



Department  
of Health

From Norman Lamb MP  
Minister of State for Care and Support

Richmond House  
79 Whitehall  
London  
SW1A 2NS

Tel: 020 7210 4850

Mr A Walker  
Senior Coroner  
North London Coroner's Court  
29 Wood Street  
Barnet  
EN5 4BE

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Dear Mr Walker,

Thank you for your letter following the inquest into the death of Dean Elie. I was sorry to hear of Mr Elie's death and wish to extend my sincere condolences to his family.

Mr Elie had paranoid schizophrenia and type 2 diabetes mellitus. In January 2012 Mr Elie attended a diabetic review with his GP. Following this he missed a number of appointments with his GP for medication review, a diabetic clinic review and for a blood test. Mr Elie died in February 2013.

At the inquest concerns were raised that there was no way of ensuring Mr Elie attended the reviews with his GP. Mr Elie had mental capacity and therefore could not be detained under the Mental Health Act. Even if he had been detainable, the Act does not in any case contain provision to compel a patient to take treatment for a physical condition.

You ask us to consider further legislation to deal with this point.

I note that you raised a similar concern in an earlier Regulation 28 case concerning the death of Duncan Lockhart (our ref: 897899). We responded on 18 December 2014, and our position has not changed.

Current mental health legislation exists in the form of the Mental Health Act 1983 (MHA), and the Mental Capacity Act (MCA). The MHA (which was substantially amended in 2007) is the law in England and Wales that permits people with a 'mental disorder' to be admitted to hospital, detained and treated without their consent – either for their own health and safety, or for the protection of other people. People can be admitted, detained and treated under different sections of the Mental Health Act, depending on the circumstances. The term 'sectioned' is used to describe

a compulsory admission to hospital. In addition, people can be put on supervised community treatment, following a period of compulsory treatment in hospital. Someone on supervised community treatment is called a 'community' patient and is subject to a 'community treatment order' (CTO).

The decision to detain someone in hospital or to put someone on supervised community treatment is taken by trained doctors and other mental health professionals approved to carry out certain duties under the Act and follow specific procedures. The MHA also makes provision for a court or judge to make an order to admit an individual to hospital.

Section 1 of the MHA defines mental disorder as “any disability or disorder of mind”, a definition which applies throughout the Act. Medical treatment for mental disorder is defined as “medical treatment which is for the purpose of alleviating or preventing a worsening of a mental disorder or one or more of its symptoms or manifestations”. This can include nursing, psychological intervention and specialist mental health rehabilitation and care.

The “Code of Practice Mental Health Act 1983” (para 23.4) further sets out that medical treatment under the Act, “includes treatment of physical health problems only to the extent that such treatment is part of, or ancillary to, treatment for mental disorder (e.g. treating wounds self-inflicted as a result of mental disorder). Other than this, the Act does not regulate medical treatment for physical health problems.”

There are no plans to extend the MHA to compel people to accept treatment for their physical healthcare needs. The MCA is designed to protect people who cannot make decisions for themselves or lack the mental capacity to do so. Under the Act, a person is presumed to make their own decisions “unless all practical steps to help him (or her) to make a decision have been taken without success”. People should be assumed to have capacity unless it can be established that they lack capacity.

Where people have mental capacity, they can make decisions for themselves, even if their decisions are considered “unwise”. This is their right under the Act, regardless of any other medical conditions from which they might suffer.

A person lacks capacity if they are unable to make a decision in relation to a matter at the material time because of an impairment of, or a disturbance in, the functioning of the mind or brain. Being unable to make a decision means that the person is unable to understand information relevant to a decision, to retain that information, to use or weigh that information as part of the decision making process and to





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communicate that decision. Lacking capacity is not based on the ability to make a wise or sensible decision.

The same test applies to people who are suffering from a mental disorder and people who are not – the issue is their capacity to make a decision. Persons with capacity and a mental illness are as entitled as any other citizen to make their own choices as to the medication they take – they have no less right to make their own decisions than those who are not suffering from a mental disorder.

People who do not have a mental illness can equally make unwise decisions, and the MCA makes it clear that people should not be treated as unable to make a decision merely because they make an unwise decision.

If it is established that a person truly lacks capacity to make a decision, then the MCA allows others to take decisions in that person's best interests. Such decisions can be made by a family member, a friend, a doctor or an independent mental capacity advocate. The MCA expects the decision-maker to consider the person's expressed wishes and feelings, beliefs and values before arriving at a decision in their best interests. A balance between taking appropriate action to prevent harm to the individual and doing what is most likely to improve the individual's state of wellbeing should also be considered.

Whilst there are no plans to extend the scope of current mental health legislation to ensure mental health patients with capacity take prescribed medication for physical illnesses, health and care services have a duty to ensure adequate support for the individual. This means that all relevant information must be provided to individuals so that, for example, they fully understand the effects of not taking medication. If, at this point, a person does not comprehend the nature of the decision to be taken, then a formal capacity assessment should be undertaken. If appropriate, decisions relating to the care of that person would then be taken by others acting in the person's best interests.

I hope that this response is helpful and I am grateful to you for bringing the circumstances of Mr Elie's death to my attention.

  
  
**NORMAN LAMB**  
