

Welcome to the session:



# AMHP Legal Update 1 (April Edition)



**Please be aware this is not a webinar!**

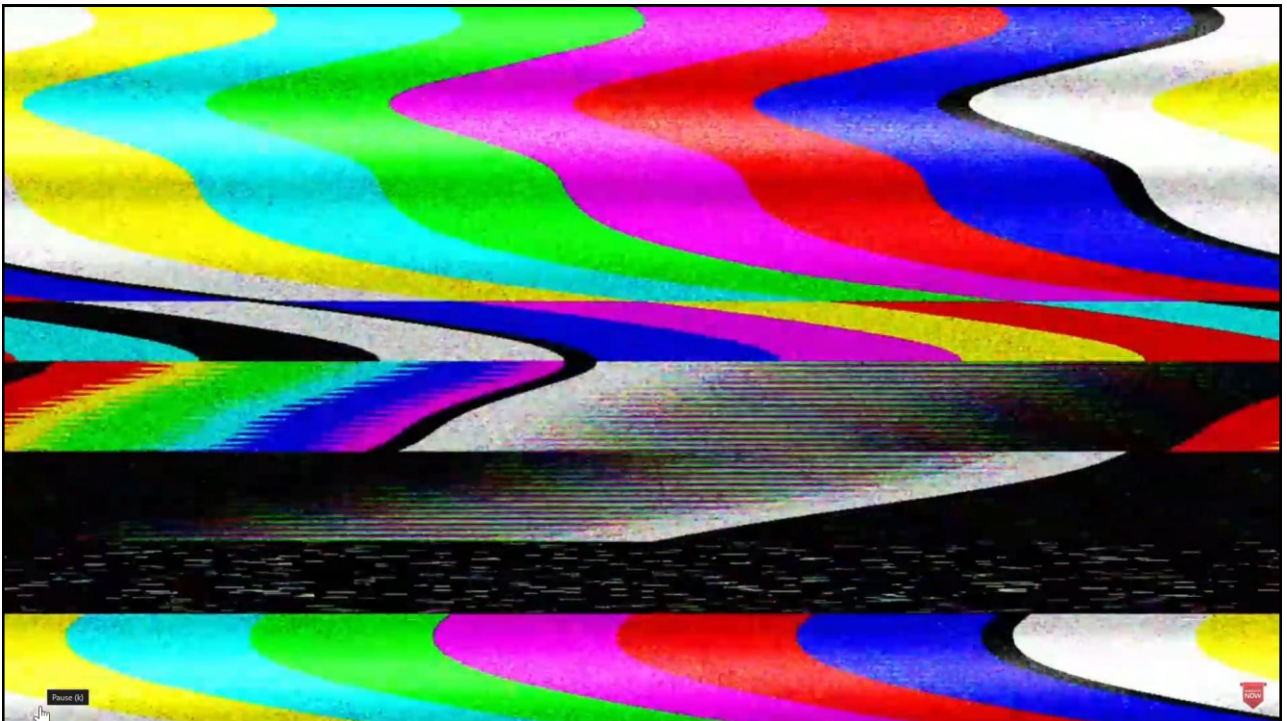
Please check your camera & mic are working and you are in a quiet space without distractions.

Please make sure you have the materials to hand; they are attached to your Outlook Calendar or Teams diary entry for today.

If your Wi-Fi isn't great and struggles when your camera is on – Close down any other Windows or Apps that aren't critical to the session.

Now you can sit back and enjoy the music, or go and grab a brew, we'll make a start at 9.30 / 13.30.

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# AMHP Legal Update 1

## (April 2026 Edition)



McGill.

Last Updated: *April 2026*



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**This is a peer-led adult learning experience; therefore, you will get out of it what you, and your fellow delegates, put into it.**

If you can't give this the time it needs, please let your facilitator know and come back another time when you can.

- **Your Expectations of Us:**  
*Guide, facilitate, inform and educate (on the tech as well as the content).*
- **Our Expectations of You:**  
*Take part - both in the room and in the breakout groups. Cameras are not optional; they are a must unless it has been agreed and is for a very good reason.*
- **Your Expectation of Fellow Participants:**  
*To engage in the room and the group work and be respectful and professional in interactions.*



*Please don't sabotage the learning for your colleagues, disengaging is disrespectful and impacts on others!*

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- ✓ If you can, please have your **cameras on!** You wouldn't come to training with a bag on your head!
- ✓ Googling answers is fine, doing your shopping isn't!
- ✓ Please **listen, engage and ask a question if you have one** – You can shout out, put your hand up or use the chat. Use the @ to tag one of us directly.
- ✓ **Look after your own health & safety**, as we're not in your house! We have a contact form in case of emergencies (which will be in the chat in 2 ticks).
- ✓ Usual rules apply to confidentiality. If we have any safeguarding or fitness to practice concerns, we will discuss this with you.
- ✓ No smoking on screen – vaping allowed subject to **your** location and organisational rules.
- ✓ **If everything freezes** – breathe, leave, reboot and then come back the way you came in at the start!



