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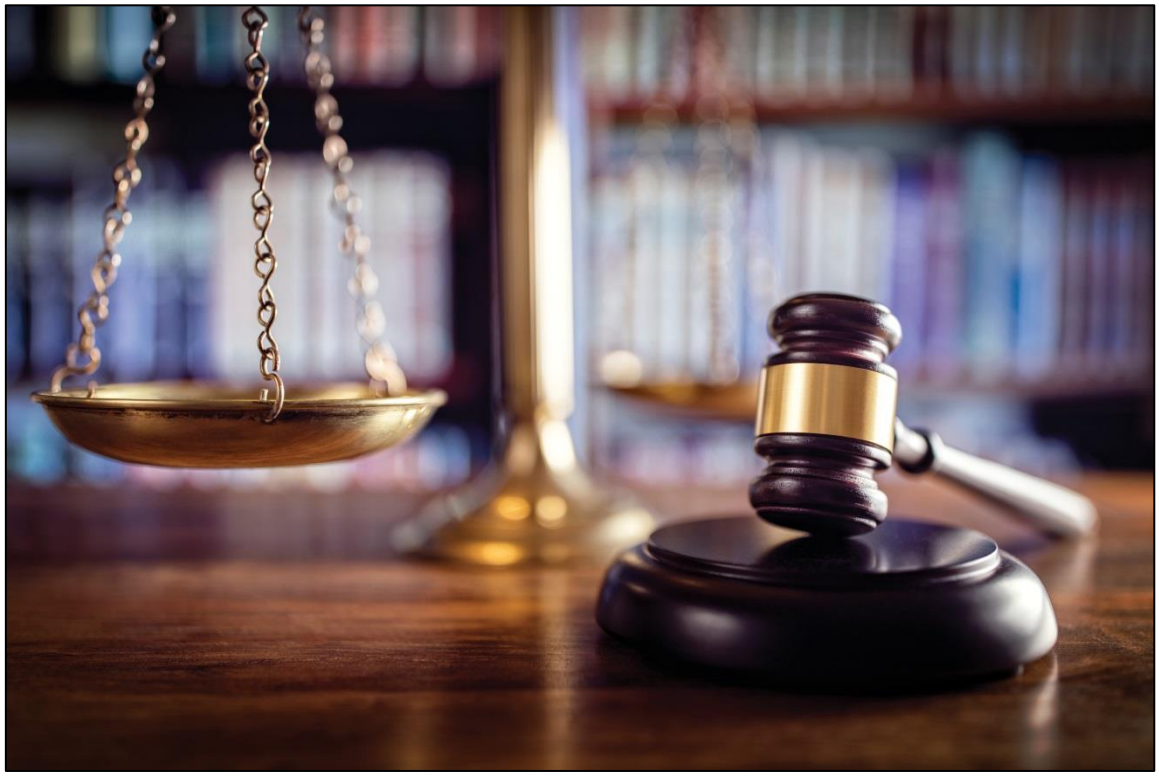
UK Mental Disability Law Conference



Tuesday 26 and Wednesday 27 June 2018

Law and Social Sciences Building,
University of Nottingham, University Park Campus, Nottingham
NG7 2RD

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Welcome

Welcome from Professor Martin Orrell

As Director of the Institute for Mental Health, I am delighted to welcome you to the second UK Mental Disability Law Conference.

The first conference in 2016 was a tremendous success with a wide variety of high quality presentations and excellent feedback from participants. The Institute of Mental Health is delighted to once again work with the University of Nottingham, School of Law and Making Waves as partners of this conference. I am thrilled to see such a range of exciting and important presentations, and parallel sessions with excellent speakers.

The Institute of Mental Health is a joint enterprise between the University of Nottingham and the Nottinghamshire Healthcare NHS Foundation Trust. We fully recognise that mental health issues are not merely clinical, but have a wide ranging impact on everyday life including the community, Social Services and the legal system. So our academic work is not purely within clinical disciplines, but includes social sciences and the humanities. Good law is the foundation for good care and a protection of human rights, so our new Centre for Mental Health and Human Rights led by Professor Peter Bartlett will reflect this. The admirable diversity of this conference programme reflects the wide range of needs and issues in mental health.

I wish you all a very successful and inspiring conference.

Welcome from Dr Julie Gosling, DSocSci, DMS. MAD. Making Waves / OPEN FUTURES Director

On behalf of people who live with mental distress or mental difference, I extend a very warm welcome to all of you attending our second Mental Disability Law Conference.

In bringing academic and professional expertise together with lived experience and activism, this gathering holds a beacon to the values knowledge and practice of law at its best - guiding towards outstanding research and practice, highlighting human impact and illuminating at its heart the rationale of law to promote justice, to safeguard, nurture and to protect.

The opportunity to meet and mix with a wide range of experiences, interests and concerns, permits and encourages us all to step out of our 'safe' terrain and into a flux of exciting possibilities. Energised and enlightened by one another, we may harness diverse lived and learned understandings towards discovering shared solutions and mutual ways forward within the practice of law and the promotion of human wellbeing. Welcome the Experience!

Professor Nigel White, Head of School of Law

On behalf of the School of Law at the University of Nottingham, may I welcome you to the second UK Mental Disability Law Conference.

The School of Law has a long history of the promotion and study of human rights, most visibly through our Human Rights Law Centre, a co-sponsor of this conference. Human rights themes run throughout the conference programme, from the experience of people affected by mental health and mental capacity law at the domestic level, through to the challenges posed by the interpretation and implementation of the United Nations Convention on the Rights of Persons with Disabilities. These raise fundamental questions as to the role of mental disability law in the coming decades.

I am pleased that the conference looks not merely at the theoretical elements of mental disability law, but also – indeed, perhaps primarily – at the effect of such law on the actual lives of people with mental disabilities. It has long been the view of the School that the key value of human rights is in changing for the better the lived experience of people.

At a time when human rights are under threat both nationally and internationally, and at a time when the austerity agenda is biting so hard on the lives of people with disabilities, this conference could not be more timely. The School of Law is proud to support it.

May I offer my best wishes for the coming days.

Programme (overall)

Tuesday 26 June	
9.00 – 10.00	Registration and Refreshments (North entrance Atrium)
10.00 – 10.30	Welcome
10.30 – 12.00	**Plenary session (main theatre B63) – Chair: Jill Stavert** **The effects of austerity** Iris Elliott, Irish Human Rights and Equality Commission Julie Gosling, Director, Making Waves Paul Atkinson, Free Psychotherapy Network
12.00-13.00	Lunch (foyer)
13.00 – 14.30	Parallel session 1
14.30 – 15.00	Refreshments (foyer)
15.00 – 17.30	**Plenary session (main theatre B63) Chair: Peter Bartlett** **UN Convention on the Rights of Persons with Disabilities: What is this 'New Paradigm'?** Margret Osterfeld, Member (Germany), Subcommittee for the Prevention of Torture Georg Hoyer, Member (Norway), European Committee for the Prevention of Torture Dainius Puras, UN Special Rapporteur on the Right to Health Eilionoir Flynn, Centre for Disability Law and Policy, NUI (Galway) Dorothy Gould, National Survivor User Network (NSUN)
19.00 – 19.20 19.20	Conference Dinner welcome drinks Conference Dinner – Senate Chamber, Trent Building, University Park Campus, University of Nottingham
Wednesday 27 June	
9.30 – 11.00	Parallel session 2
11.00 – 11.30	Refreshments (foyer)
11.30 – 13.00	Parallel session 3
13.00 – 14.00	Lunch (foyer)
14.00 – 15.00	Parallel session 4
15.00– 15.30	Refreshments (foyer)
15.30 – 17.30	**Plenary session (main theatre B63) – Chair: Julie Gosling** **What do we want from a new Mental Health Act?** Simon Wessely, Chair of the Independent Review into the Mental Health Act Diana Rose, Professor of User-Led Research, Institute of Psychiatry, King's College London Colin McKay, Chief Executive, Mental Welfare Commission for Scotland
17.30 (approx.)	Conference close

Parallel session timetable Tuesday 26 June

Rm	Time	Parallel Session 1 (Tuesday 26 June) 13.00 – 14.30
A1		**Chair: Mary Donnelly**
	13.00 –14.30	**Judy Laing and Kevin Stone:** The views of approved mental health professionals to the 'Nearest Relative role in England.
		Tom Webb: Should the Mental Health Act 1983 s.23 Hospital Manager discharge power be retained?
		Russell Ashmore: The availability, suitability and readability of written information given to informal patients about their legal rights
A3		**Chair: Jack Tomlin**
	13.00 – 14.30	**Kris Gledhill:** Is it ever lawful to detain on the basis of 'unsound mind'?
		Bo Chen: Shared Authority and Silenced Service Users: Decision-making of Mental Health Treatment in China
		Sheila Wildeman: Anti-carceral disability rights litigation in Canada: Pathways to Substantive Equality Informed by the CRPD
B62		**Chair: Jaime Lindsey**
	13.00 – 14.30	**Camillia Kong and Alex Ruck Keene:** Overcoming challenges in mental capacity: overview of a practitioner guide
		Paul Hutton: Understanding and supporting treatment decision-making capacity in psychosis: An overview of Edinburgh-led research on the psychology of decision-making in psychosis.
		Jim Rogers: Decision making in relation to mental capacity
B63		**Chair: Hope Davidson**
	13.00 – 14.30	**Aileen O'Brien, Paul Lomax and Paul Gosney:** The current appeal system for those detained in England and Wales under the Mental Health Act needs reform.
		Nicola Glover-Thomas: Examining the drivers for rising mental health tribunal caseloads
		Jill Stavert: CRPD, involuntary psychiatric care and treatment and mental health tribunals: can they happily co-exist?

Parallel session timetable Wednesday 27 June

	Time	Parallel Session 2 (Wednesday 27 June) 9.30 – 11.00
A1		**Chair: Thomas Webb**
	9.30 – 11.00	**Mat Kinton:** Detention in the community – a current legal dilemma
		Russell Ashmore: Are mental health trusts in England implementing de facto section 17 leave for informal patients? An analysis of local policies.
		Peter Hall: Mental Health Act assessments - professional narratives on alternatives to hospital admission
A2		**Chair: Amanda Keeling**
	9.30 – 11.00	**Elizabeth Fistein:** Restrictive practice in the care of people with Prader-Willi Syndrome – a review of literature
		Kris Gledhill: What are the implications of the CRPD for the professions?
A3		**Chair: Alex Ruck Keene**
	9.30 – 11.00	**Oliver Lewis:** Why does the CRPD lack traction in UK mental health law reform?
		Mary Donnelly: Two roads diverged?: European responses to the CRPD
		Christopher James Ryan and Tim Foley: To what extent are reforms to mental health legislation driven by the Convention on the Rights of Persons with Disabilities reflected in the implementation of that legislation? – Experience in an Australian state
B62		**Chair: Grace Carter**
	9.30 – 11.00	**Phil Fennell:** The lunacy inquisition of W F ('Mad') Windham (1861-2) and the common law roots of the Mental Capacity Act 2005: Lessons from the past.
		Jack Clayton Thompson: All-or-nothing: Mental capacity, autonomy and consent
		Grace Carter: Having their cake and eating it too- providing clarification on a contradiction in Article 12 of the CRPD in light of self binding and contrary wishes
B63		**Chair: Aileen O'Brien**
	9.30 – 11.00	**Nigel Eastman and Richard Latham:** Reinstatement of a 'Therapeutic Benefit' test within the Mental Health Act 1983, as amended by the 2007 Act
		George Szmukler: 'Capacity-based' mental health law and public protection
		Paul Skowron: What is the 'Best interpretation of will and preferences'?

