville Unit can be found in its March 2025 and November 2025 Scotland issues.

Individual reports of each of these unannounced and detailed visits/inspection, with recommendations and highlighting areas of good practice and those requiring improvement have subsequently been published. These can be accessed via the MWC and HIS websites. Very usefully, the MWC and HIS have also published an overview report in March 2026 summarising their findings and recommendations.

Overview report

It is strongly recommended that readers refer to both the individual visit and overview reports directly, as well as the mentioned previous *Mental Capacity Report* articles directly. These collectively provide full details of the issues, findings and human rights principles involved here. Moreover, in addition to those rights identified in the March 2025 Scotland issue of *Mental Capacity Report*, the right to education[3] has been raised, particularly in terms of enabling young people to continue with their education whilst on the units.

However, I summarise below the MWC/HIS findings and overall recommendations in the overview report.

Highlighted areas of good practice

The introduction of community meetings was identified as an area of good practice across all the units. In three[4] out of the four units areas of noted good practice were the introduction of creative new roles and development of detailed online resources for young people and families. A commitment to recruitment to social work and nursing roles was also noted in two of the four units, as was treatment that was fully authorised under the Mental Health (Care and Treatment) (Scotland) Act 2003, and the availability of accessible and age-appropriate information.

[3] Articles 28 and 29 UNCRC; Article 24 UNCRPD; see also s277 Mental Health (Care and Treatment) (Scotland) Act 2003.

[4] Where the number of units is mentioned, this does not necessarily mean that the same units are highlighted as demonstrating areas of good practice or areas for improvement in each area.

Parents feeling involved in the care planning process and being very satisfied with the care and treatment provided to their child, and the availability of schooling and education, was identified in one unit only.

Highlighted areas for improvement

Discussions with young people about advance statements and maintaining the physical environment to ensure safety were highlighted as being required across all units. The need for health board wide seclusion policies and need for 'robust' multidisciplinary teams (that include social workers, dietetics and psychology) were noted for three of the four units, as well as timeous completion of fire risk and safety procedures.

The need for timeous review and implementation of lessons learned from reported incidents was noted in relation to two of the units, and for the use of restraint as a last resort and an improvement in culture and staff attitudes in only one.

Conclusion

Whilst the reports detail some encouraging areas of good practice the variance of these across the different units is noticeable, and the same applies to areas for improvement. The overview report states that progress on stated actions will be followed up with each health board to ensure that they are embedded.

The report also, however, recognises and highlights that responsive effective leadership is essential if the right resourcing, staffing, staff attitudes and culture is to exist.

Whilst there has recently been some progress in terms of regulating and guiding restraint and seclusion in schools, with the Scottish Parliament passing the Restraint and Seclusion in Schools (Scotland) Bill in March 2026, there is currently no overarching policy or guidance in Scotland relating to restraint and seclusion for children and young people in psychiatric units. The absence of this means all the more reason to adopt a clear and principled human rights-based approach to the care and treatment of young people in such units.

Children and young people are vulnerable per se. The potential for this vulnerability to be significantly increased exists where they have mental ill-health and/or living with a learning disability or neurodiversity. Their needs are multi-dimensional and complex. It is therefore essential that the law and human rights requirements which are designed to safeguard and protect children and young people facing psychiatric care and treatment, both in relation to such care and treatment and their wider needs, are strictly adhered to and included in any approaches, guidelines and frameworks. We hope that this recent increase in the detailed monitoring of young person's units, and therefore visibility of areas of good practice and for improvement, will help to secure this.

I will end by quoting from the overview report (p14):

> *When a child or young person is admitted to one of Scotland's national or regional mental health units, it is because they require assessment and treatment for complex mental health needs. They are at their most vulnerable and they, and their families, have a right to the highest quality, compassionate care in a safe, clean, welcoming environment. We found that this was the experience of some but not all of those we met with. This is not good enough, all have the same right, irrespective of where the care is provided and by whom.*

and (referring to the BBC documentary on Skye House, Overview report p15):

> *…young people may not feel able to express their views and concerns about care and treatment to those around them whilst in receipt of that care or may not know what 'good care' looks like.*

Jill Stavert

Working with Dementia Network Plus

The Working with Dementia (WWD) Network Plus was established 2 years ago with funding from the Economic and Social Council, Alzheimer's Society and National Institute for Health and Care Research. It is a multi-university network led by the University of the West of Scotland and also including Edinburgh Napier University, Northumbria University, Warwick University, Lancaster University and Wilfrid Laurier University. It also involved lived experience and stakeholder panels.