**EMERGENCY CONTACT**

Name \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

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## Remember, you never know what someone else might be struggling with at work, at home...in their own heads.

- Be kind to yourselves, each other and us.
- Be curious but respectful, be open to feedback & discussion.
- Be mindful of language and terminology you use.
- We play music in the breaks for a reason. If you would like to know why, please ask. If you would prefer not to listen to music during the break, please turn us down.
- The return time is always displayed on the break slide.



**This is intended to be a safe space - if you need a breather, additional support or other self-care – do it!**  
*Just let us know what you need (we have extra rooms / people available if we need them).*

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## Who's Milo?

Milo is our brown-and-white pup with a purple studded collar and a cheeky grin. He's not just adorable—he's part of our training culture.

## Let Milo Out?

When Milo appears near a door, it's your cue to take a break, stretch, or reset.



## Why Milo?

- Symbol of Curiosity & Care**  
 Milo reminds us to stay curious, kind, and grounded—especially when things get intense.
- Spot Milo Challenge**  
 You'll find him subtly placed in our 3D plasticine visuals. It's a fun way to stay engaged and take a breather when screen time runs long.

How many Milo's can you find?

A mini Mars bar for the closest.



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## It's a Resource Pack!!

*We will not be using all the slides!*

The learning will come from activities and discussion. The pack is there to refer-back to, and to offer further information, links and resources to support today's session.

Rabbit hole warning – wherever you see this icon in the materials there is the opportunity to disappear down a rabbit-hole. *Don't say we didn't warn you!*



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# The Session Activity Link

## Please Login to the DCC-i Portal

**Click Here**

### April 2026 – BCC AMHP Refresher Programme

Enter your details and the session password to join.

**First Name**

**Last Name**

**Email Address**

**Session Password**

Ask your trainer for the session password.

**Join Session →**

SESSION

April 2026 – BCC AMHP Refresher Programme

Trainer: McGill · Wednesday 15 April 2026

Welcome, DAISY [Leave session](#)

YOUR SESSION TOOLS

Legal Literacy Challenge

Launch ↗

Mental Health Act 2025 Hub

Launch ↗

Section 13 - Interviewing Exercise

Launch ↗

Section 13 Exercise - Vinny's Assessment

Launch ↗

The Assumption Trap (MH Edition)

Launch ↗

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## Learning Outcomes



- ✓ An understanding of recent developments in legislation and Case Law, and the impact of these on AMHP practice.
- ✓ The ability to explore and reflect upon practice in relation to statutory duties and precedents.
- ✓ The opportunity to reflect on section 13 and a rights-based approach.
- ✓ Increased awareness of best practice recommendations and interventions when working with multiple complexities.
- ✓ Increased knowledge of the learning from PFD, enquiries, and research in relation to what works in practice and the impact of intersectionality.
- ✓ The opportunity to explore local issues and apply learning and best practice recommendations to these issues.

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## Group Exercise: *AMHP Practice – Themes & Issues*



In small groups, consider the following:

- What have been the themes and issues in AMHP practice over the last 12 months and how have you negotiated them?
- Reflecting on a case where you had to balance the persons' safety with the principle of least restriction.

*How did you explore alternatives to detention? Were there any barriers, and how did you address them?*

- Considering a time when your decision-making was challenged or could have been challenged.

*How did your record-keeping and communication support your position? What improvements could strengthen your practice going forward?*



**Don't forget to nominate someone to feedback (*no tumble-weed (aka awkward silences) when we all come back together to feedback!*)**

## Quick Overview of Changes (1): *Mental Health Act 2025 (headlines)*



- **Section 2 & 3 Detention:** Now requires evidence that “serious harm may be caused to the health or safety of the patient or another person” and that detention is necessary given the nature, degree, and likelihood of harm.
- **Section 3:** Detention for treatment only for “psychiatric disorder” (not autism or learning disability alone), duration of detention – 3 months, 6 months, annual.
- **Section 20:** Renewal of detention must meet new, stricter criteria.
- **Section 17A:** Community Treatment Orders (CTOs) also require demonstration of risk of serious harm.