Rm	Time	Parallel Session 3 (Wednesday 27 June) 11.30 – 13.00
A1		**Chair: Mary Donnelly**
	11.30 – 13.00	**Simon Clarke**: Disciplinary power and degradation ceremonies: the case of the ward round
		Jack Tomlin: the restrictiveness of forensic care: Exploring patient experience
		Serena Bradshaw: The case for supporting survivors after the judicial process
A2		**Chair: Christopher Ryan**
	11.30 - 13.00	**Jill Craigie:** Challenges for conceptualising 'undue influence' in the context of supported decision-making **Amanda Keeling :** Unravelling Article 16 CRPD: What does the Committee want from us (and is it enough)? **Ben Clubbs Coldron:** The implementation of policies to support political inclusion in secondary mental health facilities
A3		**Chair: Darius Whelan**
	11.30 – 13.00	**Claire Hogg:** The insanity defence: law and jurisprudence in England and Wales
		Meron Wondemaghen: Equality, insanity and the CRPD
		Leon McRae: Blaming rape on sleep: A psychoanalytic intervention
B62		**Chair: Sheila Wildeman**
	11.30 – 13.00	**Lucy Series:** To 'empower and protect': Tracing the Mental Capacity Act 2005's promise to empower
		Hope Davidson: Same same, but different – Comparing the potential of the Assisted Decision-Making Capacity Act 2015 in Ireland and the Mental Capacity Act 2005 in healthcare decision-making.
		Peter Bartlett: Getting there from here: English mental capacity legislation and supported decision-making
B63		**Chair: Camilla Parker**
	11.30 – 13.00	**Phil Fennell:** Jurisdiction over the Person. The new 'New Legalism' and its relevance to the reform of mental health and mental capacity law.
		Alex Ruck Keene: Navigating rights in the context of mental health reform
		Dorothy Gould: The relevance of user-led research to reform of the Mental Health Act 1983

		Parallel Session 4 (Wednesday 27 June)

Rm	Time	14.00 – 15.00
A2		**Chair: Thomas Webb**
	14.00 – 15.00	**Jack Clayton Thompson:** Male suicide, masculinity and vulnerability
		Darius Whelan: Risk of suicide in ECtHR mental health case-law
B62		**Chair: Alex Ruck Keene**
	14.00 – 15.00	**Jaime Lindsey and Rosie Harding:** Capabilities and capacity: Wellbeing and Sexual Intimacy in the Court of Protection
		Rachel Clawson: Forced marriage of adults with learning disabilities –developing knowledge, policy and practice to keep people safe
B63		**Chair: Lucy Series**
	14.00 – 15.00	**Emma Whewell:** Capacity and pre-proceedings in the field of children's social care: how misunderstandings between professionals can impact negatively on parents with learning disabilities.
		Camilla Parker: A minor issue? Children and young people's mental health care and the reform of the Mental Health Act 1983

Sponsors

We would like to thank our sponsors for their generous donations towards facilitating this conference.

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THE SOCIETY OF LEGAL SCHOLARS

President of the SLS: Peter Alldridge, FAcSS, Drapers' Professor of Law, QMUL.

The Society of Legal Scholars has around 3,000 members, mostly working in law schools in the United Kingdom and Ireland, in addition to its Associate (overseas), Emeritus, and honorary members.

The Society is engaged in a variety of activities to support its members, and the interests of legal Scholarship and offers financial support for legal research and the holding of seminars and other events through its research activities fund and the small projects and events fund. Following the Society's Centenary in 2009 a series of Centenary lectures has taken place around the UK and Ireland, most recently at Northumbria University in 2017.

The Society represents the interests of the academic legal profession in discussions and negotiations with Government and the professional legal bodies on matters as diverse as judicial appointments, legal education and training, law reform, and the Society's relationship with legal practitioners and training. The Society values its links to the legal profession at all levels. Legal practitioners who are

involved in legal scholarship are welcome to join the Society as Ordinary members, or Associate members if overseas. In addition, chambers and firms, as well as other bodies, may join the Society as Patrons.

The Society's website www.legalscholars.ac.uk provides further information on all its activities and organisation, including the annual conference, together with contact and membership details, and an application form. General enquiries may also be addressed to the Administrative Secretary: admin@legalscholars.ac.uk

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Laws is an international, open access journal featuring rigorous scholarship on critical developments in governance, courts, agencies, and social order. Analysis and synthesis, theory and practice, and empirical and doctrinal work have appeared in the journal; contributions that bridge these traditional boundaries are particularly welcome. The social sciences and humanities generate insights both from and for the legal system. While theory grounds Laws in a timeless dialogue shaped by traditions of inquiry, legal practice ensures that scholars are addressing pressing problems. Both normative and positive scholarship can aid policymakers, judges, and agency officials. Laws brings together the work of theorists and practitioners, and a diverse range of empirical researchers, to promote the progress of foundational legal norms.

Journal website: http://www.mdpi.com/journal/laws

Conference MAD space

The first Mental Disability Law Conference in 2016 set a precedent for partnership between law researchers and professionals and people with lived experience of mental distress or mental difference and provided a dedicated space for engaging as 'people first'.

Whereas we anticipate lively integration and interaction throughout the event, we encourage you all to visit our MAD Space. Here you may:

* discuss the emerging constructs of Mad Studies to build new knowledge frameworks and theories from the collective lived experience of psychiatric survivors and experts by experience.

* register an interest with Nottingham MAD Network

* talk and share human experiences of the law and its impact.

* share feelings, hopes, concerns and ideas

So do please come along to the MAD Space prepared to engage and debate or simply to listen from the heart. We will be located close to the registration desk in the main foyer.

Plenary sessions

Main theatre (B63)

Tuesday 26 June, 10.30 – 12.00

The Effects of Austerity

Chair – Jill Stavert

Introduction:
Mental disability law is no longer (if it ever was) just a branch of medical law. The increasing acknowledgement that people affected by psychosocial disabilities usually spend most of their lives living in the community means that the content and effects of broader social policy must be considered central to the field.

The UK has been subjected to economic austerity for more than a decade. This plenary looks at how that has affected people with lived experience of mental distress, and the strategies we can use to challenge the deprivations and stigma flowing from the austerity agenda.

Biographies:

Iris Elliott, Irish Human Rights and Equality Commission
Iris has worked in policy, research, health promotion, public health and social work roles in the UK and Ireland. Iris was made a Fellow of the Royal Society of Arts in recognition of her: "outstanding contribution and commitment to public mental health in the UK and Ireland". She co-authored the first published consultation with mental health services users in Ireland 'Unique Insight'. Her primary interests are the creation of human rights cultures and the realisation of human rights in everyday life. Iris holds a doctorate in Sociology for her research into women's human rights activism in Ireland, a MA in Public Culture Studies, MSc in Health Promotion and Social Work qualifications.
Contact Information Email: ielliott@ihrec.ie Twitter: @iris_elliott LinkedIn: https://ie.linkedin.com/in/iris-elliott-phd-frsa-b7016434

Julie Gosling, Director, Making Waves
Julie leads or collaborates on diverse educational, research, training initiatives across the UK and is also a committed community activist / advocate with extensive knowledge of community engagement and narrative research.

Third generation Irish, she has always lived in Nottingham. As a survivor of homelessness and domestic and child violence and the subsequent trauma that wounded her physically and mentally, she has used her lived experience to contribute to education and research at over 20 universities in Europe and the UK including both local universities.

She was awarded an honorary doctorate by Nottingham Trent University in 2013 citing her outstanding contribution to international social work education on the basis of a unique perspective on power and discrimination.

She has often used her own home as a place of safety for others, and for over 18 years she supported three learning disabled adults with her as a 'family of choice.'

Now as an older woman, she has become increasingly involved in the well-being and rights of older people and amongst other ongoing research activity, is Public and Patient Involvement lead within a European knowledge exchange, development and design initiative MinD; involving people with dementia and their caregivers in co-designing technologies for mindful and social engagement.

Her own lived experience of surviving the benefit system in the early 1980's led her into benefit activism since that time, specialising on PIP claims and appeals with a particular record of success supporting mental health claimants. She is both researcher and activist within the current climate of austerity.

Paul Atkinson, Free Psychotherapy Network
Paul has worked as a psychotherapist for more than thirty years, mainly in private practice in London. He was a political activist during the 1970s and in recent years has returned to campaigning politics - opposing state regulation of psychotherapy and counselling, supporting activists and organising psypolitical events at Occupy St Paul's, campaigning for the NHS in East London, running mens' therapy groups, and working with mental health activists against psycho-compulsion through Department of Working Pensions 'work cure' policies. He is a member of the Free Psychotherapy Network, the Alliance for Counselling and Psychotherapy, and Psychotherapy and Counselling for Social Responsibility.

Tuesday 26 June, 15.00 – 17.30

UN Convention on the Rights of Persons with Disabilities: What is this 'New Paradigm'?

Chair – Peter Bartlett

Biographies:

Margret Osterfeld, Member (Germany), Subcommittee for the Prevention of Torture
Margret is a Board member of Aktion Psychisch Kranke (APK), a German society established to reform psychiatric care. Margret's professional background is psychiatrist, psychotherapist and she is an expert on German mental health law and on psychopharmacology.

Margret treated psychiatric patients and (voluntarily and involuntarily) hospitalised persons for many years; led a psychiatric ward (1996-2007) and its multi-professional team; taught nursing and junior medical staff; studied German mental health law and the right to the best attainable mental health in relation to the right to liberty, with publications in this field from 2003 onwards.

Advisory activities relating to the process of adapting mental health law to human rights standards such as CRPD or OPCAT as independent expert in parliamentary hearings, as well as member of working groups of different CSOs on coercive psychiatric care.

Promoted the concept of the legal capacity of mentally or psychosocially disabled persons and the need for reforms in psychiatric care as a keynote speaker at national and international workshops, e. g. "Das Gespür für Menschenrechte – die Kritik der UN an der Psychiatrie" (A sense of human rights – the UN's criticism of psychiatry, February 2016) or "Menschenrechte und mitgestaltete Anspruchsrechte" (Human rights and claim rights, November 2015).

