

**May 2025:** This sheet provides examples of recent case law involving the Mental Capacity Act based around different decisions and issues. Download this case law sheet and others on DoLS and MHA-MCA interface from <https://www.edgetraining.org.uk/resources>. Join our [mailing list](#) to be notified when the next edition is published.

Quotations are taken directly from the court judgment. All case law references are hyper-linked to the full judgment for further details. Cases added since the last edition are indicated with \*\*\*.

- Cases in bold provide the *relevant information* an assessor needs to provide to conduct a mental capacity assessment for that particular decision. According to the Supreme Court ([B v A Local Authority \[2019\] EWCA Civ 913](#)) such lists are guidance and can be modified if something does not apply or something else is important to include depending on the person's specific circumstances. The assessor then needs to assess if there is anything the person is unable to understand, retain or use/weigh from the information provided to establish if they lack mental capacity to that decision.
- Note: Whilst some of the cases below list the relevant information to be covered by the assessor, they do not include a 'list of questions'. The exact questions posed should be tailored according to the individual concerned.

This case law sheet is written by Steven Richards and Aasya F Mughal, authors of:

- [Working with the Mental Capacity Act 2005 \(3<sup>rd</sup> edition\)](#)
- [Working with the Mental Health Act \(4<sup>th</sup> edition\)](#)
- [The Deprivation of Liberty Safeguards \(DoLS\) Handbook \(2nd edition\)](#)

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## Accommodation / residence / placement (including change of)

### ▪ [LBX v K, L, M \[2013\] EWHC 3230 \(Fam\)](#)

This case (para 43) sets out the information a person should understand, retain and use/weigh in order to have the mental capacity to consent to their accommodation.

- what the options are, including information about:
- what they are?
- what sort of property they are?
- what sort of facilities are available
- in broad terms, what sort of area the properties are in (and any specific known risks beyond the usual risks faced by people living in an area if any such specific risks exist)
- the difference between living somewhere and visiting it
- what activities P would be able to do if they lived in each place
- whether and how they would be able to see their family and friends if he lived in each place
- in relation to the proposed placement, that he would need to pay money to live there (as applicable), which would be dealt with by his appointee, that he would need to pay bills, which would be dealt with by his appointee. Note: If someone else is paying, this should be modified accordingly.
- that there is an agreement that he has to comply with the rules ie the relevant lists of "do"s and "don't"s, otherwise they will not be able to remain living at the place
- who he would be living with at each place
- what sort of care he would receive in each place in broad terms, in other words, that he would receive similar support in the proposed place to the support they currently receive, and any differences if they were to live at home; and
- the risk that his father might not want to see him if L chooses to live in the new placement. (note: this last point related directly to the case of LBX and could be ignored or modified unless it applied)

The Court of Appeal endorsed this list in the case of [B v A Local Authority \[2019\] EWCA Civ 913](#) but added that the list is '*...no more than guidance to be expanded or contracted or otherwise adapted to the facts of the particular case*'. See also [London Borough of Tower Hamlets v A & Anor \[2020\] EWCOP 21](#)

## Advance Decisions to Refuse Treatment (ADRT)

### ▪ [Cumbria CCG v Mrs Jillian Rushton \[2018\] EWCOP 41](#)

Poor communication and systems meant a person's ADRT was not followed. The judge stated: '*...the medical profession must give these advanced decisions the utmost care, attention and scrutiny. I am confident the profession does but I regret to say that I do not think sufficient care and scrutiny took place here. The lesson is an obvious one and needs no amplification. Where advanced decisions have been drawn up and placed with GP records there is an onerous burden on the GP to ensure, wherever possible, that they are made available to clinicians in hospital. By this I mean a copy of the decision should be made available and placed within the hospital records with the objective that the document should follow the patient.*'

## Alcohol use and the MCA

■ [PS \(Severe Short Term Memory Loss: Capacity to Engage in Sexual Relations\) \[2024\] EWCOP 42 \(T2\) \\*\\*\\*](#)

A 79 year old woman with alcohol related amnesia which causes severe short term memory impairment. She is living in a care home. The judge found: *'I am satisfied that she is unable to assess the risks associated with the consumption of alcohol and this needs to be regulated in her best interests by others.'*

■ [London Borough of Tower Hamlets v PB \[2020\] EWCOP 34](#)

PB, a 52-year-old man with a lengthy history of serious alcohol misuse and alcohol related brain damage assessed as meeting the criteria for a 'dissocial personality disorder'. PB had a range of physical comorbidities, including COPD, Hepatitis C and HIV. The judge found he had mental capacity about where he lived: *'Self-evidently, not every addict in some degree of denial can be regarded as incapacitous'* and he is able to use or weigh: *'...the potential gulf between his aspiration to moderation and the likely reality, does not negate the thought processes underpinning his reasoning.'* Prior to this judgment, the Court of Protection had previously found he lacked mental capacity to consent to his residence and care and had authorised his deprivation of liberty in a community rehabilitation unit.

■ [A Local Authority v PG & Ors \[2023\] EWCOP 9](#)

A 34 year old woman with moderate learning disability, ASD, trauma based mental illness and emotionally unstable personality disorder (EUPD). It was agreed she had mental capacity about residence (where she lived) but her mental capacity to care/support and contact with others was in question particularly during times of heightened anxiety. Her case was complicated by her regular use of alcohol. The judge concluded that she did lack mental capacity about her contact and care/support arrangements and stated: *'It is not possible to disentangle the influence of alcohol from the impact of her mental impairment. If the evidence was that PG only lacked capacity at times when she is intoxicated then the position would be different, but that is not the evidence. No party argued that the mental impairment has to be the sole cause for the person being unable to make a decision within the meaning of s.3(1).'*

## Anorexia Nervosa

■ [St George's University Hospitals Foundation Trust & Anor v LV \(Rev1\) \[2025\] EWCOP 9 \\*\\*\\*](#)

A 20 year old woman with anorexia nervosa, ASD, severe depression and anxiety. At the time of the hearing, she had been a hospital in patient three years. Given her serious and declining physical health, the NHS Trust proposed a high risk treatment option. The Judge explained LV lacked mental capacity about her treatment because she: *"...does not have the ability to weigh any option involving nutrition; she does not agree there is a risk to her in not eating even though she can see intellectually in relation to other patients that the risk is that they will starve. Her own view is that she will be fine if she continues to lose weight..."*. The judge authorised treatment in her best interests.

■ [North East London NHS Foundation Trust v Beatrice \[2023\] EWCOP 17](#)

A 50 year old woman who had suffered from anorexia nervosa since the age of 14. The judge found she lacked mental capacity to consent to her care and treatment. The second judgment ([North East London NHS Foundation Trust v Beatrice \(No 2\) \[2023\] EWCOP 60](#)) considered whether further nutrition and hydration by force was in her best interests. The judge concluded such treatment would not be in her best interests and agreed to the NHS Trusts proposed plan: *'...there will be a declaration made under s.15 of the Mental Capacity Act 2005 that it is lawful for Beatrice's clinicians to refer her for end of life care at a named hospice. It will state, of course, that she will not be forced to move to that hospice against her wishes.'*

■ [A Mental Health NHS Trust v BG \[2022\] EWCOP 26](#)

A 19 year old woman with anorexia nervosa on a mental health ward detained under the Mental Health Act. The Mental Health NHS Trust applied to the Court for declarations that she lacked mental capacity about her care and treatment including nutrition and hydration and that: *'It was lawful and in BG's best interests for no further treatment to be provided to her against her wishes and for her to be discharged home from hospital notwithstanding her admission pursuant to section 3 Mental Health Act 1983'*.

Note: The cases involving people with anorexia nervosa have normally involved a mental health NHS Trust making a court application with the support of the person and their family. They have all related to people with severe anorexia nervosa who have had multiple hospital admissions for this over many years and also repeated use of the Mental Health Act to forcibly give treatment. They have been driven by the question of whether or not the Mental Health Act should be used again to admit and forcibly treat the person. In the cases where the person is found to lack capacity, the person has been found to understand information but unable to use or weigh information about their nutritional needs.

