

# Young People with Mental Disorder: Towards a law fit for purpose

**The issue:** The legal regime that applies to young people with mental disorder is failing healthcare practitioners, young people and their families.

**The laws:** Children and young people with mental disorder are protected by a number of overlapping laws and regimes. But:

- > The different age-related laws determining capacity to consent are poorly understood.
- > The added complexity of mental disorder *sometimes* brings the Mental Health Act 1983 into play.

> Informal detention of young people who cannot consent raises issues around deprivation of liberty and questions as to how best to safeguard young people's human rights.

**Policy background:** In March 2015, the government report, *Future in Mind*, announced a major overhaul of mental health services for children and young people. Outlining a disjointed service, the report proposes measures to facilitate better commissioning and organisation of care.

**The law is inhibiting progress:** The legal system hampers policy initiatives designed to improve services.

**Next steps:**

- > Articulate the legal inadequacies from multiple perspectives and identify their effects on different groups.
- > Outline practical measures to effect change and to improve compliance and understanding of the law.

Complexity and overlap of different legal regimes is

CONFUSING

Application of adult-centric laws and processes is

INTIMIDATING

Inconsistency in the application of human rights is

UNFAIR

## Overlapping statutes ...

Children Act 1989  
Family Law Reform Act 1967  
Mental Capacity Act 2005  
Mental Health Act 1983

## ... and common law

*Gillick v West Norfolk & Wisbeck Area Health Authority* [1986] AC 112  
*P v Cheshire West and Chester Council* [2014] UKSC 19  
*RK v BCC* [2011] EWCA

“ Our childhood has a profound effect on our adult lives. Many mental health conditions in adulthood show their first signs in childhood and, if left untreated, can develop into conditions which need regular care. **But, too often, children and young people's emotional wellbeing and mental health is not given the attention it needs.**

Norman Lamb MP (*Future in Mind*, DH, March 2015)

“The intersection of laws relating to child consent, the Mental Capacity Act and the Mental Health Act pose problems regarding the admission and treatment of young people for mental disorder. We need a new regime that is - in both law and practice - fit for purpose.”

Dr Emma Cave

### Durham Law School Symposium: *Young People with Mental Disorder – Is the Law Fit for Purpose?*\*

19 March 2015

A symposium brought together clinicians, young people’s representatives and experts in law, human rights, legal history and sociology.

Participants came from England, Wales and Ireland to explore:

- ◇ Contextual explanations for legal inadequacies
- ◇ The historical development of laws on young people with mental disorder
- ◇ The influence of human rights
- ◇ The relevance of treatment settings
- ◇ The management and authorizations of deprivations of liberty
- ◇ The changing nature of eating disorders



#### Are we adequately protecting young people’s human rights?

##### European Convention on Human Rights:

Articles 2 positive obligation to protect life;

Article 5 Deprivation of Liberty Safeguards in Mental Capacity Act only apply to over 18s;

Article 8 protection of autonomy interests of children able to participate in and make decisions about their care.

##### UN Convention on the Rights of the Child

Protection of best interests, participatory rights and evolving capacities to decide.

##### UN Convention on the Rights of persons with Disabilities

Rights to equality and non-discrimination.

#### Emerging themes:

Law in theory: inconsistencies across frameworks

Law in context: historical and sociological causes and effects

Law in practice: poor fit, understanding and compliance

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#### References

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