Georg Hoyer, Professor of social medicine at the Institute of Community Medicine, University of Tromsoe, Norway's Arctic University
Georg is heading The Norwegian national research network on the use of coercion in mental health care since it was founded in 2006. Further Georg is a member of the CPT in respect of Norway since 2010. Georg was head of the Norwegian National Committee for Research Ethics 2000-2006,and has also been the Principal Investigator I in several research projects on the use of coercion in mental health care.

Dainius Pūras, UN Special Rapporteur on the Right to Health
Dainius is professor of child psychiatry and public mental health at Vilnius University. In 2014 Prof. Pūras was appointed by UN Human Right Council and serves as a UN Special rapporteur on the right to health. In 2007-2011 he was a member of the UN Committee on the Rights of the Child. Dr. Pūras

is actively involved in regional and global activities that promote human rights based and evidence based health policies and services, with focus on mental health and child health.

Eilionóir Flynn, Centre for Disability Law and Policy, NUI (Galway)
Eilionóir is a Senior Lecturer at the School of Law and Director of the Centre for Disability Law and Policy, National University of Ireland Galway. She is a graduate of University College Cork (BCL, PhD), and published her first book with Cambridge University Press in 2011, entitled 'From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities.'

Eilionóir's current research interests include legal capacity, advocacy, access to justice, and the intersectionality of disability, gender and ageing. Her most recent book 'Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities' was published in March 2015 by Ashgate. In 2014 she was awarded a European Research Council Starting Grant for the VOICES project, to document the narratives of people with lived experience of legal capacity denial.

At a national level she is actively engaged in the process of legal capacity reform, and co-ordinates a working group of over 15 civil society organisations in the fields of disability, mental health and older people on this issue. Internationally, she has supported the Secretariat of the UN Committee on the Rights of Persons with Disabilities, and in particular the working group which developed General Comment 1. She is also actively engaged with the UN Open-Ended Working Group on Ageing which aims to strengthen the international human rights of older persons. She can be contacted at eilionoir.flynn@nuigalway.ie

Dorothy Gould, National Survivor User Network (NSUN)
Dorothy is a freelance researcher, trainer and consultant with lived experience of mental distress. She has a particularly strong interest in human rights models of mental distress, in alternatives to the medical model, and in equality-based approaches to mental health law which recognise the need to bring detentions, substitute decision-making and compulsory treatment to an end. She is a strong advocate of the United Nations Convention on the Rights of Persons with Disabilities and is playing an active part in the current Mental Health Act Review. Much of her work is undertaken for the National Survivor User Network, a user-led organisation with a strong human rights ethos. She also has a freelance role in a number of other organisations. These have included the Mental Health Foundation, the Institute of Psychiatry, Middlesex University, University College London, the Healthy London Partnership and Mental Health Trusts in varied parts of the U.K. She has initiated international links too, contributed to international debates about issues important to people with mental health diagnoses and presented at international as well as national conferences. Contact details: gould.dorothy@gmail.com

Briefing note:
Peter Bartlett (Nottinghamshire Healthcare NHS Trust Professor of Mental Health Law, School of Law and Institute of Mental Health, University of Nottingham)
Peter.bartlett@nottingham.ac.uk

[These notes are to aid discussion at the plenary session of the Second UK Mental Disability Law Conference on Tuesday, 26 June 2018. These notes express the views of the author, and do not necessarily reflect the views of all or any of the plenary speakers]

What is this 'New Paradigm'?

> [F]or 650 million persons around the world living with disabilities, today promises to be the dawn of a new era -- an era in which disabled people will no longer have to endure the discriminatory practices and attitudes that have been permitted to prevail for all too long. [Kofi Annan, 2006]

The CRPD arrived with the promise of change. A 'paradigm shift' was meant to bring about a new world for people with disabilities, including people with mental disabilities.

For people with mental disabilities, the case for change is overwhelming. Detention and forced treatment happen for reasons that would be indefensible for other people (if reasons beyond a medical diagnosis are actually insisted on at all). Standards of accommodation and treatment are risible. Employment rates and standards of living are dismal. In many countries, community living exists neither as a practical reality nor even as an ideal. Social alienation is pervasive and political marginalization routine. Law provides the forms in which these and so many other difficulties thrive and perpetuates the stigma that politically allows them to continue. It also frequently furthers the injustice by denying people with mental disabilities access to the justice system.

If things need to be fixed, it is fair to surmise that the politico-legal model we have been dealing with since at least the Second World War (and arguably since the enlightenment) is not up to the job. Considerable efforts have been made for decades through this model to change the situation of people with mental disabilities; but we have not seen the required changes to problems such as those noted above that would provide people with mental disabilities with the life choices we all want to see. A cry for the continuation of the old approaches with enhanced vigor is thus unconvincing: it is not as though they have not been tried.

The CRPD therefore promises us a 'paradigm shift'. While this is routinely touted as the key to what the CRPD is about, there is a lot less structured debate as to what the new paradigm is: there seem to be a lot of abstract nouns in the discussion ('dignity' and 'autonomy', for example). It is not always obvious that they involve a 'new ' paradigm. We read a lot that the new paradigm is about human rights and non-discrimination for example, but these are equally 'old' paradigm concepts: at least on the face of the international documents, human rights and non-discrimination are have been at the core of social policy relating to mental disability for decades. What is it that makes them 'new' now, particularly when we are assured that the CRPD offers no 'new' rights, but merely gives substance to existing rights? The CRPD Committee is also being extremely diligent in providing general comments and interpretive statements as to Convention implementation (six general comments and twelve statements in the last four years). Presumably these are meant to progress the new paradigm – but absent a clear statement of what the paradigm is, it is not clear how: what is this future we are building towards?

That raises the first set of questions: what does the 'new paradigm' actually mean? Does it have something that binds it together, or is it really a collection of piecemeal implementations of individual CRPD articles? If the latter, does that limit what we will attain, since it does not mean a clear break with the approaches of the past that have not been successful? If the former, does that limit what we can attain, given the difficulties of 'big bang' approaches in states with minimal political enthusiasm for change?

How do we implement the 'New Paradigm'?

If we are actually talking about a 'paradigm shift', how do we implement that?

This question can be explored conceptually or practically. Conceptually, a new paradigm means that we are trying to do something fundamentally new. It is difficult to see how that can successfully be bolted onto the forms of law and social organization that have existed for decades or in some cases centuries. Criminal law provides a clear example of this: it is all well and good to say (perhaps quite rightly) that there are profound conceptual and practical problems with rules regarding fitness to plead and defenses based on mental disability; but from a criminal law perspective, these are not just about disability, but flow from much more complex conceptual structures relating to 'guilt', 'culpability', 'rights of the accused' and the role of the state in the criminal trial process. Each of these has its own long, rich and contested legal and political history. Change does not just affect disability law; it affects the totality of the law in question. That may well be a good thing, but it is at best a huge undertaking, giving rise to huge political, social, theoretical and doctrinal issues. It is certainly not one which at this time we have the adequate understanding to take forward on all fronts.

A more concrete way to think about those conceptual questions is what we should be asking of our present international institutions, such as the CPT and the SPT. They have their own treaties that

structure their work, and those treaties developed for specific reasons, to respond to specific (and ongoing) injustices. How should those bodies understand their roles in this new paradigm? Is the claim that the new paradigm of disability is a trump card that displaces what has come before? And if not, do these institutions end up still perpetuating the 'old paradigm'? Gradual moves towards implementation are thus problematic.

That is not merely the case on the international level, but on the domestic level as well. Insofar as states care about CRPD implementation, they seem to want it done as a one-off exercise: a nice, omnibus piece of legislation that will tick CRPD off the things-to-do list. It is not clear that such a big bang approach is possible: we do not yet have a good sense of the full panoply of legislative amendment that needs to occur, let alone what form the amendments should take. On this, the CRPD Committee are in an impossible situation: they are criticized for not providing adequate direction on one hand, but when they do provide a steer towards concrete suggestions (as for example regarding supported decision-making in General Comment 1) they are equally are criticized for impinging on the independence of the governments of States Parties. To be realistic, we therefore need to understand implementation as an ongoing process that will take a long time. But the longer it takes, the more social actors will be viewing the old and new paradigms as a coexisting blur, a potentially 'comfortable' state for the political actors which may mean that the new paradigm in the robust form we need it never arrives.

Those problems are highlighted in states where there is no political will to implement the CRPD at all. Sadly, this seems to be a significant majority of states, and it is fair to note that the UK responses to the CRPD reports about us leave us no space for smug complacency on this point. If we are looking at no significant will for political change, how will the new paradigm be kept alive? And in that event, does the CRPD become little more than a photo opportunity for politicians, allowing them to look progressive and caring, when they don't actually plan to do anything to make things better?

Wednesday 27 June, 15.30 – 17.30

What do we want from a New Mental Health Act?

Chair – Julie Gosling

Biographies:

Simon Wessely, Chair of the Independent Review into the Mental Health Act
Simon studied medicine and history of art at Trinity Hall, Cambridge and University College Oxford, graduating in 1981. He obtained his medical membership in Newcastle, before moving to London to train in psychiatry at the Maudsley. He has a Master's and Doctorate in epidemiology. He is consultant liaison psychiatrist at Maudsley and King's College Hospitals.

He founded the King's Centre for Military Health Research. Its flagship project is a large-scale ongoing study of the health and wellbeing of the UK Armed Forces, has had a direct impact on public policy and on forms of treatment and help for Service personnel. Professor Wessely has over 750 original publications, with a particular emphasis on the boundaries of medicine and psychiatry, unexplained symptoms and syndromes, military health, population reactions to adversity, and epidemiology. He is active in public engagement activities, speaking regularly on radio, TV and at literary and science festivals. He is a trustee of Combat Stress and his contributions to veterans' charities include cycling (slowly) eight times to Paris to raise funds for the Royal British Legion.

In 2012 he was awarded the first Nature "John Maddox Prize" for Standing Up for Science, and was knighted in 2013 for services to Psychological Medicine and Military Health. Between 2014-2017 he was President of the Royal College of Psychiatrists.

Diana Rose, Professor of User-Led Research, Institute of Psychiatry, King's College London

Diana is a social scientist and has been a mental health service user all her adult life. After researching in the sociology of language and then teaching social psychology, anthropology and women's studies, her first academic career was ended by the intolerability of her distress – both to her and her employer. For ten years she 'lived in the community', using or refusing mental health services, but also becoming involved in the user / survivor movement and finally working in small organisation for disabled people. Much to her surprise, she was offered a position in a national NGO where her stigmatised identity was an asset rather than a liability. In 2001 she moved to the then Institute of Psychiatry at King's College London and somehow has ended up the world's first Professor of User-Led Research. She is currently researching the history, impacts and current configurations of user-led research internationally.