## Care Act assessment

■ [A Local Authority v GP \[2020\] EWCOP 56](#)

A 19 year old man with autism, anxiety and a learning disability. He had not attended school since 2018 (living at home with his parents). There was concern about his development and lack of community access. Under Section 9 of the Care Act 2014, the local authority had a duty to assess his needs for care and support. Section 11 of the Act provides that if a person has mental capacity they can refuse the assessment but, if they lacks mental capacity the authority can undertake it despite a refusal if it is considered to be in the person's best interests. The judge laid out the relevant information a person would need to understand and use or weigh to refuse a Care Act assessment as follows:

- A local authority has a statutory duty to meet a person's eligible care needs, which may be to prevent or delay the development of needs for care and support or reducing needs that already exist.
- The assessor may speak to other adults or professionals involved in the person's care and that the person may refuse to consent to this.

- The local authority will assess how the person's wellbeing can be promoted and whether meeting these needs will help the person achieve their desired outcomes.

## Care and Support

### ▪ [LBX v K, L, M \[2013\] EWHC 3230 \(Fam\)](#)

This case sets out the information a person should understand, retain and use/weigh in order to have the mental capacity to consent to their care and support needs:

- What areas they need support with
- What sort of support they need, who will be providing them with support
- What would happen if they did not have any support or they refused it
- That carers might not always treat them properly and they can complain if they are not happy about their care

Note: The funding and arrangements for appointing and monitoring care staff were not considered relevant.

## Contact with others (restricting) (including via social media)

### ▪ [PS \(Severe Short Term Memory Loss: Capacity to Engage in Sexual Relations\) \[2024\] EWCOP 42 \(T2\) \\*\\*\\*](#)

A 79 year old woman with alcohol related amnesia causing severe short term memory impairment. Her partner of the last 20 years is called William. Their relationship has been characterised by the overuse of alcohol. She is now living in a care home and both want to continue the relationship – emotional and sexual. The judge finds that she is unable to assess any risks that a person may present to her plus she is liable to mis-identify people (she has mistaken other men for her partner).

### ▪ [In the matter of MK \[2024\] EWCOP 27 \\*\\*\\*](#)

An 81 year old woman with dementia. She lacks mental capacity around contact with one of her sons and lives at home with carers and support from her other adult children. What is notable is that the case chronicles the history of the contact order which has been in place for over 9 years (October 2014) and kept under review by the Court. In this ruling the judge decides to move from a time limited contact order to one of unlimited duration with a right of appeal/review if the circumstances change.

### ▪ [A Local Authority v Sam M & Anor \[2023\] EWCOP 68 \\*\\*\\*](#)

Sam is a man in his thirties with significant cognitive damage following a serious assault. The case concerns contact between Sam and his mother Helen and whether she should continue to live with him. Following a series of concerns about Helen, such as interfering in Sam's care, the local authority applied to the Court for her to be removed from the property. The judge concluded: *'Balancing that against all the other factors, including Sam's love for his mother and his contradictory wishes and feelings, Helen's views as to his care, and also the views of those who have provided care to him and the professionals involved in his welfare, I have decided that it is not in Sam's best interests for Helen to live in the same house at the present time.'*

### ▪ [MA & AA, Re \(Re Section 21A of the Mental Capacity Act 2005\) \[2023\] EWCOP 65 \\*\\*\\*](#)

A married couple in their 80's, both have dementia and both are under Standard DoLS authorisations. They moved into a care home together but due to MA's challenging behaviour she was moved to another care home and no contact between them was allowed. The judge agreed with the LA decision and authorised a no contact order (not part of the DoLS) but this will be reviewed on a regular basis. Note: This case was appealed in 2024 (MA v A Local Authority & Ors [2024] EWCOP 48 (T2)) but was dismissed and the previous 2023 decision was upheld.

### ▪ [Re: EE \(Capacity: Contraception and Conception\) \[2024\] EWCOP 5](#)

A 31 year old woman with autistic spectrum disorder, mild learning disability, emotionally unstable personality disorder and recurrent psychotic disorder. The judge stated: *'The primary reason EE lacks capacity regarding contact is her inability to use or weigh the risks that others pose to her. She has exposed herself to exploitation and harm from those with whom she has had contact but who has not previously known.'*

### ▪ [Local Authority A v ZZ \[2023\] EWCOP 61](#)

A young man with a mild learning disability and Attention Deficit Hyperactivity Disorder (ADHD). Generally cases around contact with others relate to the person lacking mental capacity being at risk (vulnerable) from others. In this case, the reverse was true. The judge stated: *'The issue the Official Solicitor addresses here is that Peter poses a risk to other people, people he does not know and is unable to understand that he poses that risk. This is particularly so because of the sexual nature of the harm he poses. The Official Solicitor agrees with Dr Rippon and the Local Authority that Peter lacks the capacity to make decisions about contact with other people (except his mother and Jenny). I am satisfied for the reasons they give and which I have touched upon earlier in this paragraph that he lacks capacity in this domain.'*

### ▪ [A local authority v P and a CCG \[2021\] EWCOP 48](#)

A 24 year old man with learning disability and ASD with a history of pursuing sexual relationships with others on the internet and absconding from his accommodation to meet others for sex. In relation to contact with others, the judge found: *'He is able to describe what dreadful things might happen, but unable to relate them to himself so cannot weigh those risks in the balance.'* The judge concluded he had mental capacity to engage in sexual relations but lacked mental capacity in relation to contact with others.

This combination of decisions (mental capacity to engage in sexual relations but a lack of mental capacity to have contact with others) has been seen in multiple other cases for people with learning disabilities and/or ASD. It results in a specialist care plan in the person's best interests that manages their contact with others whilst allowing for them to engage in sexual

relations. See also: [A local authority v DY \[2021\] EWCOP 28](#) An 18 year old woman with a moderate learning disability and developmental trauma disorder.

▪ [Re: BU \[2021\] EWCOP 54](#)

A 70 year old woman 'befriended' by a man with multiple convictions for fraud, theft and blackmail. The judge decided she lacked mental capacity about contact with him and ordered no further contact including the use of a penal notice (a warning attached to the court order that breach could lead to a fine or prison) against the man if he did attempt contact.

▪ [Hull City Council v A & Ors \[2021\] EWCOP 60](#)

76 year old woman with vascular dementia living with her son. He was refusing access to carers and professionals despite previous court rulings. The judge ordered the removal of the woman to a care home to allow for her assessment.

▪ [LBX v K, L, M \[2013\] EWHC 3230 \(Fam\)](#)

A man with a learning disability. The court considered whether he had the mental capacity to decide to have contact with his father and aunt. This case is used as the benchmark for assessments of mental capacity around contact which includes:

- The nature of the relationship with the person they are to have contact with
- What sort of contact they could have with the person. This includes different locations, durations and arrangements such as the presence of a support worker
- The positive and negative aspects of having contact with each person based on their own evaluations. Such evaluations will only be irrelevant if they are based on false beliefs. For example, if a person believed that an individual might have contact with had assaulted them when they had not.
- Past positive and negative experiences.

### Enforcing contact orders

The Court of Protection has the option of attaching a penal notice to contact orders. This means a person that fails to comply with such an order can be imprisoned. This is relatively rare but does happen. See cases of:

[ICB v Hindley \[2024\] EWCOP 79 \\*\\*\\*](#) – 168 days imprisonment

[Derbyshire County Council v Grundy \[2025\] EWCOP 2 \\*\\*\\*](#) – 28 days imprisonment

## Contraception

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

A young woman with a learning disability, autism spectrum disorder and Attention Deficit Hyperactivity Disorder. The judge stated: *'Dr Rippon's evidence is clear that CLF does not understand, and cannot weigh or use, information about different forms of contraception, their effects, side-effects, and effectiveness. This is primarily because she understands that contraception involving medication or a device (not condoms) will render her permanently infertile.'*

▪ [Re: EE \(Capacity: Contraception and Conception\) \[2024\] EWCOP 5](#)

A 31 year old woman with autistic spectrum disorder, mild learning disability, emotionally unstable personality disorder and recurrent psychotic disorder. The judge concluded she had mental capacity to make decisions about the use of contraception, stating: *'There are reasons to avoid setting the bar too high for capacity to make decisions about the use of contraception...Daily, in GP surgeries and clinics, women make decisions about contraception without considering the risks to them or to the health of their baby if they were to get pregnant. The risk of becoming pregnant following intercourse is a core piece of relevant information, but not all the many and varied risks which may be consequent on becoming pregnant. Some may envisage all manner of risks, others will not do so.'*

▪ [The Hospital Trust v Miss V \[2017\] EWCOP 20](#)

