

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

- (1) In the Health, Welfare and Deprivation of Liberty Report: *Townsend* updated, sex before the Court of Protection again, and a profoundly disturbing report on dementia in acute hospitals;
- (2) In the Property and Affairs Report: new OPG investigation requirements and the consequences thereof;
- (3) In the Practice and Procedure Report: importance guidance on instructing experts, when habitual residence can be revisited, and a very useful new book on coercive control;
- (4) In the Mental Health Matters Report: the legal gaps for those in mental health crisis in ED and misunderstandings of the MCA in the mental health context;
- (5) In the Children's Capacity Report: deprivation of liberty of children in statute and in unregulated placements and what procedural fairness (does) not require in assessment;
- (6) In the Wider Context Report: the MCA and suicide, and new guidance on consenting to clinical trials.
- (7) In the Scotland Report: an update on the new AWI accreditation programme being run by the Law Society of Scotland.

We offer our hearty congratulations to Sir Stephen Cobb on his appointment as President of the Family Division and of the Court of Protection. For anyone who wants reassurance that the new President truly 'gets' the Mental Capacity Act, we suggest reading his judgment in the case of *'Stitch'*, his last decision as a Tier 3 judge of the Court of Protection.

A reminder that that whilst Chambers have launched a new and zippy version of our [website](#) which may look unfamiliar, 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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OPG requirements for professionals seeking to instigate investigations

The Office of the Public Guardian has set out new requirements for triggering investigations. As the letter outlining these sets out:

Professionals will now need to provide relevant documentary evidence at the point a concern is raised with OPG, to enable OPG to assess the concern and determine whether it can be taken forward for investigation. This may include bank statements, capacity assessments, unpaid invoices or similar material.

Evidence required when raising a concern

Concerns raised by legal professionals will usually need the following as evidence for a concern to be reviewed:

Professional Attorney

- Bank statements*
- Capacity evidence*

Legal professional

- Capacity evidence*
- Bank statements*

The letter identifies that:

OPG will continue to consider all concerns raised. Requiring documentary evidence at an earlier stage will help us assess concerns more quickly and provide concern raisers with a faster response.

We have every sympathy with the OPG, which is wildly under-resourced, but we are duty bound to note that the gatekeeping approach may help the OPG manage those limited resources, but is going to cause serious problems in practice, especially where (as so often) the concern arises out of information about or access to the person being withheld.

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Annabel has a well-established practice in the Court of Protection covering all areas of health and welfare, property and affairs and cross-border matters. She is ranked as a leading junior for Court of Protection work in the main legal directories, and was shortlisted for Court of Protection and Community Care Junior of the Year in 2023. She is a contributor to the leading practitioners' text, the Court of Protection Practice (LexisNexis). To view full CV click [here](#).



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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](#).



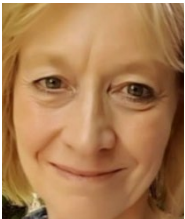
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Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services 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.

Our next edition will be out in June. 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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