Colin McKay, Chief Executive, Mental Welfare Commission for Scotland
Colin has been Chief Executive of the Mental Welfare Commission since 2014. The Commission is a statutory agency responsible for protecting the human rights of people with mental health problems, learning disabilities, dementia and related conditions, and oversees the operation of mental health and incapacity law in Scotland.

Previously Colin worked in the Scottish Government for 14 years, including four years working on mental health law reform, first as secretary to the Millan Committee, and then as Bill manager for the Mental Health (Care and Treatment) (Scotland) Act 2003. He also worked in government on justice, strategy and public service reform. Before that he was a solicitor, and spent ten years with ENABLE Scotland, where he led campaigning and policy work, established the ENABLE Trustee Service, and served as a Mental Welfare Commissioner for two years. He has a particular interest in the interface of law, care and ethics.

Parallel session 1 (Tuesday 26 June)
13.00 – 14.30
Abstracts

Time	Room A1

13.00 – 14.30	**Presenters:** Judy Laing (Reader in Law, University of Bristol) and Kevin Stone (Senior Lecturer in Social Work & Law, University of the West of England) **Title:** The views of Approved Mental Health Professionals to the 'Nearest Relative role in England. **Abstract:** Involuntary detention for people with a mental disorder is widely used across Europe. Although relatives have a right to be informed of detention in 12 European countries, their role in the process remains under-researched. This paper focusses on the interaction between mental health professionals and 'Nearest Relatives' in England. The Nearest Relative role is defined under the Mental Health Act 1983 and gives named relatives the power to object to discharge a patient from hospital, to object to some forms of treatment and to apply for or request detention of a family member. The paper reports on findings of a survey with 55 Approved Mental Health Professionals (AMHPs) and focus group discussions with 33 AMHPs in 2017-18, who were responsible for co-ordinating and conducting Mental Health Act assessments. Survey data indicates that AMHPs consulted with Nearest Relatives in a high proportion of cases. However, qualitative findings revealed that AMHPs also struggled to balance the legal rights of Nearest Relatives and patients. AMHPs considered several factors before contacting Nearest Relatives including, the actual or assumed wishes of service users, the actual or assumed mental capacity of the service user and the environment in which the Mental Health Act assessment would take place.
13.00 – 14.30	**Presenter:** Tom Webb (Lecturer in Law, Lancaster University) **Title:** Should the Mental Health Act 1983 s.23 Hospital Manager Discharge Power be retained? **Abstract:** Section 23 of the Mental Health Act 1983 (MHA 1983) gives hospital managers the power to discharge a person from compulsory care. Since the mid-1990s there has been a concerted effort on the part of government, the Royal College of Psychiatrists (RCP), and others to abolish this power. Conversely, the argument for retention has tended to come from the service user community, associated support groups, charities, and groups of hospital managers. To decide whether the s.23 power should be retained we need to consider three things. First, what do we know about the operation and administration of s.23? Secondly, can a principled argument be made for the retention of a discharge mechanism offering community oversight of care professionals? And finally, if it can, is s.23 the best vehicle for providing such a mechanism? These questions have not been addressed in the discourse thus far. In this paper I offer a response to the first question, and some initial observations on the second and third questions in the context of a discussion about the on-going attempt – most recently in the RCP's February 2018 response to the Independent Review of the MHA 1983 – to abolish the s.23 discharge power.
13.00 – 14.30	**Presenter:** Russell Ashmore (Senior Lecturer (Mental Health Nursing), Sheffield Hallam University) **Title:** The availability, suitability and readability of written information given to informal patients about their legal rights **Abstract:** The Mental Health Act 1983 does not require healthcare providers to give informal patients (IP) information about their legal rights. However, there are concerns that IP are unaware of their rights (Lomax et al., 2012; CQC, 2014).

	This study reports on the availability, suitability and readability of written information given to IP about their rights in England and Wales. All NHS organisations (n = 61) providing inpatient care were asked to provide any written information given to IP about their rights. The suitability of the material was assessed using the Ensuring Quality Information for Patients (EQIP) tool. Readability was measured using the; Flesch-Kincaid Index, Gunning FOG Index, Fry Graph Readability Formula and Standard Measure of Gobbledygook. Written information given to patients should be at, or below, grade level 6 (a reading age of 11-12 years). 27 organisations (44.4%) gave IP written information explaining their rights. Individual EQIP scores suggested that one leaflet had 'severe' problems and should be discontinued immediately; and the remaining 26 had 'severe problems' and should be reviewed and replaced within six to 12 months. Readability scores for each formula were higher than the recommended grade level 6. Twenty-five were classified as 'difficult to read'. The implications of the findings for the informal patient's ability to comprehend and exercise their rights will be discussed.

Time	A3
13.00 – 14.30	**Presenter:** Kris Gledhill (Professor, AUT Law School, Auckland, New Zealand) **Title:** Is it ever lawful to detain on the basis of 'unsound mind'? **Abstract:** This paper outlines the clear difference of view as between the Committee on the Rights of Persons with Disabilities and the Human Rights Committee/European Court of Human Rights as to the legality of detention on the basis of "unsoundness of mind" (to use the ECHR language). It argues that (i) the CRPD Committee is incorrect to the extent that it argues that such detention can never be permissible but that (ii) the HRC/ECtHR need to move their approach towards recognising a much stricter standard as to the circumstances when detention can be permissible, recognising both the history of detention having been subject to an inadequate standard of review and the importance of ensuring community provision of services so as to allow inclusion in the community, which in turn has to be governed by the principles of reasonable accommodation and hence the need to provide more in light of a disability. It is suggested that the history of underfunding and inadequate community provision means that the current use of mental health detention in countries such as the UK and New Zealand is systemically arbitrary and unlawful: but that this does not mean that it can never be justified.
13.00 – 14.30	**Presenter:** Bo Chen (PhD Candidate, Centre for Disability Law and Policy, National University of Ireland Galway) **Title:** Shared authority and silenced service users: Decision-making of mental health treatment in China **Abstract:** Who makes decisions about mental health treatment is a crucial issue for mental health laws worldwide, and substituted decision-making has long been criticised by disability movements and fundamentally challenged by the CRPD. While paternalistic psychiatry and the power imbalance created by mental health laws in the West have received much attention, this presentation will explore decision-making structures in China. Based on qualitative interviews conducted in China, the presentation will demonstrate a decision-making structure within which family members rather than psychiatrists are the most important and final decision makers regarding admission, treatment and discharge, while

	the voice of service users is largely absent. This is conceptualised in this study as 'Shared authority and Silenced Users'. Compared to service users of Western mental health systems, whose autonomy is restricted by coercive and usually paternalistic medical professionals and mental health laws, having your family members on your side is the crucial factor for service users in exercising their legal capacity in China. The presentation, then, will provide explanations for this scenario: lack of independent oversight for psychiatrists, role of responsibility bearer and fee payer for family members and disabled access to justice for service users.
13.00 – 14.30	**Presenter:** Sheila Wildeman (Associate Professor, Schulich School of Law) **Title:** Anti-carceral disability rights litigation in canada: pathways to substantive equality informed by the CRPD **Abstract:** This paper brings critical disability scholarship on the emancipatory potential of the CRPD into conversation with prison abolitionism. It inquires more specifically into the role of litigation in advancing the arguably mutually-supportive social justice ends of abolishing penal- and disability-based incarceration. The focus is Canada. Part One addresses recent litigation and proposed law reforms challenging institutional practices of solitary confinement (or "administrative segregation") in Canada's prisons. These initiatives deviate from the goal of abolishing solitary confinement as such -- or addressing the carceral logics that produce it -- and instead reconstitute the problem as in great part one of "mental health," i.e. as residing in prisoners deemed mentally ill/disabled. Proposed remedies thus aim to re-direct such prisoners to newly-expanded carceral spaces for mental health observation and treatment. Critical disability analysis assists in challenging these developments in a manner consistent with abolitionism. Part Two shifts to disability-based institutionalization, asking what disability rights litigation can learn from prison rights litigation to revitalize challenges to confinement and conditions of confinement in psychiatric hospitals, social care homes, and nursing homes. It concludes that there are enormous opportunities in this regard in Canada. Part Three moves from individualized and incremental litigation strategies to ask what if any further role litigation may play in creating the social and political conditions for abolition of both penal- and disability-based incarceration. It focuses on a recent statutory human rights complaint in Nova Scotia in which prolonged disability-based institutionalization is positioned as a form of systemic discrimination requiring systemic remedies promoting substantive equality.

Time	B62
13.00 – 14.30	**Presenter:** Camillia Kong (Director of Research Strategy and Senior Researcher, University of Oxford) and Alex Ruck Keene (Barrister/Lecturer, 39 Essex Chambers, University of Manchester, Kings College London) **Title:** Overcoming challenges in mental capacity: overview of a practitioner guide **Abstract:** Ten years of experience of the Mental Capacity Act (MCA) in action has brought into sharp relief (i) the dual impulse to respect individual choices and the impulse to protect and safeguard persons from harm and (ii) the complex relationships that can support and enable, as well as obstruct and disable individuals' ability to decide, act and secure their own interests. However, to date, no clear framework provides real guidance as to how to resolve such tensions. This presentation provides an overview of our practitioner book, Overcoming challenges in the Mental Capacity Act 2005: Practical guidance for working with complex issue (Jessica Kingsley, forthcoming 2018) which offers a set of ethical principles that can inform and guide both capacity assessment and best interests decision-making under the MCA. The core message of our practitioner guide is that the MCA cannot

	be properly deployed without a set of ethical skills. We facilitate the ethical reflection of practitioners in three key areas: 1) The role of relationships in mental capacity: why and how relationships matter in developing capacity and establishing supportive decision-making mechanisms. 2) The dialogical skills which enable and empower individuals with impairments: what these dialogical skills are and how to cultivate them. 3) The role of the capacity and best interests assessor: how social care workers, clinicians, and legal practitioners can impact positively or negatively on the autonomy and agency of individuals.
13.00 – 14.30	**Presenter:** Paul Hutton (Associate Professor of Therapeutic Interventions, Edinburgh Napier University) **Title:** Understanding and supporting treatment decision-making capacity in psychosis: An overview of Edinburgh-led research on the psychology of decision-making in psychosis. **Abstract:** Psychosis is associated with an increased risk of impaired treatment decision-making capacity ('capacity'). Patients who lack capacity report experiencing greater coercion from services, reduced autonomy and their clinicians are less likely to use shared treatment decision-making. There is therefore a pressing need to improve both our understanding of capacity in this group, and develop safe and effective strategies to support it. In this talk, the progress of an Edinburgh-led research programme to develop such strategies, and the new theoretical model this work is based on, will be presented. The extent to which existing research supports this model will be reviewed, drawing on several systematic reviews and meta-analyses published by our group. New observational and experimental work which directly tests the central claims will be presented, as well as our planned programme of work. Finally, the implications of our findings for our current conceptualisation of capacity in psychosis, and interventions to support it, will be considered.
13.00 – 14.30	**Presenter:** Jim Rogers (Senior Lecturer, University of Lincoln) **Title:** Decision making in relation to mental capacity **Abstract:** The Deprivation of Liberty Safeguards (DOLS) provide essential legal protection for those who are in hospitals and care homes for care/ treatment and lack the capacity to consent to this. Conducting the necessary assessments which are required by these regulations has become a very important and burdensome task for the health and social care system, currently costing over £1 billion per year (Law Commission Impact Assessment 2015). Given the significant burden on the care system in terms of both time and money and given the large numbers of citizens who are subject to these assessments it is important that the correct guidelines are followed in relation to the capacity assessment and that self – determination and supported decision making is encouraged wherever possible. Mental capacity assessments are central to the assessment process in both existing and new proposed legislation (Liberty Protection Safeguards).This paper will present initial findings from interviews with Best Interests Assessors, DOLS signatories in local authorities, and Mental Health Assessors, about the factors that influence their judgements about mental capacity, based on four brief vignettes presented to them shortly before interview. The findings will have relevance to all involved in the DOLS process, but also to other health and social care staff, who are routinely involved in mental capacity assessments.

