

# Insight

CASE MANAGEMENT MAGAZINE

MARCH 2024 / ISSUE 01

THE  
 **BABICM**  
MEMBERS'  
MAGAZINE

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## LEGAL BOUNDARIES AND THE SEXUAL OFFENCES ACT

The implications in  
supporting clients

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## DELVING INTO TECH

Capacity, Security,  
Independence  
and Gaming



Brain injury and  
**The Criminal  
Justice System**

A 360 Degree View



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## Brain Injury and the Criminal Justice System

A 360 Degree View

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**Insight**





# Chair's Welcome

BABICM Magazine, Spring 2024 Issue

I hope your year has started well. Spring is in the air as I write and is making me reflect on how many colleagues have mentioned recently their longing for longer warmer days and that uplifting sense of new beginning that this time of year often brings.

At BABICM we are feeling it too with our new-format magazine and its new name – so I am delighted to welcome you to Case Management Insight - or Insight, as we imagine we'll be known. Beyond the new name and cover, you will find relevant content for those involved in case management with a fresh and easy to navigate layout.

I would like to welcome our new editor, Deborah Johnson, and the newly formed Magazine Advisory Group (MAG) consisting of members who will support and advise on up to date and pertinent content for each issue. We also have a team of copywriters behind the scenes. Turn to page 6 to see more about the people involved in producing your quarterly magazine.



I think it is important to make sure we regularly provide you, our members, with useful information selected and tailored to interest those working in the world of case management with the most complex and life changing injuries.

In this issue you will find updates on professional matters relating to IRCM and the much-anticipated opening of registration, family care payments, a reminder of what you can get from your BABICM membership and how we are doing with our drive to improve equity and belonging at BABICM. As usual, we showcase a range of our fantastic recent events – a reminder for those who attended and a roundup of content if you missed any of them.

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/ I hope you will enjoy the articles and information inside this issue of your magazine and that this publication continues to grow in its relevance to you and your work. /

Our Case Management Specialisms series continues, and I think you will enjoy the articles we have gathered for you around the theme of the criminal justice system from a number of different perspectives. Meanwhile, this packed issue contains information about our recent work to support you, the membership as well as our diary of upcoming educational events, including our ever-popular annual conference in Coventry in June.

I hope you will enjoy the articles and information inside this issue of your magazine and that this publication continues to grow in its relevance to you and your work. I look forward to hearing what you think of the new style and knowing more about what you want from your magazine so that it can continue to develop and enhance its usefulness to you.

Let us have your feedback and ideas  
[editor@babicm.com](mailto:editor@babicm.com).



Introducing  
Case Management  
**Insight**

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By Deborah Johnson

In such a wide-ranging and fast changing area as case management, insight and relevant information to help those working within it can be extremely helpful.

The BABICM members' magazine, which has grown so much over the past few years, has played a key role in helping to collate and share such content.

Growing in size almost each issue, the magazine tackles a host of pertinent issues, working with leading names in their field to deliver analysis, while also updating on recent and upcoming BABICM events.

Such is the progress the title has made in recent times that it was felt we had reached a point where we could transcend into a standalone publication – one with its own name and identity, while still being very much part of BABICM and its offering to members.

I was delighted to be appointed to lead this project. I have worked in media and publishing for over 20 years and my passion lies in creating content and publications which are excellent in quality, but most importantly meet the needs of their audience.

With the magazine having been developed so brilliantly by Janette Mason, who oversaw every aspect of its creation in addition to her role as Director of Operations, there were excellent foundations to build on.

Supported by the Magazine Advisory Group – Harvinder Kaur, Ben Needham-Holmes and Daniel Thomas, with invaluable additional insight from Janette and Vicki Gilman – we have created what we hope and believe is an excellent identity for this magazine.



Case Management Insight, or Insight as we imagine it will be known, will still contain the array of insightful and useful content, and we will look to develop our range of features and platforms as we go forward. The introduction of the 360 Degree View platform, for example, will allow us to explore issues in greater detail than ever before, bringing together a range of perspectives to share different viewpoints to stimulate debate and start conversations.

We are supported by a number of excellent copywriters - Jay Chowdhury, Ingrid Espinosa, Freya Masters and Scarlett Parr-Reid - whose work is contained in this issue and will feature going forward. Their insight as science and medical communicators will add greatly to the information we can offer to members.

I am grateful for the time and enthusiasm our Magazine Advisory Group and copywriters have invested in this project and am very proud of what we have created. Many thanks too to our designer, Sophie Dinsdale, for her creativity and commitment in bringing our ideas to life.

