



KNOWSLEY  
SAFEGUARDING  
ADULTS BOARD

PREVENTION THROUGH PARTNERSHIP

# Legal Safeguarding Remedies

(a non-exhaustive overview of the law)

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# What laws can be used to safeguard a person ?

1. Civil Legislation
2. Criminal Legislation
3. Human Rights (HRA 1998 / ECHR)
4. High Court's Inherent Jurisdiction

# 1. Civil Legislation - Care Act 2014

From [Community Care \(8 August 2023\)](#) :

## Government to review case for powers of entry for social workers in adult safeguarding cases

Review finds practitioners often lack tools to protect people from being abused at home by those providing care, reopening debate over powers of entry, which were rejected by government during Care Act's passage

### **Powers of entry rejected during passage of Care Act**

During the passage of the Care Act, the then coalition government rejected calls from social workers, charities and parliamentarians to introduce a power for practitioners to gain entry to premises to speak to potential victims of abuse, on the grounds that existing powers were sufficient.

However, an analysis by leading Court of Protection barrister Alex Ruck Keene and then chief executive of Action on Elder Abuse (now Hourglass), Gary FitzGerald, published in the same year (2014), identified gaps in these measures (briefly summarised in the box below).

# 1. Civil Legislation - Mental Capacity Act 2005

- ▶ Mental Capacity - legally defined / assessment  
legally defined
- ▶ Best Interests - defined by Code of Practice /  
caselaw
- ▶ Office of the Public Guardian
  - ▶ Registers of Lasting Powers of Attorney (LPA) / Court-  
appointed Deputies
  - ▶ Court of Protection Visitors
  - ▶ Investigate safeguarding concerns re LPAs/ Deputies

# 1. Civil Legislation - Mental Capacity Act 2005 (cont.)

## ▶ Court of Protection

- ▶ Authorises Deprivations of Liberty (for everywhere but care homes or hospitals)
- ▶ Resolve any disputes regarding capacity or best interests decisions

## ▶ Statutory DOLS framework (ie. MCA 2005 Sch A1)

## ▶ Independent Mental Capacity Advocate (IMCA)

- ▶ Serious Medical Treatment (s.37)
- ▶ Long-term change of accommodation (s.39)
- ▶ DOLS authorisations (s.39A)

# 1. Civil Legislation - Mental Health Act 1983

## ▶ Section 2 - Admission for Assessment :

An application for admission for assessment may be made in respect of a patient on the grounds that—

- (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
- (b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

## ▶ Section 135 - Warrant to search for and remove patients

(1) If it appears to a justice of the peace, on information on oath laid by an [F1 approved mental health professional], that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or
- (b) being unable to care for himself, is living alone in any such place,

the justice may issue a warrant authorising any constable F2 . . . to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part II of this Act, or of other arrangements for his treatment or care.

# Civil Legislation - Anti-social Behaviour, Crime and Policing Act 2014

## Power to grant injunctions

- (1) A court may grant an injunction under this section against a person aged 10 or over ("the respondent") if two conditions are met.
- (2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.
- (3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

- ▶ Safeguarding case involving Knowsley resident - see [Safeguarding adults who refuse support: how antisocial behaviour legislation may help](#) in *Community Care*
  - ▶ *Capacitous; risk of death from relative; unwilling complainant; refused respite*
  - ▶ *KMBC made unilateral without-notice injunction application*
  - ▶ *1 year final injunction granted with power of arrest*



## 2. Criminal Legislation

- ▶ Unfit to plead : hospital order - (Criminal Procedure (Insanity) Act 1964)
- ▶ Non-molestation/occupation orders (Family Law Act 1996)
- ▶ Stalking / Harassment offences (Protection from Harassment Act 1997)
- ▶ Female Genital Mutilation Act 2003
- ▶ (Wilful) Neglect and Ill-treatment (Mental Capacity Act 2005 s.44)
- ▶ Forced Marriage (Civil Protection) Act 2007
- ▶ Domestic Violence Protection Order/Notice (Crime and Security Act 2010)
- ▶ Controlling or coercive behaviour (Serious Crime Act 2015)
- ▶ Modern Slavery Act 2015
- ▶ (Protection from Harassment) Restraining Order (Sentencing Act 2020)
- ▶ Domestic Abuse Act 2021



# 3. Human Rights Act 1998 / European Convention on Human Rights (ECHR)

## 6 Acts of public authorities.

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if—
  - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
  - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- (3) In this section "public authority" includes—
  - (a) a court or tribunal, and
  - (b) any person certain of whose functions are functions of a public nature,

## 3. Human Rights Act 1998 / European Convention on Human Rights (ECHR) (cont.)

### 3 Interpretation of legislation.

- (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
- (2) This section—
  - (a) applies to primary legislation and subordinate legislation **whenever enacted**;
  - (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
  - (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

An example : *Ghaidan v Godin-Mendoza* [2004] UKHL 30

*Legal meaning of “surviving spouse” in Rent Act 1977 interpreted using HRA s.3 by judges to mean including same-sex relationships (departing from previous caselaw). The Act was later amended in the same year by legislation to make explicit.*