	B63

Time	
13.00 – 14.30	**Presenter:** Aileen O'Brien (Consultant Psychiatrist and Reader in Psychiatry and Education, St. George's University of London), Paul Lomax (Higher Trainee, South West London and St Georges Mental Health NHS Trust) Paul Gosney (Higher Trainee, South West London and St Georges Mental Health NHS Trust) **Title:** The current appeal system for those detained in England and Wales under the Mental Health Act needs reform. **Abstract:** The approach to managing the involuntary detention of people suffering with psychiatric conditions can be divided into those with clinicians at the forefront of decision making and those that rely heavily on the judiciary. The system in England and Wales takes a clinical approach whereby doctors have widespread powers to detain and treat patients involuntarily. A protection in this system is the right of the individual to challenge a decision to deprive them of their liberty or treat them against their will. This protection is provided by the First Tier Tribunal; however the number of successful appeals is low. The authors found that of the 399 admissions under Section 2, there were 96 appeals and just four were discharged by the Tribunal. It was found that those appealing their detention were no more likely to be discharged than those who did not appeal, however those who appealed were discharged on average four days earlier. In this paper we outline the system of appeal in England and Wales. We then discuss why so few patients successfully appeal their detention and we conclude that the current system is flawed. We offer a number of recommendations about how the system might be reformed.
13.00 – 14.30	**Presenter:** Nicola Glover-Thomas (Professor, University of Manchester) **Title:** Examining the drivers for rising mental health tribunal caseloads **Abstract:** In the UK, the Mental Health Act 1983 (MHA 1983) (as amended) provides the legal framework which governs decisions made concerning the care and treatment of those suffering from mental disorder where they may pose a risk to themselves or others. The perspective of the patient and the care provider may conflict and can be a source of tension and challenge within mental health law. Through access to a mental health tribunal, patients are offered the apparatus to review and challenge their detention. With detention rates under the mental health legislation rising exponentially, this is having a knock-on effect upon tribunal application numbers. As there is a legal requirement to review all cases of individuals detained under the MHA 1983, understanding the key drivers for this increase in detention is essential in order to understand how to better manage both detention rates and the upsurge in tribunal caseloads. With the increase in overall activity, mental health tribunal workloads present significant practical challenges and has downstream cost implications.
13.00 – 14.30	**Presenter:** Jill Stavert (Law Professor and Director, Centre for Mental Health and Capacity Law, Edinburgh Napier University) **Title:** CRPD, involuntary psychiatric care and treatment and mental health tribunals: can they happily co-exist? **Abstract:** The UN Committee on the Rights of Persons with Disabilities, interpreting the CRPD, has

	called for the abolition of laws that permit detention and involuntary treatment on the basis of actual or perceived mental impairment because such laws deny the exercise of legal capacity for persons with mental disabilities on an equal basis with others and are thus discriminatory (General Comment No 1(2014), para 7; Guidelines on art 14 (2015), para 6). In 2017, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health also noted the pivotal role that independent judicial review plays in the enjoyment of the right to mental health whilst, at the same time, indicating concern about an increase in mental health tribunals that legitimise coercion and isolate people within mental health systems from access to justice (Report to UN Human Rights Council, March 2017, paras 51-52). This paper will therefore consider the question of whether mental health laws and genuine equality for persons with mental disabilities can co-exist and the potential role mental health tribunals may play here.

Parallel session 2 (Wednesday 27 June)
9.30 – 11.00
Abstracts

Time	A1
9.30 – 11.00	**Presenter:** Mat Kinton (National Mental Health Act Policy Advisor, Care Quality Commission) **Title:** Detention in the Community – a current legal dilemma **Abstract:** The Mental Health Acts of 1959 and 1983 were founded on an assumption that psychiatric care and treatment, insofar as it involved deprivation of liberty, would take place in a 'hospital'. In part through the widening of the interpretation of the concept of deprivation of liberty by the courts (resulting in the current Law Commission proposals for safeguards over deprivation of liberty in private homes), and in part through continuing moves towards 'community' services, this assumption no longer holds. This paper looks at the precedents and implications of the judgment in the MM case of 2017, which addressed the circumstances in which detained patients can be discharged from hospital into continued detention elsewhere. This ruling identified a power of detention in relation to community treatment orders, but found that accommodation involving continued deprivation of liberty would only be lawfully achieved for conditionally discharged patients who lack capacity to agree to the placements. The paper looks at the likely effect of this ruling on discharge pathways, and the possible legal responses, either by the Supreme Court when hearing the appeal, or by government subsequent to that. (SSJ v MM; Welsh Ministers v PJ [2017] EWCA Civ 194, [2017] MHLO 16.)
9.30 – 11.00	**Presenter:** Russell Ashmore (Senior Lecturer (Mental Health Nursing), Sheffield Hallam University) **Title:** Are mental health trusts in England implementing de facto section 17 leave for informal patients? An analysis of local policies.

	Abstract: The Mental Health Act (DH, 2007) allows a detained patient to be granted leave from hospital under section 17 of the Act. Informal patients have the legal right to leave at any time and do not require permission to do so. Two landmark cases (Savage, 2010; Rabone, 2012) raised significant implications for this right. While the cases have been widely debated in the literature (Szmukler et al., 2013) these is a paucity of empirical work exploring their impact on local policy. A Freedom of Information request was submitted to all mental health trusts in England providing inpatient mental health care (n = 57). Organisations were asked to provide a copy of any documents offering guidance to mental health professionals on the informal patient's right to leave. Thirty-one organisations had a specific leave policy for informal patients. A document analysis generated five themes: 'legislation and duty of care', 'defining leave', 'requesting and granting leave', 'imposing and accepting restrictive practices', and 'de facto section 17 leave'. Restrictive practices are being implemented by organisations to the extent that they are effectively operating de facto section 17 leave policies. Such practices are not supported by the Act or its Code of Practice (DH, 2015).
9.30 – 11.00	**Presenter:** Peter Hall (Lecturer in Social Work, Department of Psychology, Sociology and Social Work, University of Suffolk) **Title:** Mental Health Act assessments - professional narratives on alternatives to hospital admission **Abstract:** This research draws on themes derived from research conducted as part of a doctoral study in which fifteen mental health professionals were involved in nine Mental Health Act assessments. These professionals were invited to explore the ways they undertook Mental Health Act assessments and provided home treatment, and how the assessment process informed their practice and relationships with others. The research developed from my practice as a Social Worker in secondary mental health care, critically exploring the different reactions and responses which mental health professionals display to Mental Health Act assessments, how decisions are made during the trajectory of the assessment, and, specifically, investigating cases where the outcome of the assessment is non-hospital provision using home treatment. Drawing on interviews with professionals involved with Mental Health Act assessments, the concepts of 'social crisis/mental illness', professional negotiations and social capital are explored as a means of understanding outcomes to Mental Health Act assessments. Finally, a discussion of the implications of this research for contemporary mental health social work practice is presented.
Time	**A2**
9.30 – 11.00	**Presenter:** Elizabeth Fistein (Ethics & Law Theme Lead / Affiliate, School of Clinical Medicine / Centre for Law, Medicine & Life Sciences University of Cambridge) Anna Murray (Clinical Student, School of Clinical Medicine, University of Cambridge) **Title:** Restrictive practice in the care of people with Prader-Willi Syndrome – a review of literature **Abstract:** Most people with Prader-Willi Syndrome (PWS) aspire to live independently. However,

	their condition means they never feel full, so they always want to eat. They can also tolerate much larger amounts of food in their stomach than people without PWS can and are therefore at increased risk of life-threatening gastric rupture. If access to food is not restricted they are at risk of rapid deterioration of health, increased safety risk and premature death. Parents, carers and authorities struggle with the tension between maximising individual choice and control, satisfying carers duty of care and providing a safe workplace for support workers. There is a need for clear, justifiable, evidence-based guidelines for the care of adults with PWS, which are consistent with international human rights law and are possible to implement in a variety of settings around the world. The 'Choice and Control' project aims to produce such guidelines. As part of this project, we are undertaking a review of law regarding restrictive practices for people with PWS in multiple jurisdictions. We will present our findings and discuss how they relate to the development of guidelines on restriction of access to food.
9.30 – 11.00	**Presenter:** Kris Gledhill (Professor, AUT Law School, Auckland, New Zealand**)** **Title:** What are the implications of the CRPD for the professions? **Abstract:** The Committee on the Rights of Persons with Disabilities has now issued more than 60 concluding observations and several general comments. Amongst other things, it has made calls for the legal profession and the judiciary to improve their awareness of the CRPD and its implications, but it has also indicated that one of the steps required is that entry into the legal profession by persons with disabilities is facilitated and encouraged. Similarly, it has called for curricula in architecture and engineering schools to be modified so that principles of universal design and reasonable accommodation are understood and made central; and it has regularly called for training of the medical and social work professions on the principles set out in the CRPD. This paper considers the implications for various professions of the comments of the CRPD Committee, highlighting and drawing inferences from the material generated by the CRPD Committee.