### **Renewal Criteria (s20)(Post-2025) criteria are stricter and more specific:**

- The patient is suffering from a psychiatric disorder of a nature or degree which makes it appropriate for them to receive medical treatment in hospital.
- Serious harm may be caused to the health or safety of the patient or another person unless the patient receives medical treatment.
- It is necessary, given the nature, degree, and likelihood of the harm, for the patient to receive medical treatment.
- The necessary treatment cannot be provided unless the patient continues to be detained.
- Appropriate medical treatment is available for the patient.



## Quick Overview of Changes (2): Mental Health Act 2025 (headlines)



### Autism & Learning Disability:

- No longer a basis for detention under Section 3 unless accompanied by a psychiatric disorder or “serious behavioural consequences” (i.e., abnormally aggressive or seriously irresponsible conduct).
- New duties for care, education, and treatment reviews for people with autism or learning disability detained under the Act.
- Integrated Care Boards (ICBs) must maintain registers of people at risk of detention and commission services to reduce unnecessary admissions.

### Nominated Person – Replacing Nearest Relative:

- Patients can appoint a Nominated Person (NP) to exercise rights and be consulted on key decisions (admission, discharge, transfer, CTOs).
- Court can remove or replace an NP if not acting in the patient’s best interests.
- AMHPs must consult the NP before making applications for admission or guardianship, unless impracticable or would cause delay.
- NP can object to applications; if so, stricter criteria for proceeding apply.

### New Power & Criteria:

The AMHP can override an NP’s objection only if they can evidence and certify a risk of dangerous behaviour and must document this decision.

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## Quick Overview of Changes (3): Mental Health Act 2025 (headlines)



### Police & Criminal Justice Reforms:

- Police stations and prisons removed as places of safety for people detained under the Act (except in limited circumstances).
- New time limits for transfer of prisoners to hospital (28 days from referral).
- **Deprivation of liberty conditions:** Tribunals and Secretary of State can impose these only if necessary for public protection.

### Independent Mental Health Advocates:

- (IMHAs) Expanded eligibility: All informal patients now qualify for IMHA support.
- Duties on hospitals and local authorities to notify IMHA providers and ensure patients are aware of their rights.
- IMHAs must be involved in key decisions and reviews.

### Consent, Capacity, and Treatment

- **Capacity-based approach:** All references to “capacity to consent” now align with the Mental Capacity Act 2005.
- **Treatment decisions:** Must consider alternatives, patient’s wishes, and views of the NP, IMHA, and others.
- **Second Opinion Appointed Doctor (SOAD):** Expanded role, especially where treatment is given without consent or conflicts with advance decisions
- **Advance Choice Documents:** NHS and ICBs must support patients to create these.

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## MHA 2025: *Want to know more?*



Explore the MHA 2025 Hub & Login and book onto a Session.

**YOUR NEXT SESSION**  
 Wednesday 15 April 2025  
**AMHP Workshop: Section 13 in Practice**  
 YOUR NEXT STEP IN THE PROGRAMME  
 9:30 am - 9:30 am ✓ Please book your place to confirm your attendance. [View details →](#) [Book your place →](#)

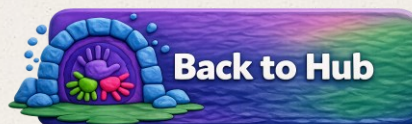
**FUTURE SESSIONS**  
 Upcoming sessions you may want to plan for

Date	Session Title	Details
15 Apr 2026 1:30 pm - 4:30 pm	AMHP Legal Update 1	<a href="#">Details →</a>
24 Apr 2026 9:30 am - 12:30 pm	AMHP Peer Supervision Group	<a href="#">Details →</a>
12 May 2026 9:30 am - 12:30 pm	Mental Health Act 2025 Update Clinic	<a href="#">Details →</a>

**Practice Library**  
Reference materials and programme guides

**Interactive Tools**  
Practical tools for session delivery

[Click Here](#)



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## Quick Caselaw Updates: *From the Upper Tribunal*



- Guidance from the tribunals on capacity assessments where capacity fluctuates.  
[KH, AH v Nottinghamshire NHS FT & Wiltshire MH NHS Trust \[2025\] UKUT 128 \(AAC\)](#)
- Is appropriate treatment really available if the hospital has the resource but is not willing to provide it?  
[JB v Elysium Healthcare & Secretary of State for Justice \[2025\] UKUT 009 \(AAC\)](#)



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## Case Law Update: Key Themes