A 21 year old woman with a severe learning disability. Found to lack mental capacity to engage in sexual relations and contraception and vulnerable to sexual exploitation having conceived a child: *'...in circumstances which in all probability amounted to rape.'* Her mother was against a contraceptive patch which was recommended by the NHS Trust involved in her care. The judge agreed to a six month trial of a contraceptive patch in her best interests. The judge re-stated and applied a long-standing prior ruling (*A Local Authority v Mr and Mrs A [2010] EWHC 1549*) on what a person needs to understand for this decision:

- The reason for contraception and what it does (which includes the likelihood of pregnancy if it is not in use during sexual intercourse)
- The types available and how each is used
- The advantages and disadvantages of each type
- The possible side-effects of each and how they can be dealt with
- How easily each type can be changed
- The generally accepted effectiveness of each type

▪ [Oxford Uni Hospitals NHS Foundation Trust v Z \[2020\] EWCOP 20](#)

A 22 year old woman with a cognitive impairment and a bicornate (or heart-shaped) uterus. She was 35 weeks pregnant with her fifth pregnancy. Of her four children, one died soon after birth and the other three have been taken into care. All of her pregnancies have involved medical complications and the current pregnancy was considered high risk (poorly controlled gestational diabetes, anaemia and a severe vitamin D deficiency). Further pregnancies carry serious escalating physical risk to her. The hospital consider that given her obstetric history and current presentation it would be in her best interests: *'...to have an intrauterine contraceptive device inserted at the time of her caesarean section in order both to reduce the risk of an unplanned future pregnancy and to enable family spacing.'* The judge found she



lacked mental capacity to consent to the insertion of an IUD and it would be in her best interests for one to be fitted during her planned caesarean delivery.

## Covert medication

### ▪ [An NHS Trust v XB \[2020\] EWCOP 71](#)

A man with treatment resistant paranoid schizophrenia detained in hospital under the Mental Health Act. He also had severe hypertension and without medication there was a very serious risk to his health (stroke, heart failure, renal disease) including his death). However, in relation to antihypertensive medication: *'...he disbelieves the diagnosis, despite clear evidence to the contrary. The source of his disbelief is his delusional thinking caused by his treatment resistant paranoid schizophrenia.'* The judge found he lacked mental capacity to consent to the medication it should continue to be given covertly, in his best interests. The judge criticised the NHS Trust for the delay in applying to the Court of Protection and failure to adequately involve the family as required under Section 4 (best interests) of the MCA.

## Deaf or hearing impaired people

### ▪ [Oldham Metropolitan Borough Council v KZ & Ors \(Rev1\) \[2024\] EWCOP 72 \\*\\*\\*](#)

A 20 year old man who was profoundly deaf and communicated using British Sign Language (BSL). The assessment that he lacked mental capacity to make a range of decisions by a consultant psychiatrist was questioned due to the failure to take appropriate 'practicable steps' (a legal duty) during the assessment of mental capacity. The Court appointed a different consultant with specialist expertise in working with deaf people. Using appropriate practicable steps she found he had mental capacity to make several decisions and also his diagnosis was incorrect. The judge stated: *'As regards wider issues concerning the assessment of mental capacity of deaf individuals the following should be an essential part of any such assessment. The experience in this case demonstrates the use of a non-specialist expert is not an appropriate substitute for the specialist assessment and risks incorrect conclusions regarding capacity being reached. Where an assessment is required the following considerations should guide any assessment of a deaf individual fluent in BSL:'*

- 1) *Any mental capacity assessment of a deaf individual fluent in BSL should ideally be undertaken by an assessor who is suitably qualified to communicate at the relevant level of BSL. If that is not done, there should be a clear explanation why and what measures, if any, are proposed to be in place to manage that gap.*
- 2) *The assessor should ideally have a background in understanding deafness and engaging with the deaf community. If they don't, there should be a clear explanation why they are undertaking the assessment without such knowledge.'*

## Dental treatment/assessment

### ▪ [Health Body A v JW & Anor \[2024\] EWCOP 40 \\*\\*\\*](#)

A young woman with learning disability, autism and avoidant/restrictive food intake disorder (ARFID). The 'health body' (ICB or Welsh Health Board) apply to the court for a declaration that she lacks mental capacity and it is in her best interests to undergo a dental examination and treatment under general anaesthetic. All previous attempts have failed due to her resistance. In addition, whilst under anaesthetic a blood test, smear test and cutting of her hair and nails should also be undertaken. The judge agreed to all points.

### ▪ [BNK \(Dental treatment\) \[2023\] EWCOP 56](#)

A 36-year-old man with a diagnosis of severe learning disability, autism and Noonan syndrome (a genetic condition that stops typical development in various parts of the body). He required dental treatment including extractions. He was expected to object to the treatment and so the use of physical and chemical restraint may have been necessary. The judge found he lacked mental capacity to consent to the dental treatment and authorised treatment in his best interests after conducting a 'balance sheet' analysis between the treatment options.

### ▪ [Cardiff & Vale University Health Board v P \(2020\) EWCOP 8](#)

A 17 year old man with autistic spectrum disorder in visible pain from impacted wisdom teeth. The judge was critical of the delay by the Welsh Health Board and dental school in bringing action to court: *'...this young man, it seems, has been suffering, and significantly so, for nearly five months. This is little short of an outrage. It is indefensible.'*

## Deprivation of Liberty Safeguards (DoLS)

We produce a separate DoLS case law sheet and Community DoL case law sheet.

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## Deputyship

### ▪ [AB v CD \(By The Official Solicitor\) & Anor \[2024\] EWCOP 32 \\*\\*\\*](#)

A rare example of a deputy for personal welfare rather than finances. The case involved a 27 year old man with a moderate learning disability and hearing and visual impairments. Subject to a community DoL order from the Court of Protection. On going disagreement between his mother and professionals about where he should live and the most

appropriate care package. The judge authorised the appointment of an independent personal welfare deputy (no links with any of those involved).

▪ [CL v Swansea Bay University Health Board & Ors \[2024\] EWCOP 22](#) \*\*\*

A 22 year old man with significant learning disability, atypical autism, attention deficit hyperactivity disorder and other physical health issues. His mother was appointed by the Court of Protection as his personal welfare deputy in 2019 and was removed by a previous judge. The mother appealed this unsuccessfully in this case.

### Dialysis (renal failure)

▪ [Norfolk and Norwich University Hospitals NHS Foundation Trust & Ors v Tooke & Ors \[2023\] EWCOP 45](#)

Jordan Tooke is 29 and has a diagnosis of autism, severe learning disabilities, and William's syndrome. He cannot communicate verbally but is skilled in non-verbal communication. He has reached end-stage renal failure and is needle phobic and despite some progress due to 'familiarisation' methods. He needs dialysis and is expected to resist the procedure. The judge authorised the use of sedation to allow dialysis. The longer term plan (hopefully) being a kidney transplant. His real name is published partly in the hope of a donor coming forward. The judge stated: *'...though dialysis is undoubtedly burdensome, it is certainly not futile....Having regard to Dr M's clear view that Jordan's sedation can be managed, I have come to the view that the opportunity of dialysis ought to be afforded to Jordan and that such opportunity can properly be said to be in his best interests.'*

### Do Not Attempt Cardiopulmonary Resuscitation (DNACPR)

▪ [Elaine Winspear v City Hospitals Sunderland NHS Foundation Trust \[2015\] EWHC 3250](#)

Case concerned a DNACPR notice which was (illegal) because of a breach of Section 4(7) (consultation requirement under the statutory best interests 'checklist') of the Mental Capacity Act 2005: *"If, ...it is both practicable and appropriate to consult then in the absence of some other compelling reason against consultation, the decision to file the DNACPR notice on the patient's medical records would be procedurally flawed. It would not meet the requirements of s.4(7) MCA; it would accordingly not be in accordance with the law."*

### Education – Special Education Needs (SEN)

▪ [A Local Authority v GP \[2020\] EWCOP 56](#)

See details under Care Act assessment above. The judge laid out the relevant information a person would need to understand, retain and use or weigh to make decisions as to their education as follows:

- The type of provision.
- The type of qualifications, if any, on offer.
- The cohort of pupils and whether P would match the profile of other pupils at the provision.
- That P has additional rights up to the age of 25 because of his special educational needs.

