

Safeguarding Adults Training

The Inherent Jurisdiction
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ELIZA SHARRON
KINGS CHAMBERS, BIRMINGHAM



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Practical
considerations

The relevant
statutory duties

Injunctions

INHERENT JURISDICTION (IJ)

The Scope of the
IJ

Duration and
purpose

IJ and DOL



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To whom
does the LA
owe relevant
duties?



- **Primary Care Act 2014 duties:**

- Assessing need [s.9]
- Meeting eligible need [s.18]
- Needs must arise from or be related to ‘**a physical or mental impairment or illness**’

(r.2(a) Care and Support Eligibility Regs 2014)

- **Specific safeguarding duty under s.42:**
 - (a) has **needs for care and support** (whether or not the authority is meeting any of those needs),
 - (b) is experiencing, or is at risk of, **abuse or neglect**, and
 - (c) **as a result of those needs** is unable to protect himself or herself against the abuse or neglect or the risk of it.

- (3) “**Abuse**” includes financial abuse; and for that purpose “financial abuse” includes—
 - (a) having money or other property stolen,
 - (b) being defrauded,
 - (c) being put under pressure in relation to money or other property, and
 - (d) having money or other property misused.

- **Self-neglect**

- This covers a wide range of behaviour neglecting to care for one's personal hygiene, health or surroundings and includes behaviour such as hoarding. It should be noted that self-neglect **may not** prompt a section 42 enquiry. An assessment should be made on a case by case basis. **A decision on whether a response is required under safeguarding will depend on the adult's ability to protect themselves by controlling their own behaviour.** There may come a point when they are no longer able to do this, without external support.

[14.17 Stat Guidance]

- **S.42(2) duty:**
- (2)The local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult’s case (whether under this Part or otherwise) and, if so, what and by whom.

- Investigation/findings
- Referral to the police / other agencies
- Adult Protection Plan
- Written Agreement
- Needs assessment (*must carry, despite refusal, if P is at risk of abuse/neglect, see s.11(2) Care Act 2014*)

The Inherent
Jurisdiction –
who does it
apply to?

- **Vulnerable adults - whose will has been overborne/vitiated because they are:**
 - (i) under **constraint**;
 - (ii) subject to **coercion or undue influence**; or either
 - (iii) for **some other reason** deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.

Munby J, : Re SA [2005] EWHC 2942

(Endorsed by Court of Appeal in DL v A Local Authority [2012] EWCA
Civ 253

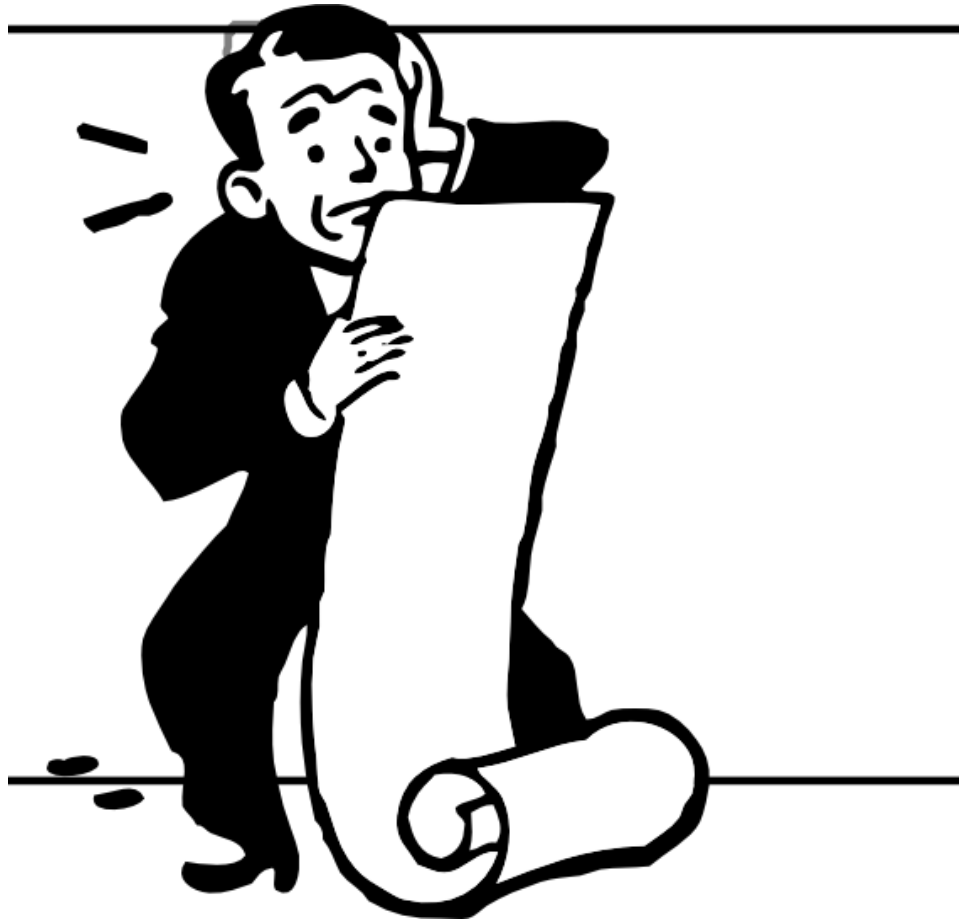
- **iii) Other disabling circumstances:**
- ‘What I have in mind here are the many other circumstances that may so reduce a vulnerable adult's understanding and reasoning powers as to prevent him forming or expressing a **real and genuine consent**, for example, the effects of **deception, misinformation, physical disability, illness, weakness (physical, mental or moral), tiredness, shock, fatigue, depression, pain or drugs**. No doubt there are others”.