## 3. Human Rights Act 1998 / European Convention on Human Rights (ECHR) (cont.)

### Article 2 - Right to life

- ▶ Operational and systemic duties

### Article 3 - Prohibition of torture or inhuman or degrading treatment

- ▶ E.g. Foreign nationals with No Recourse to Public Funds (NRPF)
  - ▶ Human Rights assessment
  - ▶ Hong Kong BN(O) Visa - 'Destitution Funds'

### 3. Human Rights Act 1998 / European Convention on Human Rights (ECHR) (cont.)

#### **Article 5 - Right to liberty and security**

- ▶ E.g. Deprivation of Liberty Safeguards

#### **Article 6 - Right to fair trial**

- ▶ E.g. in safeguarding decision-making

#### **Article 8 - Right to respect for private and family life**

- ▶ Autonomy vs Safety

## 4. High Court's Inherent Jurisdiction

“the common law is the **great safety net** which lies behind all statute law and is capable of filling gaps left by that law, if and in so far as those gaps have to be filled in the interests of society as a whole.”

(Donaldson L. in Re F (Mental Patient: Sterilisation) [1990] 2 AC 1)

- ▶ A facilitative power ; not punitive e.g. creating DoL
- ▶ “The concept of the ‘inherent jurisdiction’ is by its nature illusive to definition”
- ▶ It's not ubiquitous and to be used sparingly

## 4. High Court's Inherent Jurisdiction (cont.)

- ▶ From **Re SA (Vulnerable Adult with Capacity Marriage)** [2005] EWHC 2942 (Fam) , Munby J.

Three situations where the Inherent Jurisdiction may be used :

Where a competent but vulnerable adult, who, despite having mental capacity is either :

1. Under constraint, or
2. Subject to coercion or undue influence, or
3. For some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.

## 4. High Court's Inherent Jurisdiction (cont.)

### Southend BC v Meyers [2019] EWHC 339 fam

1. 98 yr old Mr Meyers prevented from receiving care by the aggressive behaviour of his son 'KF' who lived with him.
2. Mr Meyers briefly entered respite during repairs to his property but later refused all offers of further respite.
3. Local authority sought declaration from High Court that it had done all it could do to discharge its duties and legal responsibilities towards Mr Meyers.
4. Mr Meyers and KF appeared to be struggling to cope. Mr Meyers had a number of hospital admissions and was contacting Care Line on a regular basis, reporting that he had not eaten nor had anything to drink.



## 4. High Court's Inherent Jurisdiction (cont.)

“the bungalow had no furniture and that Mr Meyers had neither sheets nor mattress and was effectively sleeping on wooden slats. For reasons which are unexplained, the glass panes from the patio doors had been removed leaving Mr Meyers' room exposed to the cold. Again, for reasons which are unclear but I suspect are a facet of KF's own psychological distress, the boiler had been dismantled and there was, accordingly, neither heating nor hot water. There was no cooker, kettle, cups, fridge. There was very little by way of food. There is evidence of these household items having been burnt in the garden. Mr Meyers had not eaten, he was dehydrated and had a urinary tract infection.....Mr Meyers was naked from the waist down. It has emerged, during the course of this hearing, that this was frequently the situation when the Local Authority had visited in the preceding months (see para 9 above). He was surrounded by flies. Under the bed and on the floor, there was food, general clutter, blood and faeces. This desperate situation, I have been told, had been observed on a number of visits. Mr Meyers had trouble sitting and this remained difficult even when he was provided with a pillow. He reported that he had neither food nor drink for two days. He was certainly dehydrated. The urinary tract infection had led to hallucinations. He had not been taking his antibiotics. He was deeply resistant to returning to the Care Home.”

## 4. High Court's Inherent Jurisdiction (cont.)

5. Judge stopped Mr Meyers from returning home:

*“the ambition here is not to confine Mr Meyers to the Care Home, but to protect him from the grave danger that living in the bungalow with his son has already been demonstrated to represent. To safeguard him, by invoking the inherent jurisdiction of the High Court, it is necessary to restrict the scope and ambit of his choices, not his liberty. It is important to highlight that there remain a range of options open to him. The impact of the Court’s intervention is to limit Mr Meyers’s accommodation options but it does not deprive of his physical liberty which is the essence of the right guaranteed by Article 5.”*

5. LA ordered to investigate legal means to remove KF from bungalow. Injunction made against KF from visiting father.
6. Court did not grant declarations sought.

# Legal Remedies : Issues/Gaps/ Problems

- ▶ MHA 1983 and personality disorders e.g. Emotionally Unstable Personality Disorder (“EUPD”) - treatability / threshold for detention
- ▶ Capacity and addictions e.g. drug and alcohol
- ▶ Coercive control / undue influence - insufficient evidence
- ▶ (absent) Powers of entry by social workers
- ▶ The law is only a means to an end (and both the “means” and “end” are dependent on available resources).

The background features a faint, light-colored image of a pair of scales of justice. The scales are centered and slightly faded. On the right side of the image, there are several overlapping, semi-transparent geometric shapes in shades of red and grey, creating a modern, abstract design.

# The End

Any questions?

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