The network's objective is to address the social and financial inequalities for those living with dementia, and family carers, in the workplace. It is running and will continue to run projects and events, and produce resources, to this end.

On the 25th March 2026 it held its first conference. This was well-attended and delegates heard presentations and participated in discussions on new insights into supporting people living with dementia, or carers, in the workplace in the workplace and dementia-inclusive workplaces. It also supports research career development in the field and has created a WWD Academy which runs a webinar series.

It has also just launched a research grant funding call, the deadline for expressions of interest being 12pm 1 June 2026.

For more information about the network and its work and/or how to contact or follow us please see Working With Dementia Network Plus

Jill Stavert

An Australian visit: Jill Stavert

Research projects of interest

I recently visited Melbourne, Victoria, Australia, as the guest of La Trobe University, and am very grateful for the warm welcome and interesting visit arranged by La Trobe and others.

A whole book could be written about the similarities and some differences between Victoria and Scotland! However, it was particularly interesting to note the similarities (good and less so!) in terms of the mental health law reform and its implementation, and attempts to align this with CRPD compliance, although, of course, Victoria has enacted new mental health legislation recently.

It is worth highlighting the following two projects. These concentrate on mental health law, practice and policy in Australia but are definitely have useful relevance to the other jurisdictions, including those within the UK.

INDICATE

This project is seeking to create a CRPD implementation assessment tool for Mental Health Law and Policy. The research team includes Associate Professor Piers Gooding and Professor Chris Maylea (La Trobe University), Dr Catherine Brasier (Wellways Australia), Professor Neeraj Gill (Griffiths University, Queensland) and Jill Stavert (Edinburgh Napier University), with Postdoctoral Fellow Dr Panos Karanikolas and PhD candidate Jessica Rodriguez Garcia (both based at La Trobe).

This project is in its early stage but has recently published the findings of a scoping review in the *International Journal of Law and Psychiatry*.

Follow this link for more information: Home - The Indicate project.

FACTORS

This project has undertaken extensive research into factors that affect Community Treatment Orders.

The project team is led by Professor Lisa Brophy (La Trobe University) who is joined by other La Trobe colleagues (Professor Chris Maylea, Dr Tessa-May Zirnsak (project Manager) and Paul Armitage and Bianca Mandeville (PhD candidates). The team also includes or has included colleagues from RMIT University (Professor Penelope Weller), the University of Queensland (Professor Steve Kisely and Dr Claudia Bull). The University of Sydney (Associate Professor Dr Chris Ryan and Dr Edwina Light), the University of Melbourne (Vrinda Edan), Flinders University (Professor Sharon Lawn) and the University of Otago (Associate Professor Dr Giles Newton-Howes).

Amongst other things, the findings today seem to suggest that community treatment orders may benefit some individuals in certain situations and with specific diagnoses. However, they do not necessarily have beneficial effects for all.

For more information about the FACTORS project and related outputs see Factors Affecting Community Treatment Orders Research Study, Research, Care Economy Research Institute, Our research, Care Experience, La Trobe University

Other Melbourne activities

Apart from attending meetings on both these projects I also met with other staff and PhD students at La Trobe University, and friends and colleagues at RMIT University and the University of Melbourne. I also delivered a public lecture and met with colleagues at Safer Care Victoria and at the Mental Health Tribunal Victoria (who also kindly arranged for her to observe two hearings).

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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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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

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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

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 your event

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 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 England & Wales events. For Scottish events, we invite donations to Alzheimer Scotland Action on Dementia.

Our next edition will be out in May. 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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