### Education, Health and Care needs assessment (EHC)

▪ [A Local Authority v GP \[2020\] EWCOP 56](#)

See details under Care Act assessment above. The judge laid out the relevant information a person would need to understand, retain and use or weigh to request an EHC assessment.

- An EHC plan is a document that says what support a child or young person who has special educational needs should have
- Other people will be consulted during the assessment process including parents, teachers and other professionals
- If assessed as requiring an EHC the young person has enforceable right to the education set out within their plan
- An EHC plan is only available up to the age of 25 years.

### End of life and palliative care

▪ [Northumbria Healthcare NHS Foundation Trust v HX & Ors \[2024\] EWCOP 52](#) \*\*\*

A woman in her late 40s diagnosed with severe, global, hypoxic ischemic encephalopathy or brain damage following a cardiac arrest. A disagreement between her son and the hospital team about withdrawing treatment. The judge stated: *'I am satisfied, clearly but reluctantly, that it is not in HX's interests to continue to administer to her life sustaining medical treatment in the form of mechanical ventilation and CANH, but rather that as explained it is in her best interests, with sadness, to begin to implement for her a palliative care regime, the consequence of which (but not the aim) will be the end of her life.'*

▪ [GUP v EUP & Anor \[2024\] EWCOP 3](#)

A woman in her late eighties whose family disagreed with the withdrawal of medical interventions by hospital staff: The judge stated: *'There has been increasing divergence between the growing hope of the family for some meaningful recovery and the view of the clinicians that comfort and dignity ought to be the focus of EUP's care, at what they assess to be the end of her life. Whilst these two perspectives of EUP's medical needs have diverged, I am concerned that the treatment she has received reflects a convergence between the two. In other words, the treatment plan has an air of*

*compromise about it, a negotiation between the family and the medical team. There may, sometimes, be a place for that, but not if the person at the centre of it becomes marginalised. P (the protected party) must always be afforded care, which is identifiably in her own best interests. The family's views are relevant only insofar as they provide a conduit for P's own wishes and feelings. Families, however loving and well-meaning gain no dominion over their dying and incapacitous relatives. The family's role, which is crucial, is to promote and not subvert P's autonomy.'*

▪ [Aintree University Hospitals NHS Foundation Trust v James \[2013\] UKSC 67](#)

This was the first case on the MCA considered by the Supreme Court. Mr James was a 68 year old man, in hospital (critical care unit) for 7 months – stroke causing, severe neurological damage septic shock, multiple organ failure, on CPAP (supported breathing) for 12 hours a day plus a ventilator and CANH. His clinical team considered he was in a minimal conscious state and wanted to withhold 4 treatments if his condition deteriorated. Mr James' family disagreed. The court stated: *'...the focus is on whether it is in the patient's best interests to give the treatment, rather than on whether it is in his best interests to withhold or withdraw it. If the treatment is not in his best interests, the court will not be able to give its consent on his behalf and it will follow that it will be lawful to withhold or withdraw it.'*

There are large number of published cases around end of life decisions under the MCA. The common thread is where a hospital wishes to withdraw treatment in a person's best interests and the family disagree.

### Entry to premises (Forcible)

▪ [London Borough of Croydon v CD \[2019\] EWHC 2943](#)

A man refusing access to domiciliary care with a history of depression, excess alcohol use and severe self-neglect. Section 48 interim order (before a mental capacity assessment had been completed). The judge stated: *'I take the view that it is in CD's best interests that I should give directions and/or make orders without delay which enable the Local Authority to gain access to his accommodation in order, first of all to provide appropriate care for CD himself and secondly to make his accommodation safe for human habitation.'*

▪ [A Local Authority v WMA \[2013\] EWCOP 2580](#)

A 25 year old man with atypical autism and pervasive development disorder living with his mother with extreme concerns about his welfare. Following earlier rulings that were not successful the judge ruled that in his best interests he should be removed to a supported living placement. Given the potential resistance from the man (lacking mental capacity) and his mother the judge agreed: *'...a power for the local authority to enter the home if necessary; a power to the police to restrain WMA if necessary; an order that WMA be removed from his current home and taken to B where the local authority will have power to retain him if needs be;...'*

### Faith based delusions and mental capacity

▪ [A County Council v MS and RS \[2014\] B14](#)

A man with schizophrenia presenting with religious delusions. The judge overrode the consultant psychiatrist's mental capacity assessment and decided the man did have the mental capacity to make a donation to his church: *'...I have accepted that his belief that he is a prophet is a delusional belief that does not mean that all of his religious beliefs are delusional or compromised by the presence of mental illness.'*

### Financial decisions

▪ [Local Authority A v ZZ \[2023\] 61](#)

A young man with a mild learning disability and Attention Deficit Hyperactivity Disorder (ADHD). The case differentiates mental capacity to make financial decisions based on the complexity of the decision. The local authority considered he lacked mental capacity to make all financial decisions. The judge however found he had mental capacity to manage simple financial decisions but: *'If Peter did not have an appointee, his property and affairs decision making would become more complex for him. I doubt he would then have capacity to deal with the more complex part of his property and affairs.'*

### Fluctuating capacity

▪ [Calderdale Metropolitan Borough Council v LS & Anor \[2025\] EWCOP 10 \\*\\*\\*](#)

A 31 year old woman (referred to as Stitch) with mild intellectual disability, ADHD and a dysfunctional attachment style. *'She is reported to have microscopic brain disorder, associated with microcephaly at birth. She experiences difficulty in processing and assimilating information, exacerbated by a cognitive rigidity; this makes it difficult for her to consider new information which challenges her understanding...'* The judge stated: *'...in the area of residence and care there are times when Stitch appears to articulate a level of understanding and reasoning which suggests that she does have capacity; indeed, this was a finding which I made about this and many aspects of her decision-making in 2023. However, at other times, she shows such a clear and marked lack of understanding or reasoning about her residence and care needs that she could not be viewed under any circumstances as having capacity.'* The judge concluded: *'It is thus appropriate that I should take a longitudinal perspective on her capacity in these regards, and to declare (albeit with reservations) that she is incapacitous in these areas.'*

▪ [Oldham Metropolitan Borough Council v KZ & Ors \(Rev1\) \[2024\] EWCOP 72 \\*\\*\\*](#)

A 20 year old man who was profoundly deaf and communicated using British Sign Language (BSL) with a diagnosis of extreme language deprivation. He experienced regular moments of heightened arousal and anxiety during which he lost

his mental capacity. The judge stated: *'The evidence demonstrates that for the majority of the time KZ has capacity to make decisions regarding his residence and care arrangements. The behavioural incidents that result in a loss of capacity appear to be time limited and staff are adept at resolving and de-escalating the situation.... In those circumstances, the least interventionist approach to capacity that promotes KZ's autonomy and capacity would be achieved by making an anticipatory declaration as compared to the longitudinal one.'*

▪ [Leicestershire County Council v P & Anor \(Capacity: Anticipatory declaration\) \[2024\] EWCOP 53 \\*\\*\\*](#)

A woman with Complex Post Traumatic Stress Disorder (PTSD) as a result of childhood trauma who dissociates on a regular basis. She has had several admissions to mental health wards and been detained under the Mental Health Act. It is agreed that when she is not dissociating, she has mental capacity. The judge considered evidence that when she does dissociate she loses mental capacity about care, support and contact with others. The judge concluded: *'Whilst most of the time P is able to make decisions about her care and contact with others there are limited times when she is unable to do so when she dissociates in the context of leaving the property in certain circumstances or seeks to admit visitors to it. In particular, at those times she is unable to properly weigh the relevant considerations, understand the significant risks and make decisions to keep herself safe which she recognises need to be made when she does not dissociate and has capacity.'*

▪ [A Local Authority v PG & Ors \[2023\] EWCOP 9](#)

A 34 year old woman with moderate learning disability, ASD, trauma based mental illness and emotionally unstable personality disorder (EUPD). *'In respect of both care and contact with others there are times when the evidence suggests that she does have capacity to make decisions and others when she does not, therefore this is undoubtedly a case of fluctuating capacity. The fluctuations appear to depend on the level of PG's anxiety and whether she feels under stress. The situation is made even more complicated by the fact that when PG is in the community, her decision making may also be influenced by the consumption of alcohol.'* This case is also listed under alcohol.

