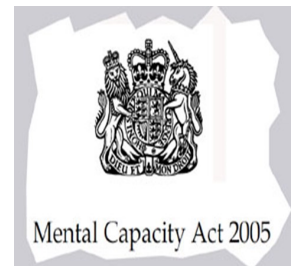


Mental Health Legislation



Volume 6 Issue Three

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Department
of Health &
Social Care

Liberty Protection Safeguards Update

The government announced on the 5th of April 2023 that it would delay the implementation of the Mental Capacity (Amendment) Act 2019 until “beyond the life of this Parliament.”

Therefore the Liberty Protection Safeguards (LPS) are not going to come into force for the foreseeable future.

The decision does not change the position in relation to the need to authorise deprivations of liberty, it simply means that we have to keep using the tools that we have, i.e. DoLS for our hospital/respite settings for those over 18, and the Court of Protection for everyone and everywhere else (unless the Mental Health Act applies).

Whether LPS will be taken forward remains to be seen. If LPS does go forward we doubt it will happen until at least 2027.

Bevan Brittan 

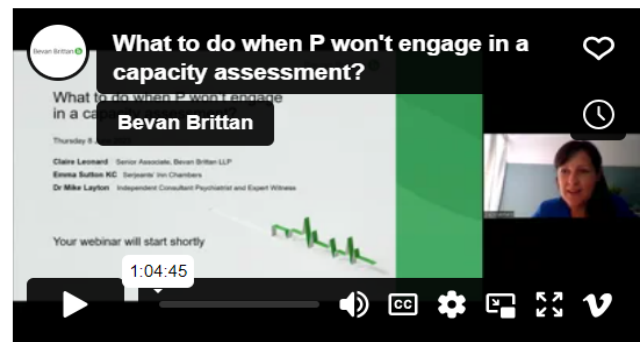
Bevan Brittan discuss what this means for authorising deprivations of liberty in the interim [here](#).

Mental Health Legislation Department

In the meantime if you have any queries relating to deprivations of liberty in any setting, please do not hesitate to contact Steve Trunk or Liam Moseley for advice.

What to do when a patient won't engage in a capacity assessment

It is not an uncommon scenario for a person to refuse to engage with an assessment of their capacity. But what is the legal position when this happens and practically, what should professionals do?



In [this session](#) Dr Mike Layton (Consultant Psychiatrist) and Emma Sutton KC from Serjeants' Inn Chambers considered:

- key guidance from the case law;
- the presumption of capacity and when might it not be appropriate to rely upon it?
- distinguishing between a lack of engagement and a lack of capacity;
- can you rely upon collateral information?
- real-life case studies; and
- practical tips and suggestions.

Reasonable alternative treatment options in informed consent cases: Bolam persists

The Court of Appeal has recently handed down an important judgment in the distinction between two aspects of the clinician's role in informed consent cases, and the interplay between patient autonomy and a doctor's discretion when giving advice on treatment options.

Read more [here](#)

- if you need further information or have a comment or query, please contact the Mental Health Legislation Team on 024 7693 2520
- Head of Mental Health Legislation - Steve Trunk 024 7693 2530 or 07748 321939 steven.trunk@covwarkpt.nhs.uk
- Newsletter Author - Steve Trunk

From the Web:

Anorexia and capacity North East London NHS Foundation Trust v Beatrice and Edward [2023] EWCOP 17

This case concerned 'Beatrice,' who was 50 years old; the second respondent, 'Edward' was her father. An application was made by North East London NHS Foundation for declarations that a palliative care plan for Beatrice which would withdraw active psychiatric treatment was lawful and in her best interests. Read more [here](#).

Gloucestershire Hospitals NHS FT & Anor v Joanna [2023] EWCOP 21

This case concerned "Joanna", who was 26 years old, detained under s.3 of the Mental Health Act 1983, 38 weeks' pregnant and experiencing psychosis. An application was made to authorise serious medical treatment, namely a planned caesarean section, obstetric care and delivery of her child 3 days after the hearing. Read more [here](#).

Immediate risk to life

Mental health Cop discusses the recent announcement by the Metropolitan Police about declining to attend emergency mental health calls unless there is an 'immediate risk to life' . Read his thoughts [here](#).

Squaring the Circle: What steps can a local authority take to ensure a lawful deprivation of liberty in an unregistered children's home in England for children under 16?

In September 2021, the Government removed the lawful basis for a local authority to place a 'looked after' child under 16 years old in a setting in England that meets the definition of a children's home but that has not been registered as a children's home with Ofsted. However, the ongoing national shortage in registered children's homes means that local authorities are continuing to have to place children in unregistered settings without lawful basis. Read more [here](#).

The use of CCTV in care homes

Is the use of surveillance cameras in care homes an acceptable practice?

This question has been subject to regular debate in the care home sector and the media, often in the context of cases where care homes have been seen to have failed their residents. Read more [here](#).

Case (Forced marriage). Coventry City Council v MK [2023] EWHC 249 (Fam)

"The application for a Forced Marriage Protection Order arose out of the discovery that there had been an arranged putative wedding between MK and a woman in Pakistan. Read more [here](#).

A Local Authority v PG & Ors [2023] EWCOP 9

Judgment concerning capacity in relation to contact and care where P's capacity may fluctuate.

PG is a 34 year old woman with diagnoses of autism spectrum disorder, Emotionally Unstable Personality Disorder and mild learning disability. She lives in a supported living placement.... Read more [here](#).

Reporting restrictions and serious medical treatment cases – a difficult (evidenced) balance

In the conjoined appeals of Abbasi and Haastруп [2023] EWCA Civ 331, the Court of Appeal has grappled with the questions of (1) the jurisdiction of the High Court to grant reporting restriction orders ('RROs') providing for the anonymity of professionals involved in treating children involved in serious medical treatment cases; and (2) the circumstances under which such RROs should continue after the death of the child. Read more [here](#).

Covid inquiry will investigate if secret do not resuscitate orders allowed over-70s to die in hospitals

The Covid inquiry is to investigate whether there was a secret and widespread policy in place at the start of the pandemic to issue Do Not Attempt to Resuscitate (DNAR) notices on elderly Covid patients in hospitals without their families' consent. Lady Hallett has extended the remit of her inquiry to look into the issue after a number of bereaved families reported similar experiences of their loved ones' dying after the DNAR orders were imposed without consent. Read more [here](#).

Expect delays: Patient loses bungalow option due to assessment delays.

Read more [here](#) about how delays in assessment and long waiting lists affected an outcome for a patient.

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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