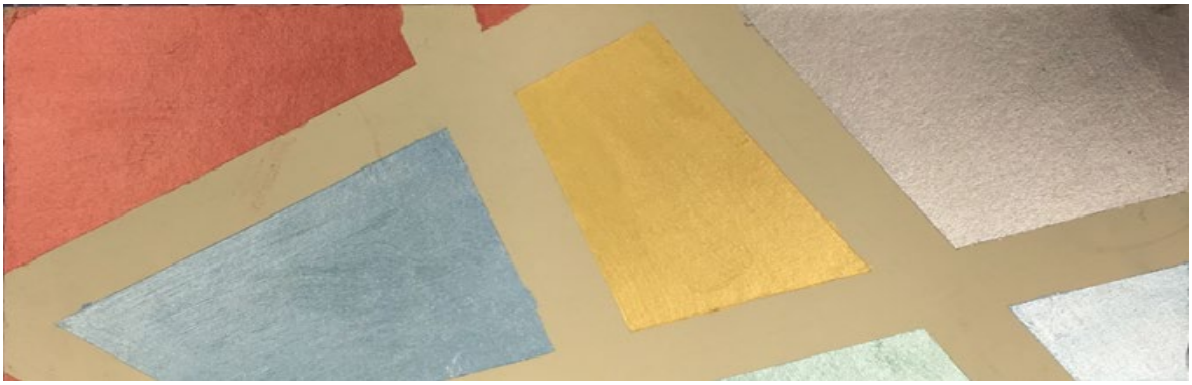


Welcome to the November 2026 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: key themes from post-AGNI caselaw to date, and two medical treatment decisions showing doctors getting it right;

(2) In the Property and Affairs Report: self-dealing in the rearview mirror, dismay at deputy delegation and blithe ignorance of the obligations on a deputy as regards settlement of monies;

(3) In the Practice and Procedure Report: personal welfare orders after HB;

(4) In the Mental Health Matters Report: the Mental health conditions, ADHD and autism prevalence review; and Royal College of Psychiatrists on coercion and human rights;

(5) In the Children's Capacity Report: information-sharing as regards children, and new procedural rules relating to children in ECtHR cases;

(6) In the Wider Context Report: deprivation of liberty before Strasbourg, guidance on eating and drinking at acknowledged risk, and an important change of position relating to Jehovah's Witnesses;

(7) In the Scotland Report: the death of a Bill that never was, and a new appointment for the Mental Welfare Commission.

With huge thanks to Neil Allen, we have set up a running table of post-AGNI cases allowing rapid identification of the types of scenarios being considered, and the results. The case-tracker can be found here, a page where we also host an 'AGNI annex' summarising and commenting on the cases decided in October.

All our other content that you might need – our Reports, our case-law summaries, and our guidance notes – can 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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Personal welfare deputyship after *HB*

With thanks to Senior Judge Hilder, we reproduce here a template welfare deputyship order following the decision of the Court of Appeal in *HB*. It is important to note that the 'suggestions' at (i) – (viii) of paragraph 2 of the deputyship template are just that –suggestions of wording from which selection is to be made according to the facts of the case. They should not be understood as invariably likely to be included (in contrast to the 'standard' provisions of a Property and Affairs deputyship order.) For example, we would expect that (i) is not often included, residence issues will generally be considered so serious that a decision of the court is to be preferred.

In many situations, a welfare deputyship order is not actually needed. Again with thanks to Senior Judge Hilder, we reproduce an order which may be made where the reason for seeking an order is that the applicant is not being listened to in best interests decision-making. Although the result is an order refusing the application, it nonetheless leads to a piece of official paper which can be put before the relevant public body: a somewhat expensive and cumbersome way of ensuring that decision-makers actually comply with their obligations under the MCA 2005.

Court of Protection User Group Meeting

Ahead of the October 2026 meeting, the minutes of the April meeting have been published. Key practice points include the following:

Email communications with the Court

Users were strongly reminded of the following:

- Use informative subject lines:
    - P's initials | Case number | Document name | URGENT + reason (if applicable)
- Do not send "chasing" emails (there would be no reply sent to e-mails asking for an update. This position would be reviewed in 3 months.
- Send emails to one Court email address only.
- Do not copy judges unless specifically authorised.
- State clearly in the first line who you represent, and do not copy the Court into inter-party correspondence.

Judicial Visits to P

Requests for judges to meet P in person must follow the formal application and risk assessment process. The Court remains committed to P's participation but off-site judicial visits should not be assumed to be routine.

Digital vs Paper Applications

Costs may be refused where an application was made on paper when it should have been submitted digitally.

Replacement deputy applications should now generally be made through the portal, even where the original deputyship was created via paper application.

Signatures and Statements of Truth

A typed name alone is not regarded as a valid "digital signature". An electronically stored signature is required.

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Alex has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court and European Court of Human Rights. He also writes extensively, has numerous academic affiliations, including as Professor of Practice at King's College London, and created the website www.mentalcapacitylawandpolicy.org.uk. To view full CV click here.



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Nicola appears regularly in the Court of Protection in health and welfare matters. She is frequently instructed by the Official Solicitor as well as by local authorities, ICBs and care homes. She is a contributor to the 5th edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2022). To view full CV click here.



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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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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.



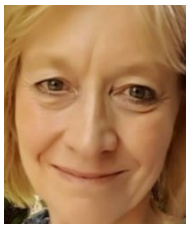
Alex Cisneros: alex.cisneros@39essex.com

Alex regularly appears in health and welfare and property and affairs cases in the Court of Protection. He has appeared in leading cases to do with deputyship and published a textbook about LPAs. His recent doctoral thesis explores the impact of changes to mental capacity law in England and Wales. 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 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 December. 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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