

EDITORIAL

As with previous issues this issue reflects the diverse and rich range of topics and concerns that fall under the umbrella of, or are aligned with, mental health and capacity law. This time we offer three peer-reviewed articles and an Opinion piece, and a non-peer reviewed case comment. What has, however, struck me is that each of the contributions - from England, Wales, Scotland and Germany - essentially highlights issues of equality and non-discrimination in relating to rights enjoyment for persons with lived experience of psychosocial, intellectual and cognitive disabilities. Moreover, when we started work on this issue, we did not expect to be experiencing a global pandemic and one which has brought equality and non-discrimination into even sharper relief.

In the first article, *On Detaining 300,000 People*, Dr Lucy Series outlines the background to the Mental Capacity (Amendment) Act 2019 which introduces the new Liberty Protection Safeguards in England and Wales. These are due to come into force later this year (although may be delayed as a result of the coronavirus) and replace the much criticised Mental Capacity Act 2005 Deprivation of Liberty Safeguards designed to address Article 5 European Convention on Human Rights (ECHR) concerns over persons who are considered to lack capacity to consent to a deprivation of liberty. She argues, however, that the new scheme still fails to deliver adequate detention safeguards and answer the fundamental question of what are these safeguards actually for. Finally, Dr Series also highlights the very important and worrying issue that Coronavirus 'lockdown' measures may be unlawfully depriving many people in care homes and other care settings of their liberty.

The second article, *Empowering Young People*, authored by Professor Raymond Arthur and Drs Rachel Dunn and Nicola Wake present data collected using the Diamond9 mixed method approach and semi-structured interviews to evaluate sports and arts-based interventions within Secure Children's Homes in England and Wales. The results provide an original insight into this under-researched area of the criminal justice system and highlight the importance of adopting a child-centred approach to intervention models in order to engage young people, break down barriers relating to perceptions of authority and lack of individual autonomy.

Elisabeth Rathemacher's article *The State's Obligation to Protect Life and Health of Vulnerable Adults* covers a common issue for many jurisdictions of how to address the apparent differences in approaches to individual autonomy and protection in national constitutions, the ECHR and the Convention on the Rights of Persons with Disabilities (CRPD). These differences are particularly pertinent when it comes to considering justifications for forced medical treatment and hospitalisation to protect life and health of adults with serious mental illnesses who are refusing medical treatment. The matter is discussed in the context of the 2016 German Federal Constitutional Court *BVerfG* ruling. Interestingly, the article concludes that although the ruling appears to fly in the face of current understandings of the CRPD approach, it may in fact actually be CRPD compatible.

The active and meaningful involvement of persons with lived experience in the development, review and monitoring of mental health and capacity law and related rights is essential. In the Opinion piece *Engagement and Participation as a Part of The Mental Welfare Commission for Scotland*, Graham Morgan MBE, Engagement and Participation Officer (Lived Experience) at the Mental Welfare Commission for Scotland, provides an interesting account of the work of the Commission's Engagement and Participation Officers with lived experience as users and carers. The history of user and carer involvement in the Commission, as well as the reason for the employment of the existing workers and the creation of its department of engagement and participation, are discussed. Graham Morgan is also an Executive Team member of the current Scottish Mental Health Law Review chaired by John Scott QC.

Finally, in the case comment *Personal Independence Payments, Mental Distress and Uniform Policy in Determining Mobility Claims*, Zia Akhtar discusses the English High Court 2017 ruling of *RF v Secretary of State* which found that the 2016 Personal Independent Payment regulations discriminated against persons suffering from mental ill-health. The article also considers the anomalies and inequalities surrounding implementation and evaluation of eligibility for this social security benefit.

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We hope that you find this issue interesting and informative.

Jill Stavert