- Should be used where the purpose is “**facilitative**” rather than “**dictatorial**” :
- *“..the relevant case law establishes the ability of the court, via its inherent jurisdiction, to **facilitate the process of unencumbered decision-making** by those who they have determined have capacity free of external pressure or physical restraint in making those decision.”*
- **Macur J in *LBL v RYJ and VJ [2010] EWHC 2665 (COP)***



TO DOL OR
NOT TO DOL?

- **Examples of where IJ has been used to DOL**
 - **A NHS Trust v Dr A [2013] 2442 (COP)** –patient with mental illness deprived of liberty and force feed, where ineligible to be deprived of liberty under MHA and MCA.
 - **NCC v PB and NB [2014] EWCOP 14 (Parker J)** – considered IJ could be used for long term residence and DOL (obiter)
 - **Trust A v X and A Local Authority [2015] EWHC 922 (Fam)-** young person < 16 deprived of liberty (Keehan J)
 - **HCC v AB [2018] EWHC 3103 (Knowles J)** – IJ used to deprive patient of their liberty in the community (with their consent) under terms of CTO



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- **Article 5(1) ECHR**

- **1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:**
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, **of persons of unsound mind**, alcoholics or drug addicts or vagrants;

- **3 recent cases:**
 - **Southend on Sea v Meyers** [2019] EWHC 399 (Fam) (Hayden J)
 - **Redcar & Cleveland Borough Council v PR & Ors** [2019] EWHC 2305 (Fam) (Cobb J)
 - **Wakefield MDC & Wakefield CCG v DN & others** [2019] EWHC 2306 (Fam) (Cobb J)