▪ [Wakefield MDC & Wakefield CCG v DN & MN \[2019\] EWHC 2306](#)

A young man with ASD, general anxiety disorder and emotionally unstable personality disorder. The judge found: *'DN has capacity to make decisions regarding his residence and care and treatment arrangements, except when presenting in a state of heightened arousal and anxiety ("a meltdown")..'* The judge granted a declaration covering what could be described as 'parallel' care plans that stated when the man was not having a 'meltdown' he had mental capacity about his care and support needs but when he was experiencing a meltdown he lacked mental capacity around care and support.

▪ [Royal Borough of Greenwich v CDM \[2019\] EWCOP 32](#)

A 64 year old woman with a personality disorder (emotionally unstable, paranoid, histrionic and dependant types) and physical health conditions including COPD and unstable diabetes which had led to a below knee amputation. She required insulin twice a day administered by district nurses. She had a history of declining insulin or claiming she had already had it (when she hadn't). The judge stated: *'...there may be occasions when CDM has the capacity to make micro-decisions in respect of her diabetes and occasions when she does not, i.e. that her capacity does in fact fluctuate. However... logically, legally and practically, it is a macro-decision, and CDM lacks capacity to take the macro-decision,...'* In this case the woman's capacity fluctuated so often that the judge ruled that overall she lacked mental capacity to the decision.

▪ [Cheshire West & Chester Council v PWK \[2019\] EWCOP 57](#)

A 24 year old man with ASD and mild learning disability. The judge found: *'...when PWK is overwhelmed by anxiety and speaks and behaves in a way he rapidly comes to regret. That anxiety is often but not always predictable and is liable to affect every part of his life and not just the issue of the moment, whatever that may be. It is the unpredictability of that anxiety and the seriousness and breadth of its impact which is decisive in this case in overturning the legal presumption of capacity.'* In relation to care and support the judge found he lacked mental capacity: *'I am satisfied, again applying a longitudinal perspective, that PWK lacks capacity in this area.'*

## Hoarding

▪ [A Local Authority v X \[2023\] EWCOP 64 \\*\\*\\*](#)

A woman with OCD and hoarding disorder. The local authority applied for an order to remove her from the property (deprivation of liberty) for a temporary period whilst it is cleared and then for her to return. The judge agreed and stated: *'Having stood back and looked at the wide canvas of evidence, the court is really faced with a binary best interest choice. Either X remains in the property with no prospect of any change which is very likely to get worse, in a situation that is described as being a significant fire risk to her, along with the many other risks outlined above, or steps are taken to seek to bring about change. However, this latter course is not without its own risks bearing in mind X's very strongly held wishes, the very high level of distress she is likely to experience, her threats of suicide, which need to be taken seriously, and the significant interference in her Article 8 rights that such a move entails. There is no middle ground that has any credible evidence to support it; based on past experience any further attempt to support X to bring about change is certain to fail.'*

▪ [Re: AC and GC \(Capacity: Hoarding: Best Interests\) \[2022\] EWCOP 39](#)

This case sets out the information relevant to making the decision to keep or discard items and belongings (hoarding). There are five areas of information: 1. Volume of belongings and impact on use of rooms 2. Safe access and use 3. Creation of hazards 4. Safety of building 5. Removal/disposal of hazardous levels of belongings. More detailed information on each of the five areas is given in the judgment (click on the case title above).

## Impairment/Disturbance (no diagnosis)



▪ [North Bristol NHS Trust v R \[2023\] EWCOP 5](#)

A 32 year old woman in prison with no diagnosis of mental disorder. Her mental capacity to decide whether or not to have an elective caesarean section at 34 weeks was in question. There were consistent reports she had been street homeless previously. The prison mental health service found: *“Her presentation has, and continues to be unusual and baffling. She presents as perplexed, engagement is minimal with anyone who tries to engage with her and her answers to questions are mostly ‘yes’, ‘no’ or ‘don’t know’.* The judge concluded: *‘...there is no basis for interpreting the statutory language as requiring the words “impairment of, or disturbance in” to be tied to a specific diagnosis. Indeed, it would be undesirable to do so. To introduce such a requirement would constrain the application of the Act to an undesirable degree...’* (this case is also listed under pregnancy)

## Internet and social media

▪ [Calderdale Metropolitan Borough Council v LS & Anor \[2025\] EWCOP 10 \\*\\*\\*](#)

A 31 year old woman (referred to as Stitch) with mild intellectual disability, ADHD and a dysfunctional attachment style. The judge stated: *‘While at times it appears that Stitch is able to understand and communicate some of the risks involved in social media and internet use, her powerful needs, deriving from her dysfunctional attachment style, her craving for sexual satisfaction, her need for validation, and her deeply rooted fear of rejection, overwhelm her at ‘material times’ and rob her of her ability to use or weigh the risks of her social media use.’* and *‘I have concluded that Stitch does not currently have capacity to make decisions about access to the internet and social media...’*

▪ [Re: A \(Capacity: Social Media and Internet Use: Best Interests\) \[2019\] EWCOP 2](#)

A 21 year old man with a learning disability living in supported living with extensive personal social care support. The case considered his mental capacity to a range of different decisions. There were concerns about his use of the internet and social media in relation to viewing extreme pornography and contacting a number of men under police investigation for modern day slavery, trafficking and sexual exploitation. The judge decided that mental capacity to use the internet and social media are ‘inextricably’ linked and it is therefore: *‘...impractical and unnecessary to assess capacity separately in relation to using the internet for social communications as to using it for entertainment, education, relaxation, and/or for gathering information.’*

The judge concluded he lacked mental capacity to use social media and the internet and a special internet access and safety care plan should be put in place in his best interests. The case can be read alongside [Re B \(Capacity: Social Media: Care and Contact\) \[2019\] EWCOP 3](#) by the same judge in the same week.

The list of information considered relevant is as follows:

- Information and images (including videos) which you share on the internet or through social media could be shared more widely, including with people you don’t know, without you knowing or being able to stop it
- It is possible to limit the sharing of personal information or images (and videos) by using ‘privacy and location settings’ on some internet and social media sites. Even if the person doesn’t know how to use these settings themselves, they should know they exist, and be able to decide (with support) whether to apply them
- If you place material or images (including videos) on social media sites which are rude or offensive, or share those images, other people might be upset or offended
- Some people you meet or communicate with (‘talk to’) online, who you don’t otherwise know, may not be who they say they are (‘they may disguise, or lie about, themselves’); someone who calls themselves a ‘friend’ on social media may not be friendly
- Some people you meet or communicate with (‘talk to’) on the internet or through social media, who you don’t otherwise know, may pose a risk to you; they may lie to you, or exploit or take advantage of you sexually, financially, emotionally and/or physically; they may want to cause you harm

The judge provided further guidance in paragraphs 28 & 29 of the judgment on the interpretation of the above list of relevant information.

▪ [Re: C \[2020\] EWCOP 73](#)

A 28 year old woman with a moderate learning disability. Her mental capacity to use the internet and social media was considered following a police investigation into a large number of graphic sexual images were found on her electronic devices. The judge stated: *‘As a young woman, understandably, she has sexual needs and desires. Similarly, she is no different from the majority of her peers in gaining pleasure and fulfilment from the use of the Internet and social media.’* The judge ruled she lacked mental capacity to use the internet and social media.

## Lasting Powers of Attorney - Revoking/Ending

▪ [SAD & Anor v SED \[2017\] EWCOP 3](#)

The judge said the following information is relevant to this decision:

- Who the attorneys are;
- What authority they have;
- Why it is necessary or expedient to revoke the power; and
- The foreseeable consequences of revoking the power
- whether the donor is able to weigh and take into consideration the reasons for the original decision to appoint the attorneys.

The judge added: *'it is also appropriate to consider whether the donor is able to weigh and take into consideration her reasons for the original decision to appoint the attorneys.'*

## Marriage and Civil Partnership

### ▪ [Re: BU \[2021\] EWCOP 54](#)

A woman in her 70's with dementia who was 'befriended' by a man who then moved into her house. He had an extensive history of convictions and imprisonment for fraud, theft and blackmail. The judge referenced previous case law as the benchmark for the assessment of mental capacity for marriage (see [London Borough of Southwark v KA & Ors \[2016\] EWCOP 20](#) below). Although the judge found the woman had mental capacity to marry they found in relation to the man concerned she would not be able to give valid consent as he would coerce her (for consent to be valid it must be both informed and freely given). The judge noted that the relevant information for marriage and civil partnership were slightly different because: *'...there is no requirement for a civil partnership to be consummated in order for it to remain valid whereas a marriage can be annulled in the absence of consummation.'*

### ▪ [London Borough of Southwark v KA & Ors \[2016\] EWCOP 20](#)

The case set out a list of relevant information a person needs to understand, retain, use/weigh in order to decide to marry as follows:

- Marriage is status not person specific
- The wisdom of the marriage is not an issue
- Broad nature of the marriage contract
- Duties and responsibilities that normally come with marriage, including there may be financial consequences and that spouses have a particular status and connection with regard to each other
- The essence of marriage is for two people to live together and love one another
- The person must have capacity to enter into sexual relations
- That a marriage will invalidate any existing will.