Time	A3
9.30 – 11.00	**Presenter:** Oliver Lewis (Professor of Law and Social Justice, School of Law, University of Leeds) **Title:** Why does the CRPD Lack Traction in UK mental health law reform? **Abstract:** The CRPD was hailed as "the dawn of a new era". In 2017 the CRPD Committee recommended that the UK repeal legislation authorising involuntary treatment and detention on the basis of actual or perceived impairment. The panel tasked to make recommendations on revising the Mental Health Act 1983 seems not to have taken the CRPD Committee's advice. What are the implications for the international human rights project?
9.30 – 11.00	**Presenter:** Mary Donnelly (Professor of Law, University College Cork) **Title:** Two Roads Diverged?: European Responses to the CRPD **Abstract:** This paper explores the increasingly pronounced divergence between European

	responses (as expressed through various Council of Europe bodies including the Committee on Bioethics and the European Court of Human Rights) to the CRPD and the views of the Committee on the Rights of Persons with Disabilities. It identifies both the normative and the political implications of this divergence. There are the obvious risks that the CRPD is rendered increasingly irrelevant in European human rights discourse. However, there is also the possibility that the current divergence could ultimately be productive in progressively advancing the human rights of people with capacity impairments in Europe, with the CRPD serving as a form of normative 'check' and the European bodies providing the 'balance' of a more granular and grounded exploration that the Committee is able to provide (because of its interpretative approach). Either way, the paper argues that this divergence needs analysis and engaged response.
9.30 – 11.00	**Presenter:** Christopher James Ryan (Clinical Associate Professor, University of Sydney and Westmead Hospital) **Co author:** Tim Foley (Advanced Trainee, Consultation-Liaison Psychiatry) **Title:** To what extent are reforms to mental health legislation driven by the Convention on the Rights of Persons with Disabilities reflected in the implementation of that legislation? – Experience in an Australian state. **Abstract:** Background: In 2015 the mental health act of Australia's most populous state underwent reforms driven by the Convention on the Rights on Persons with Disabilities. These required that "every effort that is reasonably practicable" be made to obtain patients' consent, to monitor their capacity and to provide support with decision-making. The changes were communicated to clinicians via an online education module and in-hospital seminars. Objectives: To determine the degree to which clinicians' practice was impacted by the 2015 reforms. Methods: An audit of the reports, written by trainee psychiatrists for Tribunal hearings, was conducted examining the frequency with which reports made reference to the patient's decision-making capacity and to the Act's three involuntary treatment criteria. The audit sampled two time periods: one prior to, and one after, the 2015 reforms. Results: Preliminary results suggest that while the frequency of references to decision-making capacity (the element introduced with the 2015 reforms) increased significantly, after the reforms it was nonetheless mentioned in only around 10% of reports. Interestingly, between the two sample periods, the frequency with which the reports referred to the "least restrictive alternative" treatment criterion nearly doubled to over 80%. *Analysis of the results continues and it is anticipated that the final results and their implications will be presented at conference.*

Time	B62
9.30 – 11.00	**Presenter: Phil Fennel** **Title:** The lunacy inquisition of W F ('Mad') Windham (1861-2) and the Common Law Roots of the Mental Capacity Act 2005: Lessons from the Past

	Abstract: On 16 December 1861 the hearing began before, Master Samuel Warren and a special jury, of the Commission de Lunatico Inquirendo into the state of mind of W F Windham, the heir to Fellbrigg Hall, who had just turned 21. The proceedings questioning his capacity to manage himself and his property and affairs were brought by his uncle, General Windham. Young Windham had fallen hopelessly in love with Agnes Willoughby, one of a group of women known as 'beautiful horsewomen', who he had married and to whom he had made a gift of £14,000 worth of jewels. The marriage never amounted to anything more than a sham, although Windham was clearly very devoted to his wife. Two months previously, Sir Hugh Cairns had successfully petitioned the Lords Justices to grant Windham leave to raise a mortgage of £2,000 on Fellbrigg Hall, the purpose being to finance his legal defence, a defence which would be conducted by Sir Hugh himself. The inquiry lasted over 34 days, at an estimated cost of 160 guineas a day, with 50 witnesses appearing for the petitioners, and 90 for Windham. Defending the petition cost Windham £20,000, and was a major factor in Windham's financial ruin. Even though he was found not to be a lunatic by the jury, as in Dicken's fictional Jarndyce v Jarndyce, the legal costs swallowed up what was left of his estate. Little more than two years after the case he died penniless at the age of 25, while Agnes Willoughby lived out her days in Fellbrigg Hall with her heir, Windham's putative son. The case became a by word for the expense and injustice of the Chancery Lunacy Procedure and led to the sweeping reforms introduced by the Chancery Lunatics Act of 1862 which shaped the procedure for the next 150 years. The case is notable for many reasons. Windham was represented by Sir Hugh Cairns, a future Lord Chancellor. He also paid for his wife Agnes to be represented by John Coleridge QC, a future Lord Chief Justice. The Times Reported that Sir Hugh Cairns made a 'most powerful and eloquent' opening speech, 'which occupied upwards of two days in defence of the sanity of Mr Windham; and the effect on the audience was such that in spite of the rebukes of the judge, enthusiastic cheering again and again broke forth.' Sir Hugh's speech is a ringing crie de coeur to the jury to uphold the common law protections against being wrongly declared to lack capacity. Many of the concepts lauded by Sir Hugh, such as the presumption or assumption of capacity, survive as key principles of the Mental Capacity Act 2005. The case and its aftermath raise many issues for contemporary practice including: open justice; the extent of a person's right to participate in proceedings to determine her or his capacity; and the boundary between incapacity due to unsoundness of mind and irrationality. In respect of the latter, the case came shortly after the birth of psychiatry as a medical discipline, and almost all the luminaries of contemporary psychiatry appeared as medical witnesses, including Drs Conolly, Forbes Winslow, Babington, Sutherland, Tuke, and Mayo. These experts were divided. The case did much to draw the boundary between insanity and eccentricity which persists to the present day, and also to engender great public scepticism about medical evidence. The paper concludes with reflections on the present-day importance of the lessons from the Windham affair.
9.30 – 11.00	**Presenter:** Jack Clayton Thompson (Lecturer in Law, University of Westminster**)** **Title:** All-or-nothing: mental capacity, autonomy and consent **Abstract:** This paper is concerned with the role of 'Capacity' as a conceptual basis for the law's understanding and treatment of individuals with mental health concerns and mental disabilities. Focusing on the binary nature of the capacity paradigm under the Mental Capacity Act 2005, it seeks to argue in favour of a more nuanced understanding of and response to circumstances of incapacity and partial capacity. It argues in favour of a

	spectral approach to issues of capacity and autonomy through reforms to the Mental Capacity Act to draw it more closely in line with the UN Convention on the Rights of Persons with Disabilities and wider social justice reforms. Under this framework, emphasis is drawn towards supported decision making through the lens of (Human) Rights; it does so by directing the discussion towards the means of exercising one's rights rather than whether or not rights are held.
9.30 – 11.00	**Presenter:** Grace Carter (PhD Student, Institute of Mental Health University of Nottingham **Title:** Having their cake and eating it too- providing clarification on a contradiction in Article 12 of the CRPD in light of self binding and contrary wishes **Abstract:** I wish to present my PhD as a thought piece. My research seeks to address a fundamental contradiction within Article 12 of the CRPD - a contradiction in need of clarification if any implementation of Article 12 is to be obtained within English and Welsh law. This contradiction comprises of Article 12 awarding universal legal capacity to all whilst also acknowledging instances in which self binding should be used to allow past wishes to overrule present wishes, post mental incapacity. Implementation therefore requires clarification on which past wishes should be upheld, why and whether/how such a justification can be maintained without reference to a mental capacity based model. I intend on providing this clarification by interviewing people with both episodic and developmental mental health conditions to give beneficiaries of the CRPD a voice in how this may be interpreted and to gain their unique insights. Questions shall be semi-structured and focus on whether/ when restrictions to legal capacity can be justified; for which legal decisions; for what type of MHC; in what scenario; and how much these responses differ on an individual and societal level.

Time	B63
9.30 – 11.00	**Presenter:** Nigel Eastman (Emeritus Professor of Law and Ethics in Psychiatry, St George's, University of London), Richard Latham (Institute of Psychiatry, Psychology and Neuroscience, Kings College London) Colin Campbell, (Institute of Psychiatry, Psychology and Neuroscience, Kings College London) **Title:** Reinstatement of a 'Therapeutic Benefit' test within the Mental Health Act 1983, as amended by The 2007 Act **Abstract:** The 2007 Act amending the Mental Health Act 1983 effectively removed the previously extant 'treatability' test in favour of the requirement only that 'appropriate medical treatment is available' (applicable now to all those exhibiting 'mental disorder'). This was driven by a 'public risk' agenda and was against the Richardson Committee recommendation of an enhanced treatability test, the view of Joint Parliamentary Scrutiny Committee which had considered the same amendment within the Draft Mental Health Bill 2004, plus opposition from both the Royal College of Psychiatrists and myriad others bodies concerned with mental health care and civil rights. Continued lack of an effective 'therapeutic benefit test' within the Act both contravenes individual rights and contradicts the core medical requirement of 'evidence based treatment', with application of treatment to patients only where it can asserted and justified that there is a likelihood of some benefit to them. Finally, in being legally discriminatory it stigmatizes both the mentally disordered as patients and psychiatry within medicine; separating the latter from the rest of medicine, to the likely detriment of medical

	recruitment, and therefore ultimately to the detriment of all patients requiring mental health care. We therefore propose reinstatement of an effective therapeutic benefit test.
9.30 – 11.00	**Presenter:** George Szmukler (Emeritus Professor of Psychiatry & Society, Institute of Psychiatry, Psychology & Neuroscience, Kings College London) **Title:** 'Capacity-based' mental health law and public protection **Abstract:** What are the forensic implications of a capacity-based mental health law (or generic 'fusion law')? Concerns that such law will not adequately protect the public are often expressed. Under capacity-based law, involuntary detention and treatment could only be justified by impaired treatment decision-making capacity and a best interests (or 'will and preferences') judgment. How then would this play out in relation to 'mentally disordered' offenders? How would those who retain capacity be managed? In the absence of 'restriction orders' (such as s.37/41 MHA 1983) how would those assessed as continuing 'high-risk' be managed? How could we deal with the discriminatory practice where an offender with a mental disorder may be deprived of his or her liberty in hospital for a period far in excess of the normal sentence for the same offence? These considerations will be set against the background of the 2% or so of serious offences committed by this group and the damaging stereotype of their being intrinsically dangerous. The UN CRPD raises a set of further questions concerning the 'mental condition' defences – unfitness to stand trial and 'not guilty by reason of insanity'.
9.30 – 11.00	**Presenter:** Paul Skowron (Postdoctoral Research Associate: Mental Health and Justice, University of York) **Title:** What is the 'Best interpretation of will and preferences'? **Abstract:** In General Comment No 1 ('GC1'), the UN Committee on the Rights of Persons with Disabilities calls for the 'best interpretation of will and preferences' to replace 'best interests' determinations in decision-making law. What does 'best interpretation' mean? One thought is that 'best interpretation' means 'the most accurate interpretation'. On this reading, 'best interpretation' simply aims to discover the objective truth about another person's will and preferences. Human beings, after all, have a subtle 'folk psychology' that makes us very good at identifying what one another want. This, however, is too easy. In reality, interpreting another person's preferences always draws on social norms about what is good for people. In practice, then, 'best interpretation' guided by folk psychology risks collapsing back into the very 'best interests' standard that GC1 tries to replace. Worse, many abuses of people with mental disabilities have been rooted in folk psychology gone wrong. This does not mean that interpretation guided by folk psychology is useless. It does mean that it is not enough. It must be supplemented by moral reflection on the very everyday norms that make interpretation possible.