But what is very important to us all is that this is a two-way process, and interaction with the BABICM membership is vital to this being a success. You know what you want to read and what is useful and relevant to your work, and we really want to know whether we are achieving this.

We would encourage and very much welcome feedback and interaction – please do get in touch and let us know what you think of Insight, what you'd like to see, what we could be doing differently or better.

We look forward to hearing from you  
[please email me at editor@babicm.org](mailto:editor@babicm.org)

## Meet our writers



**Jay**  
Chowdhury



**Ingrid**  
Espinosa



**Scarlett**  
Parr-Reid



## IRCM Update

By Carole Chantler

Thanks to BABICM for this opportunity to tell you a bit more about the Institute of Registered Case Managers from my perspective. I took over as Chair last year, but I've been part of the project that led to IRCM back since it first started in 2010, so it's fair to say it's something I'm very committed to and have some knowledge of this project.

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Back in 2010 members of BABICM, CMSUK and VRA were asking for a professional pathway and standardised education for the profession. At the time we didn't realise that an accredited register would be the end point nor that the journey would be so long and complicated. But I along with many others who have been part of IRCM's development believe in the importance of what we are doing, and I'm committed to seeing it come to fruition.

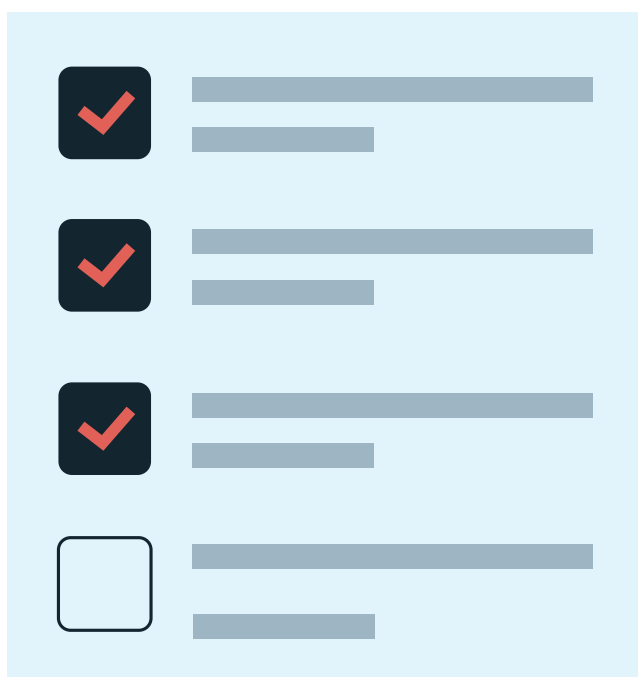
People ask why are you doing this, why have a register of case managers? Having a register matters; for the public IRCM is committed to protecting, for us as individuals and for the profession as a whole. I'm a nurse by background and you wouldn't hire a nurse who wasn't registered, would you? So why should people have to commission a case manager unable to have confidence they meet relevant publicly recognised standards?





The desire for a step forward to professionalisation for the industry was not just from case managers but also from those working with and commissioning case managers. Members of the IRCM Supporters Community which includes over 80 organisations have committed that “when commissioning, recommending or employing case managers, to endeavour to use the services of registered case managers or those working towards registration whilst being supervised by registered case managers.” I think this demonstrates the need is there to have a register.

Perhaps one day we’ll move towards regulation rather than registration for case managers but right now there is no government appetite to create more protected titles. Becoming a register accredited by the Professional Standards Authority, the same organisation who oversee ten health and care regulators including, HCPC and GMC, will not only give us credibility now but it means case management is well placed should this change. PSA rightly have very high standards for accredited registers and much of how we operate will echo the regulator’s work with standards, a public register and a process for removing case managers from the register when appropriate.



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We’ve had a lot of questions about how IRCM will deal with specialisms and at least initially it won’t directly. We need to walk before we can run, and this may well be something for the future as well, but not now. However, scope of practice underpins all our work, and our standards state “the case manager will be accountable for maintaining and working within their scope of practice”. We’ve created guidance on scope of practice to help people.

Another area that people have asked a lot about is trainee case managers. Until case managers have gained enough experience they should be working under the direct supervision of an experienced case manager.

Once the register opens replace “experienced” with “registered”. The case management competency framework provides useful information for pre-registrants who of course should also be working in line with the standards of proficiency.