- [DB v Humber Teaching NHS FT Trust \[2026\] UKUT 57 \(AAC\)](#)
  - The tribunal had been wrong to believe that a restricted patient must either be detained in a hospital or discharged into the community.
  - Detention cannot be a condition of discharge. But a patient may remain in the hospital, or later be admitted, informally during a conditional discharge.
  - This possibility is one of the factors that may be taken into account when deciding whether to discharge a patient conditionally.
- [WM v Bradford District NHS FT \[2025\] UKUT 396 \(AAC\)](#)
  - The tribunal had been wrong to believe that it could not make a statutory leave recommendation in relation to a patient who already had some s17 leave of absence.
  - The purpose of recommendations is to assist in identifying the best way forward for the patient. There are no statutory words limiting the discretion, and to do so would '*produce an absurdity*': it would be unworkable and impracticable to limit the power to recommend different types of leave, which are appropriate at different stages of treatment and can have different purposes.

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## Case Law Update: (1)

### [Nottinghamshire Healthcare NHS Foundation Trust v MC \[2025\] EWHC 920 \(Fam\)](#)



High Court judgment concerning whether it was lawful not to impose physical health treatment under s.63 Mental Health Act 1983, despite the patient being detained and the treatment falling within the s.63 scope.

- MC was a restricted patient detained under s37/41 MHA and held in Rampton Hospital.
- He had diabetes but persistently refused physical health treatment.
- His refusal created a risk of physical deterioration and premature death.

The Trust sought a declaration under the High Court's inherent jurisdiction that it would be lawful **not** to impose treatment to save his life.

The High Court declared it was lawful **NOT** to force physical treatment, even though: MC was detained, and

- The proposed physical health intervention could fall within s.63 MHA (treatment for a symptom/manifestation of mental disorder).

#### **The judgment emphasised:**

- s.63 is a power, not a duty – clinicians may treat without consent but are not compelled to.
- The Court will not override a responsible clinician's professional judgment where compulsion would be clinically inappropriate or harmful.
- Best-interests, human rights, and proportionality considerations are central.

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## Case Law Update: (2)

### Nottinghamshire Healthcare NHS Foundation Trust v MC [2025] EWHC 920 (Fam)



#### Core Legal Question

- Is an NHS Trust legally required to compel life-saving physical healthcare under s.63 MHA when a detained patient refuses it?

**or**

- Can the Trust adopt a clinically-led, non-coercive approach even if this carries a risk of death?

#### Court's Decision

The High Court declared it was lawful NOT to force physical treatment, even though:

- MC was detained, and
- The proposed physical health intervention could fall within s.63 MHA (treatment for a symptom/manifestation of mental disorder).

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## Case Law Update: (3)

### Nottinghamshire Healthcare NHS Foundation Trust v MC [2025] EWHC 920 (Fam)



#### 1. "Can" is not "must" under s.63

s.63 creates a lawful basis to treat - but does not impose a legal duty to use compulsion.

#### 2. Forced physical treatment for detained patients demands a high justification threshold.

Courts will not support compulsion simply because a patient is detained.

#### 3. Capacity is not determinative

Under s.63, capacity is not the key test, but best-interests reasoning and proportionality still apply.

#### 4. Respect for autonomy within secure settings

AMHPs should recognise the importance of patient autonomy, particularly in high-security environments.

#### 5. Document everything

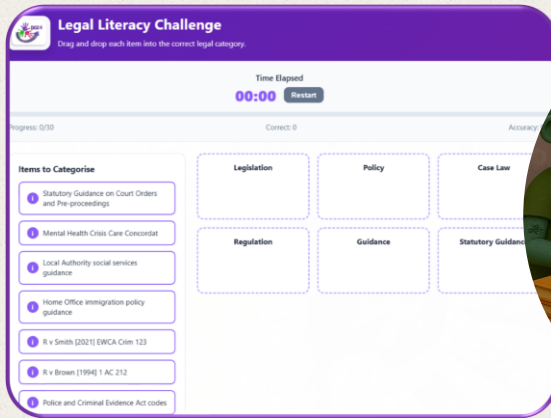
AMHPs must record:

- Rationale.
- Human-rights analysis.
- Why less restrictive options are preferred or insufficient.
- Multi-agency consultation.

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# Group Exercise: *Legal Literacy Challenge*



Don't forget to nominate someone to feedback (or agree to do it together, but no tumble-weed (aka awkward silences) when we come back together please!)

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# COFFEE BREAK!



It's time to...

- **Blink!**
- Hydrate.
- Stretch.
- Get yourself another brew.
- Let the dog out.\*
- Let the dog back in.\*



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## Update: *Nearest Relative Refresher*



**Local Government & Social Care Ombudsman (LGSCO) and Health Service Ombudsman (PHSO) Findings relevant to the NR Role.**

- **North Somerset Council (Oct 2024)**  
Found at fault for failing to inform a Nearest Relative of their right to oppose a Section 3 detention. Avon & Wiltshire NHS Trust was also criticized for not recording reasonable adjustments under the Equality Act.
- **Durham CC & NHS Trust (Jan 2025)**  
Fault found for discharging a Section 117 patient without involving the NR, despite the patient's consent.