The judge noted that: *'It is not relevant to his understanding of marriage that he does not understand...a wife will need to obtain entry clearance.'*

## Mental Health Act & Mental Capacity Act interface

We produce a separate MHA and MCA case law sheet. Download from: <https://www.edgetraining.org.uk/mharesources>

## Personality disorder

### ▪ [Re: AB \[2021\] EWCOP 21](#)

A 24 year old woman with organic personality disorder (and anxiety and depression) with a history of admissions to mental health hospitals and detention under the Mental Health Act. She has a history of behaviour that challenges and is currently awaiting sentencing for series of physical assaults (staff and general public). She is under DoLS in a care home and this case authorised her future discharge home, detained under a Court of Protection order (community DoL).

- See also: *Royal Borough of Greenwich v CDM [2019] EWCOP 32* and *Leicester City Council v MPZ [2019] EWCOP 64* (both detailed under *use or weigh information*) and *London Borough of Tower Hamlets v PB [2020] EWCOP 34* (under alcohol use and the MCA).

## Pregnancy and caesarean section

### ▪ [North Bristol NHS Trust v R \[2023\] EWCOP 5](#)

The case set out a list of relevant information a person (in this case a woman) needs to understand, retain, use/weigh in order to decide to have a caesarean section:

- i. The reason why an elective caesarean section is being proposed, including that it is the clinically recommended option in R's circumstances.
- ii. What the procedure for an elective caesarean involves, including where it will be performed and by whom; its duration, the extent of the incision; the levels of discomfort during and after the procedure; the availability of, effectiveness of and risks of anaesthesia and pain relief; and the length and completeness of recovery.
- iii. The benefits and risks (including the risk of complications arising out of the procedure) to R of an elective caesarean section.
- iv. The benefits and risks to R's unborn child of an elective caesarean section.
- v. The benefits and risks to R of choosing instead to carry the baby to term followed by natural or induced labour.
- vi. The benefits and risks to R's unborn baby of carrying the baby to term followed by natural or induced labour.

The judge also said at para 63 that the relevant information will include some information concerning the impact on her unborn child of R taking or not taking a decision on the matter. R's unborn child has no separate legal identity until they are born.

- [Leicestershire Partnership NHS Trust & University Hospitals of Leicester NHS Trust v PQ \[2024\] EWCOP 73 \\*\\*\\*](#)

A 29 year old woman with treatment resistant paranoid schizophrenia and had been living in the community subject to a Community Treatment Order (MHA) before being recalled to the mental health unit and then transferred to the acute hospital where she is due to give birth. The NHS Trusts had known about the pregnancy for over 4 months but only made an urgent application to the court on her due date of pregnancy at 40 weeks requesting a same day or next day hearing for a planned caesarean section. The judge was critical of the failure of the Trusts to follow previous legal guidance (NHS Trust v FG [2014] EWCOP 30) which states applications to the Court should be no later than 4 weeks before the due date. The judge noted that: ‘...failure to do so is unfair to the patient and likely to be contrary to their best interests.’ The judge agreed to the planned caesarean section (this was delayed from the original date of application as circumstances changed).

▪ [Rotherham and Doncaster and South Humber NHS Foundation Trust v NR & Anor \[2024\] EWCOP 17 \\*\\*\\*](#)

A 35 year old woman detained under Section 3 of the Mental Health Act and 22 weeks pregnant. The court considered whether she had the mental capacity to consent to a termination. The judge concluded she did lack mental capacity but in relation to her best interests said: ‘*The initial application for a declaration was that I should state that it is lawful and in NR’s best interests to have a termination. I expressly decline to make that declaration. I do, however, approve the proposed care plan and confirm the lawfulness of it. Thus, I make a declaration that the care plan, setting out the arrangements for a termination of NR’s pregnancy is lawful. I go no further. So far, the options presented to NR have been uncoupled from the practical realities. There is now a finely structured plan where a decision, one way or the other, is unavoidable. It is important that NR knows that I am respecting her rights as an autonomous adult woman to make this decision for herself, with the help of those she chooses to be advised by.*’

▪ [CP, Re \[2024\] EWCOP 7 \\*\\*\\*](#)

A 30 year old woman with schizophrenia detained under Section 3 of the Mental Health Act and 36 weeks pregnant. The judge declared that she lacked the mental capacity to make decisions about her obstetric care, anaesthesia and ancillary care and treatment. The judge stated: ‘*Her mental[ly] disorder is such that she is unable to adequately weigh up the benefits and detriments of each obstetric treatment option, including which type of anaesthesia.*’

▪ [North Middlesex University Hospital NHS Trust & Anor v MB \[2023\] EWCOP 23](#)

A 26 year-old woman who was 37 weeks pregnant. She was detained in hospital under section 3 of the Mental Health Act 1983. It was agreed that she lacked mental capacity about how her unborn child would be delivered. The judge was critical of the NHS Trust for the delay in bringing the case to Court: ‘*I can see no good reason why this application could not have been issued much sooner and in accordance with the clear guidance set out in NHS Trust 1 and NHS Trust 2 v FG [2014] EWCOP 30, [2015] 1 WLR 1984*’. Judges have repeatedly been critical of NHS Trusts for making late applications to court.

In the cases above, the judges found the women lacked mental capacity as they could not use or weigh the necessary information about obstetric care and treatment. The judges authorised obstetric care plans in their best interests including the use of restraint or sedation, if required.

## Restraint

▪ [Norfolk and Suffolk NHS Foundation Trust v HJ \[2023\] EWFC 92](#)

Use of the Mental Capacity Act for the purpose of regular physical restraint in order to deliver an enema on a mental health inpatient ward whilst the person was detained under the Mental Health Act. The judge stated: ‘*...section 6 of the MCA recognises that many patients who lack capacity will also resist having medical treatment or care which is entirely appropriate for them because they will not understand why they are being provided with care or treatment. The broad effect of section 6 MCA 2005 is that, where such treatment is reasonably believed to be in P’s best interests, restraint short of a deprivation of liberty can lawfully be imposed on P without any further authorisation where it is reasonably believed by those providing the care that it is necessary to prevent harm and the restraint used is proportionate to the likelihood and seriousness of that harm.*’ Note: this would apply to any care setting or location as long as the criteria of the MCA were followed.

## Self-neglect

▪ [London Borough of Croydon v CD \[2019\] EWHC 2943](#)

A man refusing access to domiciliary care with a history of depression, excess alcohol use and severe self-neglect. Section 48 interim order (before a mental capacity assessment had been completed). The judge stated: ‘*I feel able to conclude that there is reason to believe that at the moment, per section 2, he lacks capacity to make decisions about his personal care.*’ The judge authorised entry to the premises and delivery of care on an interim basis.

