

# Court of Protection: Conversation with a psychiatrist

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# Agenda

- Lawyers & psychiatrists: Best practice when working together
- Obstetric decisions
- Treatment: Mental Health Act v Mental Capacity Act

# Expert evidence: court requirements

- Section 49 report v Part 15 expert
- Difference in report types
- Expert's duty
- Form and content of an expert report

# Expert evidence: court requirements

*“I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion”*

Para 11 PD15A

# Lawyers & psychiatrists: working together

## Psychiatrists perspective

- Talking in definitive terms about the human brain
- Predicting future behaviour
- Remember limits of expertise
- Points of law – not quality of care
- Usefulness of dialogue

# Lawyers & psychiatrists: working together

## Legal perspective

- Limits of expertise
- Realistic timeframes
- Documents
- Assessment environment

# Obstetric decisions

- Obstetrics
- Increase of cases
- Breadth of decisions and relevant information
- Best interest considerations
- Practical clinical considerations

# Capacity to decide on mode of delivery

*Re D* [2014] EWCOP 11

Facts

*“Authorisation for the deprivation of DD's liberty and for the use of restraint...is sought, as is permission to intrude, by force if necessary, into the privacy and sanctity of her home. Steps to promote her physical health ...it is argued, require a physically invasive medical procedure, to be conducted under general anaesthetic. I am acutely aware of the unusually onerous responsibility which falls upon me sitting as a Judge of the Court of Protection in determining this application.” [5]*



# Capacity to decide on mode of delivery

Identified 3 general important points:

- Best interests not limited to best medical interests. It is in the best interests of any woman carrying a full term child whom she wants to be born alive and healthy that such a result should, if possible, be achieved.
- No jurisdiction to take into account the interests of the unborn child.
- Must have regard to the least restrictive option.

# Capacity to decide on mode of delivery

Identified 8 factors that a prospective mother would need to be able to understand, use and weigh and communicate a decision in respect of to have capacity [69]

What about where the only clinically safe option is a caesarean section?

*North Bristol NHS Foundation Trust v R* [2023] EWCOP 5

# Birth - best interests

Role of the child in best interests considerations

- Re D
- North Bristol NHS Foundation Trust v R [2023] EWCOP 5
- Guys and St Thomas' Trust v R [2020] COPLR 471, [63]
- Practical examples / timeliness

# Contraception

- *A Local Authority v A* [2010] EWCOP 1549
- Medical treatment
- Relevant information
- Impact of child

# Abortion

- Article 8 ECHR
- Abortion Act 1967, section 1
- Context – *Re SB (Capacity to consent to termination)* [2013]  
COPLR 445
- Involvement of the father

# Abortion

- Relevant information
- *S v Birmingham Women and Children's Trust* [2022] EWCOP 10
- *Re CS* [2016] EWCOP 10

# Non- engagement

Declining to take part in the capacity assessment

Why might a psychiatrist let someone who is suicidal leave, and does capacity have a role to play in that?

# Treatment: MHA v MCA

- Obstetric care:
  - choice of regime
  - Practice guidance - *North Middlesex University Hospital NHS Trust v SR* [2021] EWCOP 58 paras 26-28
- Pregnant detainees



# Contact



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*'Mathew is a conscientious barrister who will do his utmost for his client. He is a good lawyer and a very helpful junior in the quality of his legal research and his thoughts and ideas for advancing the case.'*

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