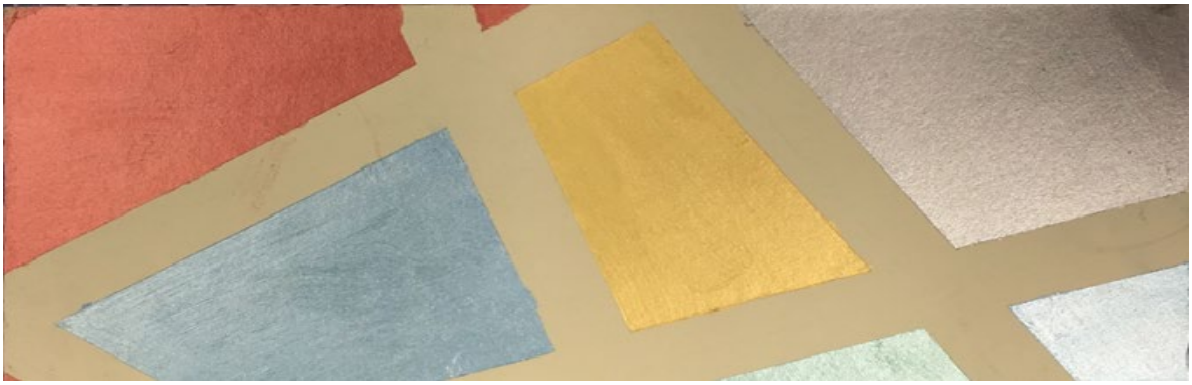
MENTAL HEALTH MATTERS
March 2025 | Issue 148



Welcome to the March 2025 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: insight into the proper place of insight, best interests decision-making and good clinical governance, and anorexia and the changing calculus of decision-making;

(2) In the Property and Affairs Report: the Court of Protection's (international) jurisdiction over children;

(3) In the Practice and Procedure Report: fees changes relating to the Court of Protection and the OPG guidance on disclosing visitors' reports;

(4) In the Mental Health Matters Report: the Mental Health Bill progresses and the independent investigation into the care and treatment of Valdo Calocane;

(5) In the Children's Capacity Report: why the report is named as it is, the Court of Appeal confirms that local authorities cannot consent to the confinement of children in care, and guidance for judges writing to children;

(6) In the Wider Context Report: the updated Code of Practice on diagnosing death and restraint in Northern Ireland.

(7) In the Scotland Report: no hard news, but the way ahead for AWI reform becomes clearer, and unhelpful uncertainty about powers of attorney.

The progress of the Terminally Ill Adults (End of Life) Bill can be followed on Alex's resources page here.

You can find our past issues, our case summaries, and more on our dedicated sub-site here, where you can also sign up to the Mental Capacity Report.

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The picture at the top, "*Colourful*," is by Geoffrey Files, a young autistic man. We are very grateful to him and his family for permission to use his artwork.

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Mental Health Bill

The Mental Health Bill has had its last day at Committee stage in the House of Lords. This stage allows peers to scrutinise the detail of a Bill, but traditionally no votes are taken. Tim Spencer-Lane has given an excellent summary of the last day on 24 February, as follows.

Implementation/funding

There were calls for a costed plan for community care to support the Bill's reforms and a statutory backstop for implementing the Bill. In response, Baroness Merron set out the Government's implementation plan.

Mental health commissioner

Peers called for the creation of a statutory mental health commissioner to provide "sustained leadership for mental health" and to drive forward the reforms. Baroness Merron repeated that a commissioner would duplicate existing functions such as those of CQC.

Specialist eating disorder units

There were calls for the adequate supply of eating disorder units. Baroness Merron committed to working with NHSE to improve access to eating disorder services.

Community support

Peers called for sufficient high quality community services as alternatives to detention. Baroness Merron felt existing duties under the NHS Act addressed these matters.

'Breathing space' (debt respite scheme) scheme

Peers wanted the scheme to be extended to Part 3 patients and a proactive duty to offer the scheme. Baroness Merron said the revised Code would include a 'requirement' for referrals and the scheme would be kept under review.

Inappropriate placements of children

There were calls for limits on the placement of children on adult mental health wards and notifications of out-of-area placements. Baroness Merron said that the revised Code would address these issues.

Use of force

Peers pointed to the inappropriate use of restraint for children in psychiatric hospitals and limits on the use of long-term segregation. Baroness Merron confirmed that CQC has been commissioned to develop a viable and proportionate reporting mechanism.