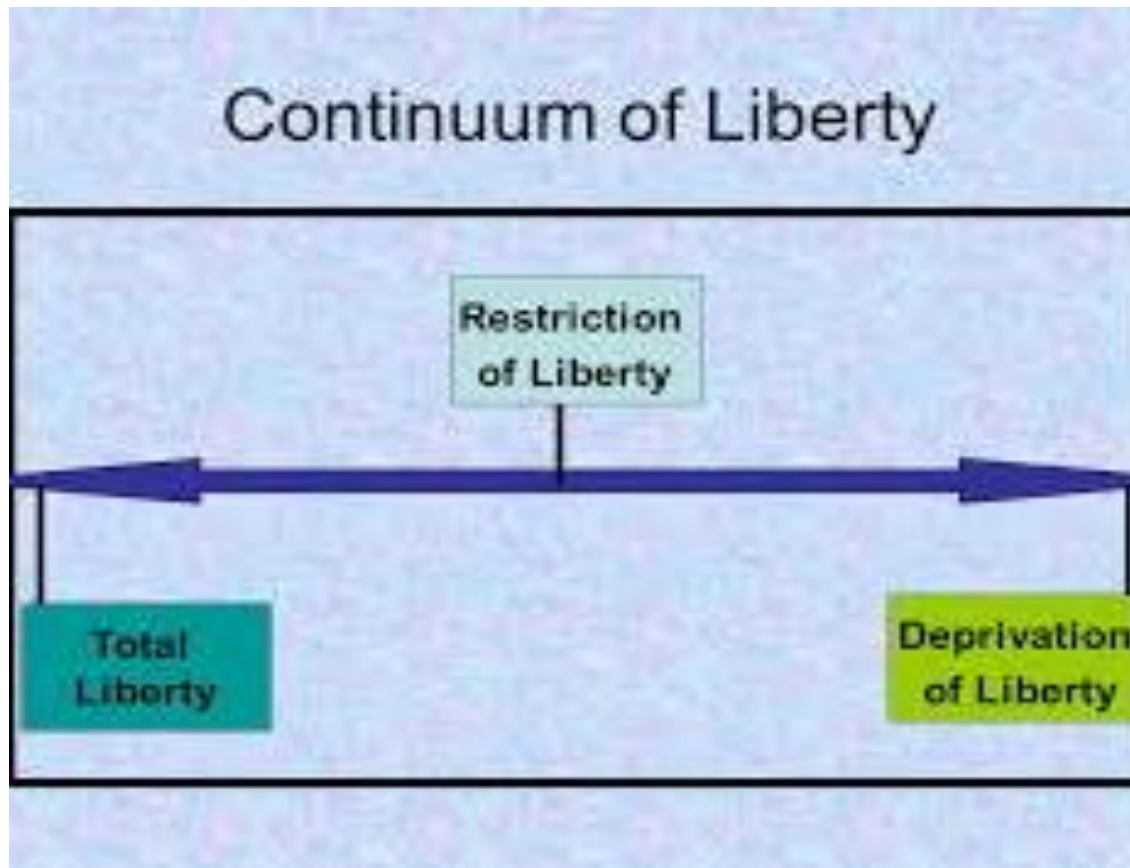
- **Southend on Sea v Meyers** [2019] EWHC 399 (Fam) (Hayden J)
 - 97 year old man living with son, in a co-dependent dysfunctional relationship;
 - Son had mental health and alcohol problems, and would refuse carers access to property
 - P found in severely malnourished/dehydrated state – admitted to hospital

- LA concerned P had lost capacity and sought ex-parte order for P to be discharged from hospital to care home.
- Order was made on the papers. Return date before Hayden J, at which point P had been assessed as having capacity.
- LA sought declaration that it had discharged its duties.
- Hayden J maintained orders for P to remain in care home, until full hearing.

- Both parties appealed that it breached P’s article 5 rights.
- Baker J heard the appeal in Re BF [2018] EWCA Civ 2962 and upheld Baker J’s decision, finding:
 - In an **emergency** it was possible to DOL someone absent evidence of unsoundness of mind ;
 - Where someone **does not** meet test of ‘unsoundness of mind’ **cannot ultimately DOL** them;
 - Appropriate for **interim orders** to be made for full argument to take place and whilst care planning takes place to protect P’s human rights.

- At final hearing established that P **had** capacity
- P **did not** have unsoundness of mind
- Court found that it could not DOL him but made orders:
 - Precluding him from living with son (whether that be in care home or in his own home without his son)
 - Injuncting son from attending care home
 - Regulating contact between P and son

- Hayden J differentiated between:
 - Restricting choice/liberty; and
 - Depriving P of his liberty





- **Implications:**

- If P does not suffer ‘unsoundness of mind’ cannot DOL
- By implication – case appears to suggest that if P had capacity and ‘unsoundness of mind’ could DOL using IJ
- Any restriction – whether on private life or liberty needs to be grounded in ‘necessity and proportionality’
- LA’s not necessarily absolved from duty to act, by capacity/soundness of mind

- **Redcar & Cleveland Borough Council v PR & Ors (Cobb J)**
- P was a 32 year old woman with mental health problems
- Admitted to hospital – made allegations against parents
- LA sought ex-parte application preventing her from being discharged to parents

- Order made providing for P to be discharged to care home (where she was content to go)
- Orders lasted 4 weeks
- P agreed not to go home after the initial period
- Parents agreed to limited contact and not to seek to persuade P home
- IJ orders discharged

- **Court found that:**

- It was appropriate for without notice orders to be made – given the risk
- P had not been deprived of her liberty
- Court would have been ‘loathe’ to authorise DOL of capacitous person
- IJ could be use to DOL someone in an emergency and on an interim basis, whilst full assessment and investigation took place
- Anything over **6 weeks** would be open to challenge – (Wintwerp v The Netherlands 1979 applied).