Parallel session 3 (Wednesday 27 June)
11.30 – 13.00
Abstracts

	A1

Time	
11.30 – 13.00	**Presenter:** Simon Clarke (PhD Student / Lecturer in Psychology, University of Nottingham / Nottingham Trent University) **Title:** Disciplinary power and degradation ceremonies: the case of the ward round **Abstract:** The ward round is a central feature of psychiatric inpatient care. As the main mechanism through which patient care is reviewed on the ward, it is usually conducted by the consultant in the presence of the patient with the full care team also present. Qualitative research of service user experiences suggest that many find the ward round anxiety-provoking, intimidating and unhelpful. But what is it like to experience a ward round and what can such accounts tell us about their usage? This presentation is based on doctoral work on psychiatric inpatient care using a methodology called autoethnography which uses the researcher's experience as primary data to illuminate the social world. The experience of a first ward round is thus presented, using a juxtaposition of patient, carer and clinical team accounts. The presentation concludes with a reflection on the purpose and function of the ward round in today's mental health service suggesting, following Foucault, that the current function and configuration of the ward round may serve institutional and professional self-reification purposes rather than an agenda of service user care.
11.30 – 13.00	**Presenter:** Jack Tomlin (PhD Student, University of Nottingham) **Title:** The restrictiveness of forensic care: Exploring patient experience **Abstract:** Patients are placed within secure care settings according to their perceived level of risk. Risk management techniques are often useful, effective and undertaken in a clinical and beneficent manner; however, a penumbra exists wherein risk prediction and management becomes too restrictive and custodial, even violating patients' human rights. This project therefore aimed to conceptualise restrictiveness in adult forensic settings. Interviews were conducted at different secure hospitals wherein patients cited multiple examples of the restrictiveness of their care and its consequences. The results showed that restrictive elements of care exist on individual, institutional and systemic levels, encompassing: patient to patient interactions, undertaking paid work, going outdoors, sharing communal spaces with 'bullying' others, locked doors at night, staff attitudes, medication, the law as prohibitive not protective, social exclusion and indeterminate lengths of stay. Being deprived of liberty in both a legal and factual sense, it is crucial secure hospitals do not restrict patients any more that needed to achieve the discipline's dual aims of treatment and harm reduction. We argue that there must be a reflexivity from stakeholders between the level of restrictiveness needed to safely provide care in a therapeutic milieu and enable the maximum amount of patient autonomy.
11.30 – 13.00	**Presenter:** Serena Bradshaw (Managing Director, Goddards) **Title:** The case for supporting survivors after the judicial process **Abstract:** A survivor of child abuse who endures the judicial process will learn the equation: Scale of compensation = enormity of damage How can we help survivors who leave the judicial process to disprove the equation and

	understand that they are not damaged goods? And their lives are not ruined? We too often hear statements such as "They are so damaged they'll never work again" or "With their offending history as well it's unlikely they'll find work". So, it's quite possible, an individual's capacity for personal growth could be hindered by the legal process. Yes—they may be awarded compensation—and even a five-figure sum may seem attractive if a survivor has never worked. But this compensation comes at a price. The price, surely, is that the survivor may now be confronted with solid evidence in the form of a compensation package that their life is, indeed, ruined. And where does a survivor go from here?

Time	A2
11.30 – 13.00	**Presenter:** Jill Craigie (Senior Lecturer in Medical Ethics, Kings College London) **Title:** Challenges for conceptualising 'undue influence' in the context of supported decision-making **Abstract:** There has been widespread enthusiasm for the requirement within the UN Convention on the Rights of Persons with Disabilities, for support to enable adults with mental disabilities to make decisions that have legal standing. The Convention also requires that any measures put in place to realise this support must be free of undue influence. In this paper, I will present the groundwork for a philosophical analysis exploring how the concept of 'undue influence' should be understood in this new context. The presentation will describe some first attempts to put the idea of 'undue influence' into practice in models of support, and consider these in light of an overview of current law concerning undue influence in England and Wales. An analysis will then draw out some challenges around undue influence that will be faced in the process of law and policy development in this area.
11.30 – 13.00	**Presenter:** Amanda Keeling School of Law, University of Leeds **Title:** Unravelling Article 16 CRPD: What does the committee want from us (and is it enough)? **Abstract:** The focus on interpreting the CRPD has been particularly concentrated around article 12. However, in doing so, we have perhaps neglected some of the other provisions of the convention - the interpretation of which are no less difficult. This paper explores article 16 - the right to freedom from exploitation, violence and abuse - and in particular the comments of the CRPD Committee in Concluding Observations - and considers whether the Committee have been as radical in this area as they have with other provisions of the Convention.
11.30 – 13.00	**Presenter:** Benjamin Michael Clubbs Coldron (Doctoral Researcher, University of Nottingham) **Title:** The implementation of policies to support political inclusion in secondary mental health facilities **Abstract:** The aim of the paper is to provide a brief summary of findings and recommendations from a series of observations and interviews done at a private mental health hospital during the June 2017 general election. The paper concentrates on practical findings and recommendations from the general

	election data. I will provide an overview of the dilemmas and tensions that emerged in practitioners', residents, and my own thinking as we met together to discuss and analyse the support provided to residents to increase their opportunities for political participation through educational sessions and direct support in polling stations. The paper covers three issues. The first issue discussed relates to the reluctance of staff in revealing personal political perspectives to residents, the second (and related) issue relates to the parameters of appropriate support at the polling station and the third section goes on to discuss the general embeddedness of democratic values in the organisation.

Time	A3
11.30 – 13.00	**Presenter:** Claire Hogg (PhD Student, Kings College London) **Title:** The insanity defence: law and jurisprudence in England and Wales **Abstract:** The CRPD has made it clear that fair access to criminal justice and equal protection from deprivations of liberty for mentally ill and disordered persons are matters of human rights. It is unfortunate, then, that the courts of England and Wales are currently saddled with an approach to assessing the culpability of mentally ill offenders that is marked by unclarity, inconsistency, and stigma. Interrogation of the case law around insanity reveals an approach to the exculpation of mentally ill offenders that is morally and philosophically unmoored. In the absence of a consistent and convincing account of what it is about mental illness that is capable of absolving an individual from culpability, we have been unable to develop a legal approach that is both consistent and fair. My research aims firstly to address the question of what it is about mental illness that is capable of being exculpatory, and secondly to explore ways that this might be fairly reflected in the criminal courts. My research is primarily jurisprudential and focused on the law of England and Wales, however it will ultimately make reference to, and possibly have implications for, other jurisdictions.
11.30 – 13.00	**Presenter:** Meron Wondemaghen (Senior Lecturer, University of the West of England) **Title:** Equality, insanity and the CRPD **Abstract:** The Convention on the Rights of Persons with Disabilities is considered to be a radical international treaty that affords persons with disability recognition and protection of equal rights in socio-cultural, political, medical and legal arenas. Drawing from the Convention's core principles of equality and non-discrimination, the High Commissioner for Human Rights and the Convention's Committee have called for a replacement of the insanity defence with a disability-neutral doctrine. The rationale is that retaining this special defence is, in itself, discriminatory, given its function is necessarily based on the presence of mental disability and the assumption that such disabilities impair capacity and reasoning. This article interrogates the rationale behind 'abolitionist' views, and asks whether equality necessarily means treating all persons identically regardless of capacity to reason about conduct.
11.30 – 13.00	**Presenter:** Leon McRae (Lecturer in Law, Keele University) **Title:** Blaming rape on sleep: A psychoanalytic intervention

	Abstract: The governance of sleep sex (or sexsomnia) in the criminal law is a nightmare. Press reports of sleeping, often drunk, men acquitted as automatons of raping adults and children suggests cases are rising. The use of automatism, rather than insanity, in these cases is strong evidence of the immemorial struggle faced by legal psychiatry in appropriately construing unconscious defendants. This paper responds by drawing on well-established psychoanalytic conceptions of unconsciousness to present sexsomnia as dispositional to the defendant. Taking the Freudian concepts of eros and death instinct, it asserts that sexsomniacs are acting on repressed sadistic sexual desires. Accordingly, those on notice of their sexsomnia, who fail to mitigate the risk of further attacks, should be guilty of rape. Reliance on (a reformed) insanity defence – being a denial of responsibility at the time of the offence – undermines the scope of the criminal law to self-responsibilise sexsomniacs against perpetrating unwanted sex.

Time	B62
11.30 – 13.00	**Presenter: Lucy Series** (Wellcome Research Fellow and Lecturer in Law, Cardiff University) **Title:** To 'empower and protect': Tracing the Mental Capacity Act 2005's promise to empower **Abstract:** The Mental Capacity Act 2005 (MCA) is a law that permits third parties to make substitute decisions in the best interests of people lacking mental capacity. It is widely heralded in England and Wales as 'empowering' for disabled people. The promise to 'empower and protect' has become the unofficial strapline of the Act. Recent developments have directed critical scrutiny towards these claims to empower. A review of the Act's implementation by a House of Lords Select Committee concluded that the Act's empowering ethos had not been delivered owing to implementation problems, whilst the Act is also the target of a radical critique of substitute decision making laws associated with the UN Convention on the Rights of Persons with Disabilities. Given the Act's doctrinal functions as a framework for substitute decision making and (latterly) detention, its domestic reputation for empowerment stands in need of some explanation. This paper will give an overview of the Act's earlier history and trace the emergence of its associated claims to empower. It will argue that the Act's curious reputation for empowerment can only be understood against a backdrop of widespread de facto deprivation of legal capacity, resulting from twentieth century policies of 'informality'. Empowerment through mental capacity law operates through imposing a new legal gaze in areas of life that were previously constructed as extra-legal spaces, with an important re-ordering of power relations between disabled people, families, professionals and lawyers.
11.30 – 13.00	**Presenter:** Hope Davidson (PhD Candidate, University of Limerick, Ireland) **Title:** Same, same, but different – Comparing the potential of the Assisted Decision-Making Capacity Act 2015 in Ireland and the Mental Capacity Act 2005 in healthcare decision-making. **Abstract:** In the Mental Capacity Act 2005 decisions are made in a person's best interests with the person's past and present wishes and feelings, and beliefs and values occupying a central role. Although originally the Assisted Decision-Making Capacity Act 2015 (which is enacted but not yet operative) set out that decisions would be made on the basis of a person's 'will and preference', the addition during the legislative process, of 'acting at all

	times in good faith and for the benefit of the person' means that what we now have in Ireland is very close to a best interests style determination – hence the "same, same but different" paper title. This paper will suggest that in common with the MCA, that more protection needs to be afforded in the ADMCA to the will and preference of the person lacking capacity in order to deliver on the empowering potential of the ADMCA for people with disabilities.
11.30 – 13.00	**Presenter:** Peter Bartlett (Nottinghamshire Healthcare NHS Trust Professor of Mental Health Law, School of Law, University of Nottingham, Institute of Mental Health, Nottingham) **Title:** Getting there from here: English mental capacity legislation and supported decision-making **Abstract:** To be realistic, there is little prospect of significant reform to the Mental Capacity Act in the near future. If we are going to move towards CRPD values, therefore, we are going to have to work with what we've got. One of the big movements under Article 12 of the CRPD is the shift from substitute to supported decision-making. This paper considers the language of the Mental Capacity Act to explore the possibilities to enhance supported decision-making. It further considers how the Court of Protection jurisprudence would need to develop to engage with supported decision-making in a meaningful way.