What is meant by a trainee or assistant case manager can vary a lot from one organisation to another. Those case managers in training who carry a caseload independently with some supervision over and above normal professional supervision and have an agreement with their supervisor or employer that they have an agreed development route towards becoming an autonomous case manager may be considered to be a ‘Pre-Registration’ case manager (a trainee CM), as described in the IRCM Competency Framework.



/ If you have a question around an aspect of eligibility that hasn't been covered, please get in touch. /

They will need evidence of their development and its duration through a CPD plan, and/or CPD logs. Any experience whilst on this route could be counted towards the experience requirement for an application for IRCM registration.

Those who practice as a case manager's assistant where the caseload is actually carried by the case manager and some clients are allocated for specific aspects of their case management or other supporting activity, would not be able to count this towards the experience requirement. In this instance, the work is not being carried out as part of an agreed plan for training or transitioning towards independent or autonomous practice as a case manager.

It isn't possible to answer individual questions about everyone's situation at this stage definitively as we need to focus our efforts on completing the final key steps towards opening registration. However, we regularly update the FAQ on our website and where appropriate refine the criteria or guidance that's in development to add clarity. If you have a question around an aspect of eligibility that hasn't been covered, please get in touch.

You can find all our standards, competency framework, guidance and other documents on our website and they along with the FAQ, are really useful resources.

[www.ircm.org.uk](http://www.ircm.org.uk)



Carole's professional background is nursing, critical care. She commenced her case management career in Canada working in travel, private health and government health care case management.

In the late 90s she set up a case management company in the UK dealing with personal injury and has worked in this arena ever since. She obtained her Masters in Case Management in 2011. Currently she has her own company where she works with all parties, advising on case management, statutory provision and rehabilitation.



# Optimising Care:



# Case Management in an Evolving Landscape?

**25th April 2024 | Ambassadors Bloomsbury, London**

Clients and families across the UK are feeling the impact, costs to manage the issues and plug gaps are rising. The negative welfare, health, rehabilitation, social and economic consequences can be hard to precisely define but case managers, deputies and those involved in personal injury litigation are increasingly aware of the need to respond to the problems and improve this fundamental contributor to a well lived life of quality and meaning.

**BABICM Competencies covered:**

This day will be relevant to all BABICM competencies, particularly:

- 2: Strategy
- 3: Coordination and Management
- 4: Monitoring
- 5: Duty of Care

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Recruiting and retaining support and care for case-managed clients has become ever more challenging in the past few years. This mirrors the wider national picture and it is clear that the assistance of case managers, additional resources on top of statutory provision and opportunities to be creative within some packages do not solve all of these problems. A large number of BABICM members contributed detailed information on their experiences of the care crisis in 2022 and 2023, giving a rounded view of how the mounting crisis is impacting. This has been shared in a range of articles and webinars and written up for academic publication.

[www.babicom.org/events](http://www.babicom.org/events)

# BABICM Annual Conference 2024


## Great Expectations: Spotlight on Clinical Excellence

18th & 19th June 2024 | Coventry Building Society Arena

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Our annual conference for 2024 offers a packed programme supporting the practice of case management and benefit to clients.



**Day one** will take a look at important and sometimes overlooked clinical aspects for injured clients and consider evidence-based approaches to support progress and recovery.

**Day two** will focus on overarching themes and skill development for case managers and their practice.

As always, this conference will deliver a range of exciting and thought-provoking topics delivered by outstanding speakers. The event will appeal to case managers, therapists, deputies and those involved in personal injury and medical-negligence litigation. We will showcase a diverse range of providers of equipment and services in the exhibition hall and attendees will have many opportunities for networking with friends and colleagues across the sector. This is the conference not to miss in 2024!

[www.babicom.org/events](http://www.babicom.org/events)



# Out and About

The Latest from BABICM HQ



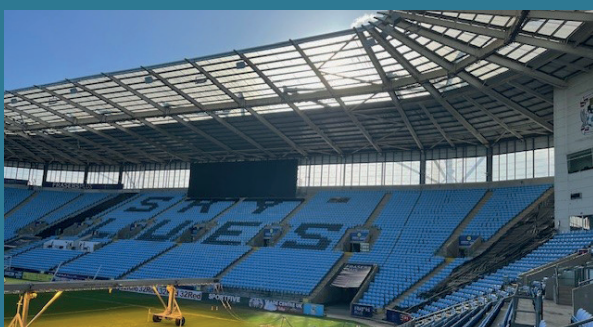
## AVMA Conference

Abbie Udall and Vic Leever from BABICM Council were at the AVMA conference in November



## Care Crisis

Vicki Gilman to speak at the Slater and Gordon event in Manchester on the Care Crisis on the 7th March 2024.



