



Mental Health Legislation



Volume 6 Issue Two

March 2023

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The Joint Parliamentary Committee's Report on the Draft Mental Health Bill Published

The Joint Parliamentary Committee on the Draft Mental Health Bill have published their report. The report asks the government to improve safeguards in the proposed new law.



'The Government's draft Mental Health Bill must be strengthened to address rising numbers detained under current legislation and tackle unacceptable and inexcusable failures on racial inequalities, say MPs and Peers.'

To read the report (or summaries) [click here](#).

Experiences of adults from a Black ethnic background detained as inpatients under the MHA

People from a Black ethnic (BE) background in England and Wales are disproportionately detained as inpatients under the Mental Health Act (MHA). Qualitative research into the lived experiences of this group is sparse. This recent [study](#), therefore, aims to explore the experiences of people from a BE background detained under the MHA.

The study found the four key themes from their interviews:

"Help is decided by others, not tailored to me"

"I am not a person-I am a Black patient"

"Mistreated or neglected instead of cared for"

"Sectioning can be a space for sanctuary and support."

Conclusions and implications for practice:

People from a BE background report inpatient detention to be a racist and racialised experience, inseparable from a wider context of systemic racism and inequality.

Experiences of detention were also discussed in terms of stigma within BE families and communities, as well as social support that appeared to be lacking outside of the hospital

When might it be appropriate to seek an injunction in the Court of Protection?

[John McKendrick KC](#) of Outer Temple Chambers covered the following topics in a recent webinar:

- * When it might be appropriate for health and social care providers and commissioners to seek injunctions in the Court of Protection;
- * What is the legal basis for such injunctions;
- * What evidence might be required;
- * What might be the issues or challenges raised in opposition; and
- * What are the lessons to be learnt from the key cases.

You can view the webinar [here](#)

COVID-19 vaccination case law

Edge have updated their informative COVID-19 vaccination case law sheet.

You can view the cases [here](#).

Informed consent: the frontline reality v the law

Informed consent is a key issue in medical practice.

In this article, Trainee Solicitor Angus Kirkwood draws on the knowledge he has acquired working as a Trainee Solicitor in the Clinical Negligence Team at Bevan Brittan to briefly consider the law around informed consent. He concludes by providing some practical advice designed to assist practitioners with meeting their legal duties.

Read the article [here](#)

- if you need further information or have a comment or query, please contact the Mental Health Legislation Team on 024 7693 2520
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From the Web:

Case (Secure accommodation of children). Re X (Secure Accommodation: Lack of Provision) [2023] EWHC 129 (Fam) — "The primary purpose of this judgment is for the court, once again, to draw public attention to the very substantial deficit that exists nationally in the provision of facilities for the secure accommodation of children. ... Courts are regularly told that, on any given day, the number of those needing a secure placement exceeds the number of available places by 60 or 70." Read the case and judgement [here](#). Also see article below.

Systemically failing the human rights of children: the President of the Family Division shouts as loudly as he can

It is exceptionally unusual for a judge, let alone a very senior judge, actively to invite a claim to be brought against the State for systemic human rights breaches, but that could be said to be the effect of the judgment of the President of the Family Division, Sir Andrew McFarlane, in the latest of the grim series of cases arising out of the lack of suitable secure provision for children. Read more [here](#).

Updated DoLS case law

Edge have produced a new edition of their DoLS case law sheet. It provides summaries and links to the key DoLS case law and has been updated with the most recent judgments of note. [See here](#).

Is depriving a person of their mobile phone depriving them of their liberty?

MacDonald J decides Is depriving a person of their mobile phone depriving them of their liberty? That was the very 21st century question confronting MacDonald J in [Manchester City Council v CP & Ors \[2023\] EWHC 133 \(Fam\)](#). Read a useful narrative on the case [here](#).

Presuming a presumption of capacity

In this case, Hayden J was asked to consider whether an advance decision to refuse invasive tests or treatments (including life-sustaining treatments) was valid, not at a point when those tests or treatments were sought to be carried out, but in contemplation of the potential that they might be. View the [judgement here](#).

George Orwell and best interests – DoLS and public protection under the spotlight.

Following on from the judgement we highlighted in the last bulletin ([DY v A City Council & Anor \[2022\] EWCOP 51](#)). This informative article looks at how, Judd J has tackled head on the perennially difficult question of whether and how DoLS can provide for public protection. Read the article [here](#).

Charging the NHS

The Daily Telegraph recently reported that one police force in the UK is to become the first to charge the NHS for police time spent in relation to 'unnecessary' mental health calls. It was calculated that Bedfordshire police are spending 53,000 hours each year dealing with mental health related demands, which is roughly 23 police officers, full-time equivalent. Read more [here](#).

When to make an application to the Court of Protection?

Health and social care providers who support vulnerable adults often have to grapple with the tricky issue of how best to support the person to receive healthcare. Often, plans will involve an element of not informing the person about what is going to happen, covert sedation or anxiolytic medication – perhaps even anaesthesia, and potentially restraint. Conversely, there can be circumstances where the professionals do not think it's clinically appropriate for a treatment to be offered to a vulnerable adult, or perhaps to be withdrawn. Victoria Butler-Cole KC from 39 Essex Chambers considered when we should be taking matters to Court [here](#). (Audio and video required).

Case (Life sentence replaced by hospital order). R v Crerand [2022] EWCA Crim 962

The Court of Appeal quashed a sentence of life & substituted a s37/41 restricted hospital order, "taking into account the nature of his mental illness, its causal connection with the offence, its treatability and clear evidence that his condition will be managed on release under the Mental Health Act regime and the public better protected". [Read 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.

To access the policies:

Please access the [policies page](#).

Narrated presentations

We have placed narrated presentations and films on the [learning and latest news section](#) of our intranet page:

DoLS, using the Mental Capacity Act, Inpatients—consent to treatment, CTOs, Scrutiny of MHA papers, What is section 135 of the MHA?, Provision of Rights, The role of the IMHA and the IMCA

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