HRA

Peers highlighted a gap in human rights protection identified in the 'Sammut' case, calling for private care providers to be deemed public authorities under the Human Rights Act. Baroness Merron

confirmed the Government is "actively considering" this matter.

Mentally disordered offenders

Peers wanted a review of the impact of the reforms on mentally disordered offenders in prisons, and the Valdo Calocane case. The MoJ minister (Lord Timpson) argued there was already robust scrutiny for offender health.

Duty to promote well-being

There were calls for a prevention duty to reduce the likelihood of detention. Baroness Merron argued this was duplicative of existing duties and pointed to the prevention concordat.

Valdo Calocane

Peers raised this case and a duty on services to maintain contact with people with a mental disorder and to publish full versions of independent reports. Baroness Merron confirmed there will be a judge led statutory inquiry.

Scrutiny of power to make consequential provisions

Baroness Marron said DHSC will respond ahead of report stage

The new Mental Health Bill print is now up on the Parliament website. This reflects changes made in Committee by Government amendment, plus various technical corrections. Clause numbers have changed for clauses after 31. Alex has yet to have the chance to update his unofficial version of the MHA Bill available on his MH Bill resources page, but will do so as soon as possible.

Valdo Calocane

As noted above, there will be a judge-led statutory inquiry into this case. In the meantime, the independent investigation into the care and treatment provided to Valdo Calocane commissioned by NHS England has been published.[1] Key findings include that:

- Calocane's risk "was not fully understood, managed, documented or communicated";
- There were missed opportunities to take more assertive action towards Calocane's care;
- The voice of Calocane's family "was not effectively considered to support the dynamic evaluation of risk" during his treatment;
- Other patients under the care of the same trust, some of whom had been discharged, had also perpetrated acts of "serious violence" across 15 incidents between 2019 and 2023;
- Calocane had no contact with mental health services or his GP for about nine months prior to the killings (and his discharge had taken place without any face-to-face contact).

In the context of the Mental Health Bill, two features stand out:

[1] Social media commentary has (rightly) identified that there were some quite strange statements in the report about the MHA, including that an emergency application can be made under s.4 by a nearing relative or an AMHP (with no reference to any medical recommendations) and for s.135 warrants to be executed by social workers alone. Those strange statements might rather undermine confidence in the legal literacy of those preparing the report.

- The emphasis on capacity on the part of both those engaged with Calocane, and on the part of the report authors, who conclude that:

> *VC's ability to fully understand the implications of his mental health condition were limited by his lack of insight. This may have meant he lacked full capacity to make decisions in relation to his care and treatment and engagement, particularly in the community. There does not appear to be a systemised approach to assessing patient capacity based on presentations across care settings and relied upon in the context of voluntary treatment within the community. Therefore, the question of capacity does not appear to inform all assessments of risk across the different care settings.*[2]

- That the investigation heard how clinicians, when deciding not to put Calocane on a CTO, were influenced by the comments within the Draft Mental Health Bill (2022), relating to the desire for a reduction in use of CTOs and its disproportionate use for black people. The investigation also noted the tension described within the CQC (2022) report between families' beliefs in the value of CTOs and challenges around their use as perceived overly restrictive by clinicians and patients. As the investigation report notes:

> *Whilst Trust staff reported that they considered race in relation to the use of restrictive practice, there is nothing in the notes to suggest that this important factor was discussed as an MDT. Such a discussion enables clinicians involved to have an open conversation to help to ensure that their decision-making is based on clinical presentation and need and is not influenced by other factors.*

[2] Page 146; on insight and capacity, see the *CT* case discussed in the Health, Welfare and Deprivation of Liberty report. We note that "full capacity" is not a concept contained in the Mental Capacity Act 2005.

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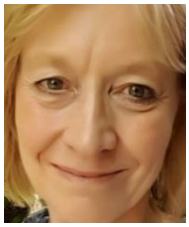
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Conferences

Members of the Court of Protection team regularly present at seminars and webinars arranged both by Chambers and by others.

Alex also does a regular series of 'shedinars,' including capacity fundamentals and 'in conversation with' those who can bring light to bear upon capacity in practice. They can be found on his website.

Advertising conferences and training events

If you would like your conference or training event to be included in this section in a subsequent issue, please contact one of the editors. Save for those conferences or training events that are run by non-profit bodies, we would invite a donation of £200 to be made to the dementia charity My Life Films in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

Our next edition will be out in April. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Report in the future please contact: marketing@39essex.com.

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