

# Mental Health Legislation

April 2024



Mental Capacity Act 2005



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## **CQC publish Monitoring the Mental Health Act 2022/23 report:**

**The Care Quality Commission (CQC) published its latest annual report in March.**

The [report](#) is based on the findings from 860 monitoring visits carried out during 2022/23. This involved speaking with 4,515 patients and 1,200 carers. Other work that informed the report included 2,759 complaints and 87 Independent Care Education and Treatment Reviews. Further stats are set out at pages 66-72.

In the foreword, Chris Dzikiti, director of mental health, highlights four key points:

- 1) **Workforce retention & staffing shortages:** one of the greatest challenges, affecting care & safety
- 2) **Lack of specialist beds:** concern this is leading to care in inappropriate settings
- 3) **ICBs and ICSSs:** Going forward the CQC will be assessing how well they are working
- 4) **Draft Mental Health Bill:** CQC are disappointed in the King's speech. However, they observe that legislation alone won't bring the changes needed and that better funding, improved community support and investment in workforce are essential.

[Click here for the press release](#)



[Click here to read the report](#)

### **Please stop saying "Has capacity"**

Mental Health Cop – Michael Brown discusses why he is frustrated to hear professionals continue to state that a person "has capacity".

Capacity is a concept from mental health and capacity law. When it's used for those purposes, it is both context and decision-specific. You don't just have or lack capacity, you have it at a particular point in time in respect of a decision you need to make.

Read the [blog here](#)

**PLEASE STOP SAYING  
"HAS CAPACITY"**

### **A hidden crisis: Older people and deprivation of liberty in care homes**

A report from Age UK calls for urgent action to resolve what it describes as an "ongoing human rights crisis" around the DoLS to ensure that the rights of older people who lack mental capacity are not ignored.

Read the [report here](#)

### **Identifying a deprivation of liberty: a practical guide**

A Law Society publication provides guidance to help people working in health and social care to identify when a deprivation of liberty may be taking place.

Read the guide [here](#)



## From the web:

### **Mental capacity to make decisions about contraception**

In a recent Court of Protection case involving a 31-year-old woman with autistic spectrum disorder, mild learning disability, EUPD & recurrent psychotic disorder, the judge concluded the woman had mental capacity to make decisions around contraception. Case can be viewed [here](#).

### **Interim declarations in the Court of Protection: a new approach**

An alternative approach to interim orders was adopted in a recent judgment [in Barnet, Enfield and Haringey Mental Health NHS Trust & Anor & Mr K & Ors \[2023\] EWCOP 35](#). The case concerned Mr K, a 60 year old man with paranoid personality disorder and delusional beliefs, who was resident at a care home. Mr K was suffering from chronic bilateral venous leg ulcers but refused to engage with professionals and would not agree to any assessment or treatment of his leg ulcers... Read more [here](#).

### **Paper: Extending section 12 approval under the Mental Health Act to professions other than medicine**

Approved clinicians who are medical practitioners are automatically approved for section 12 purposes, whereas other approved clinicians are not. It is argued in the paper that this inconsistency is illogical, has implications for patient care and needs to be remedied. Read the paper [here](#).

### **When do you need to go to court in the serious medical treatment context?**

[In GUP v EUP and UCLH NHS Foundation Trust \[2024\] EWCOP 3](#), Hayden J was concerned with a situation of a woman in her late 80s who had sustained a serious stroke... 39 Essex Chambers discuss the case [here](#).

### **X NHS Foundation Trust v RH [2024] EWCOP 150.**

Application by a hospital trust concerning capacity and best interests of RH, who needs treatment for kidney failure but has a form of schizophrenia. Read the case [here](#).

### **J v Luton Borough Council & Ors [2024] EWCA Civ 3.**

Appeal against decision it was not in J's best interests to travel to Afghanistan with his family and involving parallel proceedings in the Court of Protection and the Family Court. Read the case [here](#).

### **Wareham v Betsi Cadwaladar University Health Board & Ors [2024] EWCOP 15.**

Capacity decision concerning an adult woman, and where there is disagreement between her and the treating clinicians over her treatment. Read the case [here](#).

### **CLF, Re (Capacity: Sexual Relations and Contraception) [2024] EWCOP 11.**

Judgment concerning capacity of CLF to make decisions relation to residence, care, contact, use of social media, engagement in sexual relations and use of contraception. Read the case [here](#).

### **Peterborough City Council v SM [2024] EWHC 493 (Fam )**,

Justice Lieven took a radical approach to the question of deprivation of liberty for a 12-year-old girl, which may have wider implications. Read the case [here](#) and [here](#).

### **Mental health legislation policies**

To support staff finding mental health legislation related policies in a timely manner a subfolder has been created, which holds all Mental Health Act and Mental Capacity Act related policies.

Please access the policies page [here](#)

### **Narrated presentations**

We have placed narrated presentations and films on the learning and latest news section of our intranet page.

Access the presentations [here](#)

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