### Policy Bristol Briefing (Oct 2024)

A major research briefing led by Professor Judy Laing (University of Bristol) highlighted the emotional burden and lack of support experienced by Nearest Relatives.

Recommends clearer legal guidance and co-produced resources to improve legal literacy and access to rights.

The CQC's review following the Valdo Colacane case also emphasized the need for better collaboration with families during crises.

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## Ombudsman Case: *Trafford Council 2024*



### **Background to the complaint:**

- Mr Y attended hospital and after initial assessment was referred to the AMHP service for assessment under the MHA.
- Triage staff also referred him for brain scans to rule out neurological conditions that might be causing his symptoms – hospital refused the referral as it considered scan could take place after admission to psychiatric ward.
- Doctors known to Mr Y not available, AMHP contact alternative s12 doctor to undertake assessment.
- AMHP Considered criteria for detention had been met and there were no less restrictive options available.
- Dr X identified as Mr Y's NR and left a voicemail by the AMHP.

### **Findings of the Complaint:**

- Acknowledged that Dr X was left unclear on the process.
- The AMHP should have followed up her message re: her NR rights.
- The Council should have ensured details were provided in writing.
- The LA apologised.

*"The failure to provide sufficient details about the rights of the nearest relative will have delayed Dr X's ability to apply for Mr Y's discharge. But I cannot say, even on balance, what the outcome would have been if Dr X had been aware of her rights sooner."*

*(para 30)*

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## Revisiting Nearest Relative: *Separated Couples*

### What the Law says:

#### Section 26(5)(b) — Disqualification of Spouse

If a spouse or civil partner is:

- Permanently separated (by agreement or court order).
- Has deserted or been deserted by the patient.

...then they are disregarded as NR and treated as if dead for the purposes of NR identification



### The reality of the world:

- When is a couple no longer a couple?
- When are they separated? and what is that agreement?
- Is spouse, partner and cohabiting the same thing?

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## Revisiting NR: What is a Couple? *Kimber v Kimber [2000] 1 FLR 33*

Although primarily a family law case concerning maintenance payments after divorce. The case explored whether a woman was cohabiting with a new partner in a way that would affect her entitlement to maintenance from her ex-husband.

The court needed to determine whether the relationship constituted “living together as husband and wife”.

### Kimber Factors:

Non-exhaustive list of factors to assess cohabitation. Now widely used to determine whether someone qualifies as a cohabiting partner under the Mental Health Act:



- **Shared residence** – Do they live together in the same household?
- **Financial arrangements** – Do they share bills, rent, or mortgage?
- **Stability and duration** – Is the relationship stable and long-term?
- **Sexual relationship** – Is there an intimate relationship?
- **Public perception** – Do they present themselves as a couple?
- **Domestic arrangements** – Do they share chores, meals, and routines?
- **Children** – Are there shared children or parenting responsibilities?

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# Revisiting: Nearest Relative (NR) Separation



## What should the AMHP to Consider?

- ✓ What “NR separation” means under the MHA framework.
- ✓ Situations where NR involvement creates conflict, risk, or obstructs assessment.
- ✓ Legal criteria for displacing or overriding the NR.
- ✓ When NR input may be inappropriate or unsafe (e.g., coercion, safeguarding, undue influence).
- ✓ Human rights considerations – privacy, autonomy, proportionality.
- ✓ AMHP responsibilities: consultation, recording rationale, and defensible decision-making.
- ✓ Managing disputes: communication strategies and escalation route.

# Group Exercise: The Obligatory NR Scenarios



Read the **scenarios provided** and using the Kimber Factors decide in your groups who is the NR in each case.

What difference would / will the introduction of the NP role make in these scenarios?



**Don't forget to nominate someone to feedback (no tumble-weed (aka awkward silences) when we all come back together to feedback!)**

# Welcome to the Birmingham AMHP CPD Hub



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# Welcome to the Birmingham AMHP CPD Hub



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## Post-Session Reflection Points:

*How does what we know inform what we do?*

- What is / are your key learning point(s)?
- What else do you need to find out, and how will you find it out?
- How will you use the learning from today in your practice?



**FEEDBACK**



**Thank You!**

[Click here](mailto:crew@dcc-i.co.uk) **crew@dcc-i.co.uk**

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