- *Wakefield MDC & Wakefield CCG v DN & others* [2019] EWHC 2306 (Fam) (Cobb J)
- 25 year old man with severe autism, anxiety and emotional unstable personality
- Discharged to a supported living placement on Community Order (CJA 2003) imposed by criminal courts – only allowed to restrict not deprive liberty
- LA sought order authorising DOL, on the basis of P’s vulnerability
- P assessed as having capacity, save when in a ‘melt-down’

- **Court found that:**

- P was not ‘vulnerable’ within the meaning of SA
- IJ should not be used to deprive person of their liberty unless a prima facie case of incapacity or unsoundness of mind could be shown [37]
- Where there is a prima facie case, its appropriate for interim orders to be made under the IJ, where matters are investigated [47]
- Anticipatory declarations made under the MCA 2005 for times when P has a ‘melt-down’ rendering him incapacitous.

- **Observations:**

- Without ‘unsoundness of mind’ - cannot use IJ to DOL
- Tension between Hayden J and Cobb J – as to whether IJ should ever be used to DOL some-one with capacity
- Common ground is that interim orders can be made where court is investigating the matter
- Cobb J – interim orders beyond 6 weeks vulnerable to challenge
- Cobb J - prima facie evidence of incapacity or unsoundness of mind is required.

- Think creatively as to whether a DOL is actually required
- If some-body is at significant/grave risk – an application should be made

- Some from of protective measures can be sought or declaration that LA has discharged duties

Practicalities



- **Procedure**

- Civil claim in family division of High Court
- Civil costs rules apply
- Harbin v Masterman – indemnity for costs
- Injunctive relief

- **Should not seek an injunction against a person unless you have considered and can provide evidence of:**
 - whether X is likely to understand the purpose of the injunction;
 - will receive knowledge of the injunction; and
 - will appreciate the effect of breach of that injunction.

Cobb J, Redcar [2019]

Discussion of Examples/Questions



• Case study 1

- P is a chronic alcoholic grieving loss of partner. Refusing all support. Depressed. Various health conditions. Living conditions are squalid.
- P is admitted to hospital following collapse due to intoxication, where he remained for 3 weeks.
- P wishes to discharge himself. Its mid winter and freezing. His flat has been deep cleaned during admission. Heating and utilities not yet back in place.
- Local authority and health professionals strongly advise against.
- MHA 1983 assessment carried out – no basis to detain.
- MCA 2005 assessment – has capacity to make decision.
- P is extremely frail and still very weak.

- **Case study 2**
- P is a 56 year old woman. Long term alcoholic. Various health needs including incontinence/depression.
- Abusive relationship with husband. Has attempted to detox various times, husband will leave alcohol out for her to trip her up.
- Domestic violence. Escalates whenever tries to leave. A few serious episodes but P will not make complaint to the police. At the last attempt, P ‘fell down the stairs’.
- P expresses a wish to leave and to detox/break ties with her husband, but never goes through with it.
- Can be hard to assess capacity because P usually intoxicated, but so far assessed as having capacity as she is aware of the risks. Further more in depth assessment required.

• Case study 3

- Young man with autism and schizophrenia – living with parents and sister who has learning disabilities.
- P has made allegations against parents, that they shout at him and abuse him – but then retracts.
- Family are suspicious of services – curtains often closed when social workers call round and door not answered.
- P reluctant to engage with support workers – LA concerned it's the parents' influence – though no real evidence of this.
- P's funds often disappear from his account – LA concerned parents are using them.
- P has capacity. Previously agreed to a period in a respite placement where he did really well. At the end of the placement he was clear he wanted to go home because he wanted to be with his family.
- LA continue to be concerned for P and want him to move into a supported living placement, to begin developing his independent living skills and to provide opportunities for social interaction and growth. P is adamant he does not want to go.

• Case study 4

- P is a 65 year old woman. She is suspected to have hoarding disorder. Nobody has been able to assess but GP reports no concerns with capacity.
- P will not let professionals past the front door. She owns the property that was left to her by her parents, and has lived there since she was born.
- P is regularly seen walking up and down streets with shopping bags. She frequents all the local charity shops daily, collecting items.
- Neighbours have begun complaining that P is defecating in the garden, and is seen climbing into the property through a broken window pane in back door. Rats have begun infesting back yard.
- The windows can be seen jammed with items. All utilities have been cut off.
- Environmental Health is concerned that property is a fire risk and placing other nearby properties at risk.

Eliza Sharron
Kings Chambers, Birmingham

