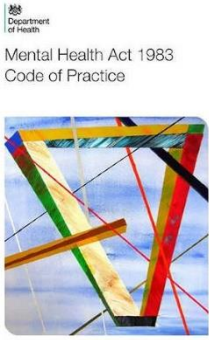


# Mental Health Legislation

June 2024



Mental Capacity Act 2005



Department  
of Health  
Mental Health Act 1983  
Code of Practice

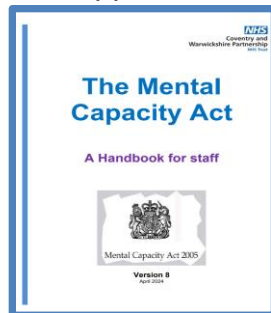
This bulletin is published for all groups of staff working within our Trust. Please share with members of your team. The bulletin is best viewed online to enable users to click onto the links.

## Mental Capacity Act Handbook update

### **Executive functioning, assessment for people with autism, Court of Protection now included**

Version 8 of our MCA handbook has recently been released.

We continue to update the handbook to support staff with their use and knowledge of the MCA.



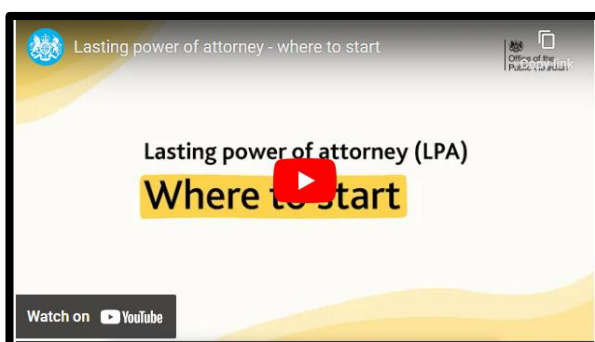
We have now added extra sections on executive functioning, assessments for people with autism, section 49 requests and the Court of Protection.

Click [here](#) and [here](#) to view our MCA resources.

## FAQs from the OPG on Lasting Power of Attorney (LPA)

The OPG receive thousands of phone calls each week from people looking for help and information on the lasting power of attorney (LPA) process. Their useful blog answers common questions by breaking down the different stages of an LPA journey.

Read the blog [here](#)



## Naughty. naughty – breaching orders in the Court of Protection

Bevan Brittan recently held a session on what happens when a CoP order is breached, covering:

- The difference between an order, a declaration, an injunction and an undertaking in the CoP
- What a penal notice is and what it means
- The effect of breaching an order, a declaration, an injunction
- Potential sanctions, implications and committal hearings

A recording of the session can be [viewed here](#)



## From the web:

### **Surrey Police v PC & Ors**

This case centers around the use of the inherent jurisdiction of the High Court where there is a deprivation of liberty, no bed and no options. In the case that went to court they had used back-to-back s136. Mental Health Cop provides a useful narrative here: [The Inherent Jurisdiction](#). In some respects, the ruling does not provide solid answers; what it does confirm is that Court is available 7 days a week, including out of hours to hear cases that are slipping between the gaps of existing legislation. Read the case [here](#).

### **Best interests and the Court of Protection**

The Court of Protection has recently issued a case highlighting the evolving and changing nature of best interests. The case concerns a 25-year-old woman with a mild learning disability, Asperger's Syndrome and epilepsy. Over a period of five years the Court has made a series of rulings involving removal from home, contact and hormone treatment. Read the case [here](#).

### **ZZ (Capacity), Re [2024] EWCOP 21**

Appeal by the local authority against a decision that ZZ has capacity to make decisions about residence, engage in sexual relations and marriage. Read the case [here](#) and [here](#).

### **University College London Hospitals NHS Foundation Trust v HER & Anor [2024] EWCOP 25**

Best interest decision concerning HER's medical care where her sister, SR, was opposed to the Trust's recommended treatment. Read the case [here](#).

### **Sexual relations and the Mental Capacity Act and the CQC – manager ordered to pay £10,000**

The CQC has recently taken a former care home manager to court for failing to protect a resident from exposure to a significant risk of avoidable harm. The manager (not the care home or company owning the home) was ordered to pay £10,000 by Birmingham Magistrates' Court. Read the case [here](#).

### **Case Law Update – Mental Capacity Act**

The Court of Protection is an active jurisdiction – with many cases publishing judgments with important clarifications and expansions on the key principles within the MCA. Key case law and important updates from the past 12 months are discussed [here](#).

### **Lukes v Kent & Medway NHS & Social Care Partnership Trust & Anor [2024] EWHC 753**

In this case, Julian Knowles J had to consider whether Mr. Lukes had a viable claim for damages for personal injury against either the police or a mental health Trust. Mr. Lukes had jumped from height in August 2020 onto railway tracks and sustained serious injuries. Read the case [here](#).

### **Hoarding case: A Local Authority v X [2023] EWCOP 64 (Theis J)**

X had lived in her local authority rented maisonette for over 27 years. Over the last two years of proceedings, strenuous and creative attempts had been made from a range of services to address the significant risks posed by the level 9 hoarding within the property. Read the case [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](#)

### **Newsletter Author**

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If you need further information or have a comment or query, please contact the Mental Health Legislation Team on 024 7693 2520.