Time	B63
11.30 – 13.00	**Presenter:** Phil Fennell (Professor of Law, Cardiff University) **Title:** Jurisdiction over the person. The new 'New Legalism' and its relevance to the reform of mental health and mental capacity law. **Abstract:** This paper considers the development of jurisdiction over the person of people suffering from mental disorder in the legal sense of any disorder or disability of the mind. In the 1980s Larry Gostin referred to a 'new legalism', based on the European Convention on Human Rights and an 'ideology of entitlement', that those subject to compulsion were entitled to treatment and support, now referred to as the right of reciprocity. This paper begins with a very brief account of the legalism/medicalism debate in histories of mental health legislation Gostin named his version of legalism the 'new legalism' to distinguish it from the sterile bureaucratic legalism of the 19th Century Lunacy Acts. The premise of this paper is that there is a newer form of new legalism, still based on human rights, but qualitatively different from the vision put forward by Larry Gostin. The paper sets out the key components of this multi-layered and multifaceted system of interlocking regimes of detention, restraint and treatment without consent. The paper reflects on the styles of legal regulation at play under the Mental Health Act and the Mental Capacity Act. The paper addresses some of the issues raised in the Wessley Committee's interim report, most notably relating to the interface between the Mental Health Act and the Mental Capacity Act 2005, the powers of the nearest relative, the role of community treatment orders.
11.30 – 13.00	**Presenter:** Alex Ruck Keene (Barrister and Visiting Lecturer, 39 Essex Chambers/King's College London**)** **Title:** Navigating rights in the context of mental health reform

	Abstract: The independent review of the Mental Health Act 1983 is underway, chaired by Sir Simon Wessely. The Review seeks to be rights-based, but what does this mean in the context of international human rights norms as they now stand? In light of the concluding observations of the Committee on the Rights of Persons with Disabilities following its examination of the United Kingdom in 2017, should the sole recommendation of the Review be to abolish the Mental Health Act and the Mental Capacity Act? If not, why not? This paper will look at how rights can be identified – and navigated – in the context of mental health reform. The perspective it presents will be informed by my current role as the legal adviser to the Wessely Review, but will not represent the view of the review.
11.30 – 13.00	**Presenter:** Dorothy Gould (Service user researcher, trainer and consultant, National Survivor User Network (NSUN)) **Title:** The relevance of user-led research to reform of the Mental Health Act 1983 **Abstract:** The aim of this paper is to present findings from three user-led studies with relevance to the Mental Health Act 1983 and to discuss implications of these for the current Mental Health Act review. The studies concerned will be "Service users' experiences of recovery under the 2008 Care Programme Approach", the "Healthy lives project" and the "Keeping control project". A mixed methods approach was taken to the first two of these studies and a qualitative approach to the third. Framework analysis was employed for all three studies. Findings from the studies suggest major service user disquiet about the system which operates under the Mental Health Act 1983, for example the predominantly medical model approach, disempowerment and psychiatric disqualification of service users, failures to address multi-factorial issues for service users, institutionalisation of staff and the use of detentions and compulsory treatment. Many study participants expressed a strong wish for alternative approaches which they would find rights-based. These study findings will also be considered within the context of global user-led research, in particular research which stems from the 2016 International Network Toward Alternatives and Recovery Conference and the sifting of this research at the Round Table which followed the conference.

Parallel session 4 (Wednesday 27 June)
14.00 – 15.00
Abstracts

Time	A2
14.00 – 15.00	**Presenter:** Jack Clayton Thompson (Lecturer in Law, University of Westminster) **Title:** Male Suicide, masculinity and vulnerability

	Abstract: Suicide is the leading cause of death in men under the age of 45 in the UK, and men across the western world are more likely to commit suicide than women, this piece looks at the social factors behind this particularly the role of masculinity and access to services. Rates of male suicide are a common problem across the western world, and as funding for mental health services decline and male access to those services are staggeringly lower than for women, change is needed. The male suicide problem is often expressed in terms of masculinity; men are taught not to talk about their emotions as a sign of weakness and are less likely to form 'meaningful' relationships outside of their romantic ones. However, this only tells half of the story. I want to argue that, if this is the case, then services need to be reshaped for men to feel more comfortable when accessing them.
14.00 – 15.00	**Presenter:** Darius Whelan (Senior Lecturer in Law, University College Cork) **Title:** Risk of suicide in ECHR mental health case-law **Abstract:** The European Court of Human Rights (ECHR) has considered a number of cases where a person has a mental health condition and is at risk of suicide. Breaches of article 2 or article 3 of the ECHR have been found in cases such as Keenan v U.K. (2001), Rivière v France (2006), Çoşelav v Turkey (2012) and Isenc v France (2016). The court's requirements in this area are stricter than in other mental health contexts, raising questions of consistency of standards. Implications for domestic courts, prison authorities, hospitals and legal practitioners will be reviewed. The paper will also consider the relationship between this case-law and the principles of the CRPD.

Time	B62
14.00 – 15.00	**Presenter:** Jaime Lindsey (Lecturer in Law, University of Essex) , Rosie Harding (University of Birmingham) **Title:** Capabilities and capacity: Wellbeing and sexual intimacy in the Court of Protection **Abstract:** This paper uses a capabilities analysis to consider how issues relating to sexual intimacy for people with mental disabilities are dealt with in the Court of Protection (CoP). Disabled people's rights to develop relationships and to engage in consensual intimacy are protected by the UN Convention on the Rights of Persons with Disabilities. English law, however, allows for adults who are deemed to lack the mental capacity to be prevented from engaging in sexual activity. In this paper, we explore the potential of the capabilities approach to justice to engage with these issues. We draw on original data from observational research carried out at the CoP to highlight a number of difficulties with the test for capacity to consent to sex under the Mental Capacity Act 2005. We argue that the current approach fails to capture the essence of sexual activity as a social practice. Instead the current law medicalises sexual activity – with pregnancy and sexually transmitted infections being at the centre of a biologically focused test for capacity. We argue that centring the test on these two features allows the law to sidestep the social dimensions of sex, particularly a person's understanding that sex is a choice, and one that you can say no to. We consider that the protective focus of the MCA should be on the social understanding of sexual intimacy to both protect adults with disabilities and to encourage the development of the capability to engage in and benefit from intimate relationships.

14.00 – 15.00	**Presenter:** Rachel Clawson (University of Nottingham School of Sociology and Social Policy, Centre for Social Work) **Title:** Forced marriage of adults with learning disabilities –developing knowledge, policy and practice to keep people safe (funded by NIHR SSCR). **Abstract:** Forced marriage is defined as a marriage without the consent of one or both parties and where duress is a factor (UK Government Forced Marriage Unit), forcing someone to marry became a criminal offence in 2014 under the Anti-social Behaviour, Crime and Policing Act. In a forced marriage one or both spouses do not, or cannot, due to lacking capacity, consent to the marriage. Research and practice evidence demonstrates that people with learning disabilities (with and without capacity to consent) are being forced to marry and that the consequences include physical and sexual assault, emotional harm and abandonment. Forced marriage of people with learning disabilities frequently presents differently to forced marriage per se, as a result it is often not recognised as such and goes undetected. Our study has produced vital new understandings of forced marriage of people with learning disabilities by examining data held by the UK Government's Forced Marriage Unit and by interviewing people with learning disabilities, their families, frontline practitioners and community/faith leaders about the issue. Its findings contribute, for the first time, to a comprehensive understanding of the lived experience of all parties involved. One key finding from the research is that in all stakeholder groups there is a lack of understanding around the law on forced marriage and issues relating to capacity to consent. As a result many practitioners are struggling to recognise forced marriage and assess capacity to consent and families are potentially leaving themselves open to prosecution as they do not understand they may be forcing the marriage of their relative. Policy and practice needs to change if people with learning disabilities are to be adequately safeguarded.

Time	B63
14.00 – 15.00	**Presenter:** Emma Whewell (Senior Lecturer in Law, University of the West of England, (Bristol) **Title:** Capacity and pre-proceedings in the field of children's social care: how misunderstandings between professionals can impact negatively on parents with learning disabilities **Abstract:** In England and Wales, the issue of delay in public law children cases has been a concern for two decades. Delay can lead to an increased burden on the public purse and greater uncertainty for children and families. Numerous procedural measures have been introduced to try to reduce delay both before the issue of care proceedings at court and subsequently. There is now a national 26-week target for the completion of proceedings. However, although there is a national 'pre-proceedings process', there is no suggested time limit for the conclusion of pre-proceedings work. A research team at University of the West of England, Bristol has considered the operation and effect on children and families of two regional pre-proceedings protocols which aim to complete pre-proceedings work within 26 weeks, and enable permanent decisions to be made about a child's future within a year overall. Parents with learning disabilities or who otherwise lack capacity are known to be at greater risk of losing their children. The speaker will consider how, in this time-limited and complex intersection of child and adult care law, 'capacity' is conceptualised and applied by different professionals and how this can exacerbate the problems experienced by such parents.

14.00 – 15.00	**Presenter:** Camilla Parker (Legal & Policy Consultant, Just Equality) **Title:** A minor issue? Children and young people's mental health care and the reform of the Mental Health Act 1983 **Abstract:** The interim report of the independent review of the Mental Health Act 1983 (England and Wales) has now been published. The report identifies children and young people in need of mental health care as being a group requiring particular attention in the review. It notes that: "Specific legal issues arise in relation to the assessment and treatment of children and young people for mental ill health, in particular because they may well be subject to different legal frameworks operating in parallel..." This paper examines some of these key legal issues and explores: a) "Which barriers to the delivery of care and treatment stem from poor understanding and/or implementation of the existing legal frameworks and associated guidance" (One of the questions posed by the interim report) b) How a human rights framework (drawing from the European Convention on Human Rights, the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities) can help to resolve the areas of concern c) The extent to which such an analysis has relevance beyond under 18s' mental health care.