## Sexual relations

▪ [ZX \(Capacity to engage in sexual relations\) \[2024\] EWCA Civ 1462 \\*\\*\\*](#)

An 18 year old man with ADHD, conduct disorder with impaired working memory, poor impulse control, difficulties with emotional regulation (neurodevelopment disorder from childhood trauma). He presents a high risk to others in terms of sexual assault etc. An earlier court ruling found he lacked mental capacity to engage in sexual relations but on appeal (this ruling) the Court of Appeal disagreed: *“following JB [Supreme Court ruling], there may be a **natural desire to protect** those with whom P might want to have sexual relations, in particular in cases where P has a history of sexual offending...However, it seems to me, although the issue of the consent of others to sexual relations has entered the list of relevant information, the Court of Protection must **not allow the desire to protect others unduly to influence a clear-eyed assessment of P’s capacity**. The unpalatable truth is that some capacitous individuals commit sexual assault, even rape, but also have consensual sexual relations. An individual with learning disability, ASD, or other impairment, may act in the same way, but it is only if they lack capacity to make decisions about engaging in sexual relations that the Court of Protection may interfere.”*

▪ [PS \(Severe Short Term Memory Loss: Capacity to Engage in Sexual Relations\) \[2024\] EWCOP 42 \(T2\) \\*\\*\\*](#)

A 79 year old woman with alcohol related amnesia causing severe short term memory impairment. She was living in a care home and wanted to continue the sexual relationship with her partner of 20 years. The judge found that although she lacked mental capacity for contact with others she did have mental capacity for sexual relations. In relationship to the information needed to be understood the judge accepted the need for her to understand about sexually transmitted infections was not necessary in relationship to her partner: *‘Since WP and PS are within a monogamous and long-standing relationship it was asserted that the risk of STD could be ruled out. Whilst I am not sure one can be so confident that one party in a stable relationship will not acquire an STD, I am willing to accept that within the context of such a relationship it is not the risk factor that a young person wishing to explore sexual experiences in a distributive rather than focal way would have.’*

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

A young woman with a learning disability, Autistic Spectrum Disorder and Attention Deficit Hyperactivity Disorder. In relation to the information a person needs to understand to engage in sexual relations the judge stated: *‘The bar should not be set too high for capacity in relation to sex. There are practical limits on what should be envisaged by the individual concerned. There is a danger in imposing requirements on their decision-making that are higher than those attained by many capacitous people making the same decisions.’*

▪ [Re: EE \(Capacity: Contraception and Conception\) \[2024\] EWCOP 5](#)

A 31 year old woman with autistic spectrum disorder, mild learning disability, emotionally unstable personality disorder and recurrent psychotic disorder. The judge considered if the 4<sup>th</sup> bullet point above *‘...a reasonably foreseeable consequence of sexual intercourse between a man and woman is that the woman will become pregnant..’* could include information on serious risk to her or the baby if she did get pregnant. The judge concluded: *‘...many women will put their physical or mental health at risk by becoming pregnant. Some may consider those risks before engaging in sexual relations, some might not. To require EE to understand and weigh or use information about risks to her health during pregnancy or labour, in particular risks which were not grave, ...would set the bar too high. Thirdly, and similarly, many women will engage in sexual relations with a view to conceiving when there is a risk that their baby will suffer harm in utero or be born with a congenital disability. Again, some women will consider those risks in advance of engaging in sexual relations, some will not: the bar should not be set too high for EE.’*

▪ [Hull City Council v KF \[2022\] EWCOP 33](#)

KF is 34 years old and has a mild learning disability. The case concerned her mental capacity about contact and sexual relations to a single known man (KW) with whom she has had a relationship of several years. On the issue of sexual relations, the judge considered that the inclusion of person specific information in addition to the information stated in the JB case above was appropriate. The judge stated: *‘In my judgment, alongside the relevant information set out in JB (above), the information relevant to that decision in this case includes that KW has sexually assaulted KF previously, that the assault was very harmful to KF, whether further sexual intimacy between KF and KW gives rise to a risk of a further assault on KF and/or harm to her, the degree of that risk, the consequence if it should materialise, and the means by which the risk could be mitigated. KF is unable to retain, and weigh or use the relevant information.’*

▪ [A Local Authority v JB \[2021\] UKSC 52](#)

The Supreme Court confirmed the relevant information a person needs to understand to have the mental capacity to engage in sexual relations was that set out in the Court of Appeal judgment *A Local Authority v JB [2020] EWCA Civ 735* with one amendment as follows:

- the sexual nature and character of the act of sexual intercourse, including the mechanics of the act
- the fact that the other person must be able to consent to the sexual activity and must in fact consent before and throughout the sexual activity
- the fact that P can say yes or no to having sexual relations and is able to decide whether to give or withhold consent
- that a reasonably foreseeable consequence of sexual intercourse between a man and woman is that the woman will become pregnant
- that there are health risks involved, particularly of sexually transmitted and transmissible infections, and that the risk of sexually transmitted infection can be reduced by the taking of precautions such as the use of a condom.

This checklist of information is flexible depending on the circumstances of the case (the type or nature of sexual act and the age of partners will have different outcomes in terms of whether pregnancy is a risk).

**Use of sexual entertainment services including sex workers**



▪ [NHS Birmingham and Solihull Integrated Care Board v JI & Ors \[2023\] EWCOP 66 \\*\\*\\*](#)

A 29 year old man with learning disability, autism and personality disorder living with his mother with 2:1 support during the day and 1:1 waking at night. His care is jointly commissioned by his local ICB and Local authority. The judge found: *'Even though JI has capacity to engage in sexual relations, he lacks capacity to make decisions about choosing who it would be safe to have sexual contact with, and choosing to pay for sexual entertainment services including a sex worker.'* Previously staff have taken him to a lap dancing club when he asked to go. One member of staff then went into a room for him to have a private lap dance. The ICB and LA consider the care workers may be committing an offence under Section 39 of the Sexual Offences Act (Care workers: causing or inciting sexual activity) and are stopping funding for the lap dancing but providing funding for alternative activities instead (cinema, music recording studio, swimming, education). The NHS Trust and Official Solicitor disagree with the decision. The judge agreed to the ICB & LA plan with the potential for lap dancing visits to be reinstated in the future.

## Surgery

▪ [King's College Hospital NHS Foundation Trust v South London and Maudsley NHS Foundation Trust & Anor \[2024\] EWCOP 20 \\*\\*\\*](#)

A 60 year old man with a long history of paranoid schizophrenia brought to hospital with septic necrotic ulcers on his leg secondary to blocked vascular supply. Without an above knee amputation the prognosis is further deterioration and death within weeks. The man refused intervention on his legs saying the ulcers were caused by *'lasers and Wi-Fi'* hitting his legs. The judge authorised the amputation in his best interests and published the case because she thought the man: *'...should have a record which he can access at his will which sets out why he has had his leg amputated and the steps that were taken to make sure that that amputation was in his best interests.'*

▪ [X NHS Foundation Trust v RH \[2024\] EWCOP 150](#)

A 40 year old man detained under Section 3 of the MHA 1983 with: *'...hebephrenic schizophrenia, which is characterised by disorganised behaviour and speech, mood incongruence, hallucinations and delusions.'* He needed surgery for declining kidney function. The judge found he lacked mental capacity to consent to the surgery and authorised it in his best interests under the MCA including the use of physical and chemical restraint if necessary. Note: It was not considered a treatment which could come within the scope of the treatment powers of (Section 63) Mental Health Act 1983.

▪ [Re TTN \(Medical Treatment: Retinal Detachment\)\[2024\] EWCOP 1](#)

A 73 year old man with treatment resistant schizo-affective disorder detained under Section 3 of the MHA 1983. He required surgery for a detached retina and this may have required physical and chemical restraint due to his objection. The judge found he lacked mental capacity to the surgery and authorised it in his best interests under the MCA. The judge was also: *'...of the view that the Applicants should avoid as far as possible actively misleading TTN, but where it is necessary to do so in order to achieve this outcome in the least restrictive way, then this in my judgment can be permitted.'*

▪ [Re TS \(Pacemaker\) \[2021\] EWCOP 41](#)

An 81 year old man with a delusional disorder detained in hospital under Section 3 of the MHA 1983. He required surgery for a pacemaker to be fitted. Although he understood the relevant information the judge found he lacked mental capacity because: *'His ability to weigh up the advantages and disadvantages is distorted by a paranoid belief that the authorities are persecuting him.'* The judge ruled it was in his best interests to have the pacemaker fitted and authorised the surgery and the use of restraint and a deprivation of liberty in the acute hospital, if required under the MCA.

## Tenancy agreement for Supported Living (Occupation Contracts in Wales)

### Tenancy Agreement

[London Borough of Islington v QR \[2014\] EWCOP 26](#)

In relation to the decision to sign/enter a tenancy agreement for supported living accommodation

- Her obligations as tenant to pay rent, occupy and maintain the flat
- The landlord's obligations to her under the contract
- The risk of eviction if she does not comply with her obligations
- The purpose of and terms of the tenancy which is to provide her with 24 hour support so that she takes her medication and can maintain her mental health
- The landlord/support staff's right to enter her flat without her permission in an emergency if there is serious physical danger or risk to her
- If she moves to supported living accommodation the CTO will be changed to require her to live there

Note: The last point on the list is highly specific to QR and will not be relevant in most other cases.

