



Welcome to the December 2024 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: the Court of Appeal grapples again with sexual capacity, and important reminders of best interests as good governance and operating in an imperfect world.

(2) In the Property and Affairs Report: Simon Edwards retires, and deputyship updates;

(3) In the Practice and Procedure Report: flight risk, and a coercive control dilemma regarding a lasting power of attorney;

(4) In the Mental Health Matters Report: a Mental Health Bill update, detainability and the courts, and Right Care, Right Person under scrutiny;

(5) In the Wider Context Report: Assisted dying / assisted suicide developments, capacity and surrogacy and two important Strasbourg cases;

(6) In the Scotland Report: Kirsty Mcgrath retires, and a blank space for developments regarding legislative reform in Scotland.

There is one plug this month, for a [free digital trial](#) of the newly relaunched Court of Protection Law Reports (now published by Butterworths). For a walkthrough of one of the reports, see [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](#).

Her fellow editors know that you will join us in congratulating Arianna on her recent appointment as a Recorder: she will sit in Family cases on the North Eastern circuit (alongside sitting as a fee-paid First-Tier Tribunal judge, (Mental Health) and fee-paid Court of Protection judge).

As is now standard, there will be no January report (but Alex will give essential updates on his [website](#)); we hope that at least some of you will get something of a break over the December period.

#### Editors

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

#### Scottish Contributors

Adrian Ward  
Jill Stavert

The picture at the top, “*Colourful*,” is by Geoffrey Files, a young autistic man. We are very grateful to him and his family for permission to use his artwork.

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### Thank you and goodnight to Simon

Our longstanding property and affairs correspondent, Simon Edwards, is standing down with effect from this issue. Worse (for us), he is, in fact, retiring from practice at the end of the year. Simon has been the conscience of Chambers’ Court of Protection team for many years, and not just the Report editors, but the team more broadly thank him for his quiet wisdom over many years, and wish him all the best for a very well-deserved change of pace.

From 2 December, it has also been possible to submit a digital application to replace a deputy following the same process.

### Deputyship updates

In a [letter](#) sent out on 18 November 2024, HMCTS has confirmed that Court of Protection Practice Direction 9H has been updated to confirm that from 2 December legal professionals must submit applications for Property and Affairs Deputyship applications via the [digital submission portal](#) on gov.uk.

The letter notes that:

*In support of mandation, in respect of any Property and Affairs Deputyship applications made on paper after 4th December by professionals, it is unlikely that authorisation to recover costs of making the application from the estate of P will be granted.*

Although litigants in person are encouraged to submit digitally, mandation of the submission portal will only apply to professional court users.

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## Editors and Contributors



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Alex has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court. He also writes extensively, has numerous academic affiliations, including as Visiting Professor at King's College London, and created the website [www.mentalcapacitylawandpolicy.org.uk](http://www.mentalcapacitylawandpolicy.org.uk). To view full CV click [here](#).



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Victoria regularly appears in the Court of Protection, instructed by the Official Solicitor, family members, and statutory bodies, in welfare, financial and medical cases. She is Vice-Chair of the Court of Protection Bar Association and a member of the Nuffield Council on Bioethics. To view full CV click [here](#).



**Neil Allen:** [neil.allen@39essex.com](mailto:neil.allen@39essex.com)

Neil has particular interests in ECHR/CRPD human rights, mental health and incapacity law and mainly practises in the Court of Protection and Upper Tribunal. Also a Senior Lecturer at Manchester University and Clinical Lead of its Legal Advice Centre, he teaches students in these fields, and trains health, social care and legal professionals. When time permits, Neil publishes in academic books and journals and created the website [www.lpslaw.co.uk](http://www.lpslaw.co.uk). To view full CV click [here](#).



**Arianna Kelly:** [Arianna.kelly@39essex.com](mailto:Arianna.kelly@39essex.com)

Arianna practices in mental capacity, community care, mental health law and inquests. Arianna acts in a range of Court of Protection matters including welfare, property and affairs, serious medical treatment and in inherent jurisdiction matters. Arianna works extensively in the field of community care. She is a contributor to Court of Protection Practice (LexisNexis). To view a full CV, click [here](#).



**Nicola Kohn:** [nicola.kohn@39essex.com](mailto:nicola.kohn@39essex.com)

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



**Katie Scott:** [katie.scott@39essex.com](mailto:katie.scott@39essex.com)

Katie advises and represents clients in all things health related, from personal injury and clinical negligence, to community care, mental health and healthcare regulation. The main focus of her practice however is in the Court of Protection where she has a particular interest in the health and welfare of incapacitated adults. She is also a qualified mediator, mediating legal and community disputes. To view full CV click [here](#).



**Nyasha Weinberg:** [Nyasha.Weinberg@39essex.com](mailto:Nyasha.Weinberg@39essex.com)

Nyasha has a practice across public and private law, has appeared in the Court of Protection and has a particular interest in health and human rights issues. To view a full CV, click [here](#)



**Simon Edwards:** [simon.edwards@39essex.com](mailto:simon.edwards@39essex.com)

Simon has wide experience of private client work raising capacity issues, including *Day v Harris & Ors* [2013] 3 WLR 1560, centred on the question whether Sir Malcolm Arnold had given manuscripts of his compositions to his children when in a desperate state or later when he was a patient of the Court of Protection. He has also acted in many cases where deputies or attorneys have misused P's assets. To view full CV click [here](#).



**Adrian Ward:** [adrian@adward.co.uk](mailto:adrian@adward.co.uk)

Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services to the mentally handicapped in Scotland; honorary membership of the Law Society of Scotland; national awards for legal journalism, legal charitable work and legal scholarship; and the lifetime achievement award at the 2014 Scottish Legal Awards.

**Jill Stavert:** [j.stavert@napier.ac.uk](mailto:j.stavert@napier.ac.uk)



Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Capacity Law and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee. She has undertaken work for the Mental Welfare Commission for Scotland (including its 2015 updated guidance on Deprivation of Liberty). To view full CV click [here](#).

## Conferences

Members of the Court of Protection team regularly present at seminars and webinars arranged both by Chambers and by others.

Alex is also doing 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](#).

Adrian will be speaking at the European Law Institute Annual Conference in Dublin (10 October, details [here](#)).

Peter Edwards Law have announced their autumn online courses, including, Becoming a Mental Health Act Administrator – The Basics; Introduction to the Mental Health Act, Code and Tribunals; Introduction – MCA and Deprivation of Liberty; Introduction to using Court of Protection including s. 21A Appeals; Masterclass for Mental Health Act Administrators; Mental Health Act Masterclass; and Court of Protection / MCA Masterclass. For more details and to book, see [here](#).

### **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.

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Our next edition will be out in February. 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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