



Legal Strategy Meeting

5th November 2020

Key Issues Identified and Actions Agreed

MENTAL HEALTH ACT

Key Issues Identified

- Opportunities to change legislation are rare, legislative process is sluggish, and reform is needed immediately
- Currently, information on law and human rights is too difficult to navigate.
- Individuals lack understanding of key legal issues, such as Deprivation of Liberty Safeguards (DoLS)
- Many families do not know they are engaged in a human rights issue when one arises
- Early intervention far more appropriate than reactive approach to Mental Health Act cases
- Judicial training in learning disabilities/autism insufficient
- There is a lack of interface/coordination between how Mental Health Act & Mental Capacity Act are used, leading to lengthier detentions and a lack of proper inter-agency implementation. In many cases, the Mental Capacity Act creates the larger obstacle to preventing detentions
- Families need one leading space for legal action, and cannot afford the time/resources to contact or hire human rights, mental health or other lawyers as each situation may demand

Actions Agreed

- Group should either support - possibly with reservations - or oppose Wessley recommendations, or otherwise engage in the legislative process (for instance engaging in consultations following White Paper) to ensure that we take full advantage of rare opportunity to change Mental Health Act.
 - The group should also consider a formal response to the JCHR's report on the detention of young people with learning disabilities or autism
- Accessible information on rights should be collated and shared. Some examples are CBF Legal FAQs and BIHR 'Know your Human Rights'.
- Families should also be made aware of their rights to advocacy, with an advocate being helpful in enabling to navigate these legal issues as well as offering one 'leading space for legal action' as mentioned above

- Clinicians and frontline staff should be made aware of their ability to challenge decisions on the basis of human rights, as per RR v Secretary of State for Work and Pensions (2019)
- The financial, emotional and moral costs of 'getting it wrong' in terms of detention, human rights, and not ensuring early intervention should be made clear.
- Judicial training on learning disabilities should be promoted, one option being 'Oliver McGowan mandatory training'

CARE ACT, PANDEMIC ISSUES and EDUCATION

Key Issues Identified

- Information on pandemic related issues is sparse and inaccessible.
- Research and evidence which does exist has been produced by a varied group of organisations, and are not accessible in one coherent document.
- Evidence surrounding the Care Act and failures to follow it during the pandemic are often in case studies or anecdotal, without hard data
- Care Act easements implemented/enabled as part of the Coronavirus Act 2020 undermine the implementation of the Care Act
- Care Act faced issues of implementation even prior to the pandemic, and lost political support in government during austerity. The 'Covid excuse' surrounding the Care Act should be tested.
- Sense that the law is not being followed on the ground, and care packages have been cut nationwide

Actions Agreed

- All research on the Care Act should be pooled, including information found by CBF, Mencap, Central England Law Centre, NAS, Kate Mercer, and any other groups not in attendance of meeting.
- A coordinated evidence base will provide more leverage for challenge, to hold guidance and government to account on these issues in second lockdown and continuing pandemic response.
- Judicial review could be initiated on the basis of evidence collected

THE LEGAL PANEL

Key Issues Identified

- Families lack knowledge or accessible information about how to access legal support.
- Families feel increasingly isolated, and legal panel may need to reach out/link them up to legal support rather than await contact from the family.
- Families need to be proactively made aware of their rights, so they can identify when these rights are being violated – the CBF have experienced

instances where a family member will contact them for another support service, unaware that a legal rights issue has occurred.

- Any information or resource repository should also meet the needs of professionals and staff as well as families, so that they too know when and how they can stand up for the rights of the people they support, and can influence a rights-based culture in their place of work
- Legal panel is limited by what is possible on voluntary model, and funding options should be considered to increase potential scope of panel.
- Panel also limited by capacity issues

Actions Agreed

- Create a repository of template letters, information and other resources useful for families and professionals
- Legal panel should explore families' legal right to trauma support, given the potentially traumatic experience arising from legal proceedings.
- Legal panel to devise a process for addressing repeated/systematic excuses for not providing support that families are entitled to, for instance Local Authorities claiming that there is no suitable housing available rather than making suitable housing available.
- CBF to raise awareness of the panel as a resource, including making information easier to find on their new website. Should also consider the platform provided by Advocacy groups to disseminate information.
- Legal panel to review and consolidate its contacts and connections with other courts, such as Care proceedings, so that families can be signposted to support.
- Panel also to consider which professional bodies it could reach out to, including potentially the Royal College of Psychiatrists, British Psychological Society, in order to ensure that clinicians/professionals are aware of their possible role in attempting to prevent rights violations.
- Capacity options to be considered to increase scope of panel and streamline referrals process, potentially linking with law societies, taking on legal caseworkers/interns, or creating a national co-ordinator role to oversee comprehensive joined-up working and collating of resources.
- Funding options to be considered – potential access to government support, legal aid, crowdfunding, subscription model.
- Legal panel to consider collaboration/membership of a 'Disability Union'
- CBF to provide clarity over how cases are triaged and how these relate to the FAQs.
- Legal FAQs to be reviewed, with concerns being that they may be too specific for use, and that actual 'FAQs' and individual cases which need individual advice should be separated. Possible new style of presenting information as an online interactive resource, as per right2visit website.

Resources/Links shared:

- Disability Union: www.disabilityunion.co.uk

- [Disability Union Tweet 26th Oct 2020](#): LDE provide grant for Disability Union to hire another caseworker to specifically support members with LD and members who are autistic

- Right2visit: <https://right2visit.info/>
- British Institute of Human Rights 'Know your rights': <https://knowyourhumanrights.co.uk/>
- Access Social Care resources: <https://www.accesscharity.org.uk/resources-1>
- British Institute of Human Rights training: <https://www.bih.org.uk/training>