### Surrendering a Tenancy (Notice to Quit)

[London Borough of Islington v QR \[2014\] EWCOP 26](#)

In relation to the decision to give up her secure council tenancy

- By surrendering her tenancy she loses the right to live or return there, and thus the opportunity to exchange that tenancy for another secure council tenancy
- She cannot move to a less restrictive environment than ABC unless she gives up her tenancy
- For the foreseeable future the terms of the CTO will not permit her to live in her flat
- She needs 24 hour support in her accommodation in order to remain well
- Giving up her tenancy does not preclude the grant of a council tenancy by LBI in the future if she is well enough to live completely independently

Points 2 and 3 on the list are highly specific to QR and will not be relevant in most other cases or may need to be varied.

## Use or weigh information

- [Calderdale Metropolitan Borough Council v LS & Anor \[2025\] EWCOP 10 \\*\\*\\*](#)

**Executive dysfunction:** A 31 year old woman (referred to as Stitch) with mild intellectual disability, ADHD and a dysfunctional attachment style. In relation to her capacity to make decisions about residence and care, the judge stated: *'In my judgment, she is not able to exercise the necessary level of executive functioning to achieve this decision-making autonomously. She derives crucial psychological containment and security from the infrastructure of the support plan; when that has gone in the past, it has exposed her inability to deploy the functions required to make a capacitous decision.'*

- [CT v London Borough of Lambeth & Anor \[2025\] EWCOP 6 \\*\\*\\*](#)

**Insight:** A man in his 50's who suffered a head injury as a child. A history of mental health and physical health needs. The judge stated: *'Insight is a clinical concept, whereas decision making capacity is a legal concept. Capacity assessors must be aware of the conceptual distinction and that, depending on the evidence, a person may be able to make a particular decision even if they are described as lacking insight into their general condition.'*

- [A Local Authority v X \[2023\] EWCOP 64 \\*\\*\\*](#)

**Insight /compulsive disorder:** A woman with OCD and hoarding disorder. The judge concluded: *'X demonstrates no insight into the situation she lives in, the inherent risks that exist for her in that situation continuing and has demonstrated a complete inability to weigh in the balance information relevant to making decisions in regard to managing her items and belongings.'*

- [Hemachandran & Anor v Thirumalesh & Anor \[2024\] EWCA Civ 896 \\*\\*\\*](#)

**Believe the information:** The judge stated: *'...there is no specific requirement of belief, whether subsumed into the general requirement of understanding or in the ability to use and weigh information or otherwise...an absence of belief may but not inevitably will, on the facts of a particular case, lead to a clinician or a court to that the functional test in section 3(1) is not satisfied and that the person in question does not have the ability to make the decision in question.'*

- [X NHS Foundation Trust v RH \[2024\] EWCOP 150](#)

**Delusions:** A 40 year old man with schizophrenia detained under the Mental Health Act. The judge stated: *'...RH suffers with delusions including that there is nothing wrong with him and that the hospital wants to remove his kidneys and kill or harm him. In Dr L's view, these persistent delusions render him unable to weigh up the relevant information...'*

- [North East London NHS Foundation Trust v Beatrice \[2023\] EWCOP 17](#)

**Anorexia nervosa:** A 50 year old woman who had suffered from anorexia nervosa since the age of 14. The judge stated: *'Beatrice cannot and does not undertake this weighing exercise because of the anorexia nervosa. The experts explained to me graphically and eloquently that the condition impairs Beatrice's mind by taking it over and creating delusions that she is overweight, with a fat, ugly body rather than being skeletal and at death's door.'*

- [Re TS \(Pacemaker\) \[2021\] EWCOP 41](#)

**Paranoid ideation:** An 81 year old man with a delusional disorder detained in hospital under Section 3 of the MHA 1983. He required surgery for a pacemaker to be fitted. Although he understood the relevant information the judge found he lacked mental capacity because: *'His ability to weigh up the advantages and disadvantages is distorted by a paranoid belief that the authorities are persecuting him.'*

- [Warrington Borough Council v Y & Ors \[2023\] EWCOP 27](#)

**Executive dysfunction:** A woman in her 20's with Autistic Spectrum Disorder. The judge stated: *'Executive dysfunction and frontal lobe paradox.... not to be regarded as synonymous with the functional test for mental capacity. The former derives from clinical practice, the latter is the test prescribed by MCA. Neither is 'insight' to be viewed as equating to or synonymous with capacity. To elide those two would be to derogate from personal autonomy, every adult from time-to-time lacks insight into an issue or indeed into themselves.'*

- [A Local Authority v AW \[2020\] EWCOP 24](#)

**Executive dysfunction:** A 35 year old man with learning disability and autistic spectrum disorder. In this case executive functioning was described as: *'...the ability to think, act, and solve problems, including the functions of the brain which help us learn new information, remember and retrieve the information we've learned in the past, and use this information to solve problems of everyday life...'* The case looked at a range of decisions including contact with others, sexual relations, internet and social media.

- [A NHS Foundation Trust v an Expectant Mother \[2021\] EWCOP 33](#)

**Agoraphobia:** A 21 year old pregnant woman with severe agoraphobia. The judge found: *'...the mother lacks capacity to make decisions about whether her baby should be born at home or in hospital. Put simply, she is so overwhelmed by her*

agoraphobia that she is unable to weigh and process relevant considerations and unable to make any sort of decision about it.'

▪ [East Lancashire Hospitals NHS Trust v GH \[2021\] EWCOP 18](#)

**Agoraphobia:** A 26 year old woman with severe anxiety, depression and agoraphobia refusing admission for urgent obstetric care and treatment (possibly including a caesarean). An emergency court hearing was held between the hours of 22.00 and 23.45. The judge concluded: *'GH's agoraphobia and anxiety has overwhelmed her ability to use and weigh the information required to decide whether to agree to be admitted to hospital for obstetric treatment..'*

▪ [Royal Borough of Greenwich v CDM \[2019\] EWCOP 32](#)

**Personality disorder:** A woman with a personality disorder. The court found she lacked the mental capacity to manage her diabetes as she could not use or weigh relevant information. A medical expert stated: *'There is a difference between CDM stating understanding of her diabetes management needs and her ability to put this into practice. She becomes emotionally dysregulated so frequently that her ability to act on her decisions is significantly compromised on a daily basis.'*

▪ [Northamptonshire Healthcare NHS Foundation Trust v AB \[2020\] EWCOP 40](#)

**Anorexia nervosa:** A 28 year-old woman first diagnosed with anorexia nervosa when she was 13. AB lacked the mental capacity to decide about her treatment. The judge explained her inability to use or weigh information as follows: *'...given the chronic nature of AB's illness and its current clinical presentation, her decisions in connection with food, calorific intake and consequent weight gain are so infected and influenced by her fixated need to avoid weight gain at all costs that true logical reasoning in relation to these specific matters is beyond her capacity or ability.'*

▪ [Leicester City Council v MPZ \[2019\] EWCOP 64](#)

**Personality disorder:** A woman with a learning disability and personality disorder. The judge considered if she had mental capacity to make various decisions: residence, care, access to social media, tenancy agreements and sexual relations and concluded her personality disorder: *'...impacts on her ability to use or weigh information as it causes her to deny, dismiss or minimise information relevant to risks, especially when put to her by professionals as it challenges her pathological way of thinking.'*

▪ [Cheshire West & Chester Council v PWK \[2019\] EWCOP 57](#)

**Autistic Spectrum Disorder:** A man with autism and a learning disability. The judge found he lacked mental capacity to make a range of decisions and stated: *'...I am amply satisfied that, because of the acute anxiety that this subject generates in him, he is unable to use and weigh that information as part of the decision-making process.'*

▪ [Re A \(Capacity: Social Media and internet use: Best interests\) \[2019\] EWCOP 2](#)

**Learning disability (adaptive reasoning):** 21 year old man with a learning disability. The judge stated: *'...A's difficulty with flexible adaptive reasoning – that is, while in some respects he can repeat back what he has been told, he is unable to apply it to actual situations...This is not just 'unwise' behaviour. In the circumstances, I have reached the conclusion (section 15 MCA 2005 ) that he lacks capacity to use the internet or social media.'*

## Vaccinations

We produce a separate case law sheet on Covid-19 vaccinations. Download from: <https://www.edgetraining.org.uk/news>