

Mental Health Legislation



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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.

How the Mental Health Legislation department can help you

We have an array of resources that you can access:

[The HOW Guide](#) provides information relating to the Mental Health Act and the Mental Capacity Act; influenced by Codes of Practice, Trust policies and procedures, learning from incidents, themes and questions that are regularly asked of our Mental Health Act offices. If you have a question the HOW Guide may have the answer.

[Our departmental pages](#) host statutory forms, trust forms, links and training materials for all aspects of mental health legislation.

[Legal Panel](#). If you have a case involving the Mental Capacity Act, Deprivation of Liberty, or the Mental Health Act and you have a query about any aspect of the legislation, then you can bring the case to our 'legal panel'. The panel can support and guide your decision-making. The legal panel which is held on a monthly basis can be accessed via Steve Trunk.

SEEKING EXCELLENCE

NHS
Coventry and
Warwickshire Partnership
NHS Trust

Mental Health Legislation 'Legal Panel'

If you have a case involving the Mental Capacity Act, Deprivation of Liberty, or the Mental Health Act and you have a query about any aspect of the legislation, then you can bring the case to our 'legal panel'. The panel can support and guide your decision-making.

The panel meets monthly via

MS Teams: Colleagues with a range of background and experience from across our directorates attend, as well as a lawyer from Mills and Reeve

Who?

How?

The panel has been put together to assist colleagues with legal queries relating to the MCA, DoL and the MHA. If you have a case that you would like the panel to discuss – please contact Steve Trunk who can support your query and present to the panel on your behalf if you are unable to attend:
steven.trunk@covwarkpt.nhs.uk

OUR GREAT PLACE
People. Passion. Pride.

[Compliance toolkits](#). If you would like to assess your team's compliance with the law and Codes of Practice, then our compliance toolkits can assist. We have the following toolkits available:

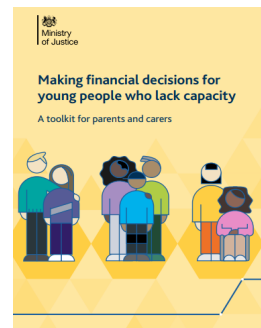
[Mental Capacity Act](#) — managers toolkit for all settings

[Mental Health Act](#) — locality & community team manager toolkit

[Mental Health Act](#) — manager's toolkit for assessing compliance in inpatient settings

Making financial decisions for young people who lack capacity: A toolkit for parents and carers.

The Ministry of Justice have published guidance and a toolkit which provides advice for parents and carers on making financial decisions for a young person who lacks mental capacity.



The toolkit provides information on: what lacking mental capacity means and the decision-making principles; the changes to decision-making responsibility when a child reaches adulthood; the relevant route to make financial decisions on behalf of a young person, including how to access a child trust fund; and if the young person is under the age of 18, how to prepare to make financial decisions when they reach adulthood.

You can view the guidance and toolkits [here](#)

McCulloch v Forth Valley Health Board “does doctor know best”?

The [Montgomery ruling](#) held that a doctor was under a duty to take reasonable care to ensure that a patient was aware of any material risks involved in any recommended treatment and of any reasonable alternative or variant treatments.

The test of whether a risk is “material” is both objective and subjective and relates to what a reasonable person in the patient's position would consider significant, or, whether the doctor should be aware a particular patient would attach significance to the risk, respectively.

Christian Lowden discusses the McCulloch v Forth Valley Health Board [2023] ruling implications in this article from Weightmans

Read the article [here](#) and a useful summary [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:

Gloucestershire Hospitals NHS Foundation Trust & Anor v Joanna [2023] EWCOP 21.

Application for declaration that Joanna lacks capacity to decide about her obstetric care and to litigate and about her best interests. Read more [here](#).

Nottingham University Hospitals NHS Trust & Anor v RL & Ors [2023] EWCOP 22.

Capacity and best interests judgment concerning RL who has been refusing food in prison. Read more [here](#).

Disentangling decisions – and do they even need to be taken: the Court of Protection pronounces

Wiltshire County Council v RB & Ors [2023] EWCOP 26 concerned a 29 year old woman diagnosed with Autism Spectrum Disorder. Since 2015 she had been selectively mute, and chose to communicate in writing or by pointing to words on an alphabet board. She was medically fit for discharge but had consistently said that she did not want to return to the bungalow, nor did she agree to return there. Read more [here](#) and the court's decision [here](#).

Completing Court of Protection papers?

This 10 minute video talks through completing a [COP 3 form](#) (assessment of capacity). You can view the video [here](#).

Supreme Court judgment on Maguire

The Supreme Court has unanimously dismissed the appeal in R (Maguire) v. HM Senior Coroner for Blackpool and Fylde [2023] UKSC 20 finding that there was no arguable breach of Article 2 of the European Convention on Human Rights concerning the right to life. It sets out an incredibly clear summary of the law on Article 2 for those needing a refresher and is an important reference for legal arguments at inquests on the applicability of Article 2 to healthcare settings in respect of scope and conclusions. Discussed [here](#). The full judgment can be accessed [here](#) and the summary [here](#).

Section 135(2) warrants and Community Treatment Orders (CTOs)

Michael Brown aka Mental Health Cop looks at the use of s135(2) warrants and CTOs; whether police officers have powers to execute the warrant by forcing entry and then remove the person to a Place of Safety for discussion about medication and decisions about discharge or revocation? Read more [here](#).

Mental Capacity Act case law sheet

Edge are pleased to announce the first edition of their brand new case law sheet on the Mental Capacity Act. The sheet lists over 25 different decisions and provides direct links to the court cases. These include: surgery, covert medication, pregnancy, sexual relations, restricting contact, hoarding, anorexia nervosa, personality disorder, self-neglect, fluctuating capacity, use or weigh information. You can download the sheet [here](#).

Case (MCA treatment for MHA patient). Norfolk and Suffolk NHS Foundation Trust v HJ [2023] EWFC 92

HJ was detained under MHA 1983 s3 but treatment under restraint for her constipation could not be provided under MHA 1983 s63. The trust asked the court to authorise deprivation of liberty; the judge in email correspondence expressed doubts; subsequently the trust and Official Solicitor changed their minds and agreed that the treatment did not involve deprivation of liberty. Read the case here and [here](#)

Wiltshire County Council v RB & Ors (Rev1) [2023] EWCOP 26 (23 June 2023)

HHJ Cronin declared that RB lacks capacity to decide:

- i) to consent to be discharged from the hospital to live at the bungalow; and
- ii) what personal care she should receive.

As is made clear in her judgment, the crucial element of her finding was founded on an inability on the part of RB to “use or weigh [the information relevant to the decision] as part of the process of making the decision”.

You can view the decision [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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