## BABICM Annual Conference

Janette Mason and Michelle Radford from the BABICM Office have been viewing venues for the BABICM Annual Conference next year and have now secured the Coventry Building Society Arena for the 3rd year running



**Welcome** to our newest member of the BABICM Team!

**“Hello!** I’m ecstatic to introduce myself to you.

My name is Calum and with years of experience working within marketing and broadcasting, I am overjoyed to join BABICM as the Engagement and Communications Officer.

I am keen to talk to our members to ensure that BABICM continues to function as an insightful and empowering organisation.

Each member is valued, and I would love to hear any of your thoughts and suggestions on how you think BABICM can achieve this.

I hope to see and speak to as many of you as possible at our upcoming conferences.

Additionally, please keep an eye out on our social media platforms where I hope to regularly post the latest in exciting BABICM news!”

/ I am keen to talk to our members to ensure that BABICM continues to function as an insightful and empowering organisation. /



# Delving into Tech

Capacity, Security, Independence and Gaming



A review by Jay Choudhury

BABICM presented a four-part webinar series: “Delving into Tech: Capacity, Security, Independence and Gaming”. The series was hosted by Jennifer Webster of WestCountry Case Management and brought together experts to explore its implications for clients with brain injuries. Each webinar showcased a different guest speaker delivering presentations online, with a Q&A session at the end of each presentation.

Dr Kathy McKay, Clinical Psychologist, kicked the series off with her talk ‘Exploring Capacity Issues Around Accessing Social Media and the Internet’. Kathy reminded us that internet and social media provide incredible opportunities for connecting with others and increasing engagement and knowledge. This is equally true, and at times more so, for clients. However with access to the internet and technology comes risks.

Capacity in technology was discussed within the framework of the Mental Capacity Act (2005) (MCA), with Kathy outlining the five key principles involved. She cautioned against presuming capacity, referencing reviews which found people using assumed capacity as a reason not to assess in the first instance. The talk dived deeper into the specifics of assessing capacity in relation to technology.

/ The talk dived deeper into the specifics of assessing capacity in relation to technology. /

Kathy explored Case Laws that set the bar regarding capacity, social media, and the internet. These are: A 2019 (Capacity: Social Media and Internet Use: Best Interests), and B 2019 (Capacity: Social Media: Care and Contact. These cases determine the level of knowledge needed to be assumed to have capacity, including both abstract concepts and concrete concepts. The standard is relatively high, considering the level of understanding clients may have.

‘Executive Function’ is becoming more relevant in case law, as from this example: A Local Authority AW (2020), which is explored in the talk. If a client repeatedly cannot implement in practice what they say they will do in theory, there is grounds to say executive function is impairing capacity. Kathy rounded off her talk with examples of assessment of risk and capacity in specific situations.

The second instalment in the series featured Andrew and Julian from Everyone Can, a charity that supports disabled children and adults to achieve greater inclusion through technology. Everyone Can provides assessments for assistive technology across the UK and they provide talks and training support for assistive technology.



Their goal is to help provide a supportive environment for disabled gamers to socialise, engage and make friends. They use technology to enable inclusion and participation. Gaming serves as a platform for developing social skills and initiating conversations about assistive technology in other aspects of life.

Safety and safeguarding in the home environment is more difficult to control, and safeguarding in gaming is not covered as much as traditional safeguarding, which is explored. Recognising these challenges, Everyone Can is developing a course in safeguarding in gaming aimed at both gaming and non-gaming audiences.

The talk explored the social platforms associated with gaming, such as Discord, one of the largest platforms in the gaming community. Discord does feature parental settings which were detailed in the talk, although they comment there are many different gaming social networks, through which the potential for risks must be considered.

Andrew and Julian highlighted the enjoyable aspects of gaming and its benefits. Social inclusion is incredibly impactful on clients, as gaming not only provides an engaging activity but also fosters a sense of community among gamers. Moreover, training and practice with computers via gaming can lead to improved communication speed and more accurate motor control. Ultimately, gaming offers a safe challenge with real achievements.

The third presentation came from Jeff Goodright, Managing Director of Cyber Spider Ltd. Jeff's talk, 'Keeping Our Clients Safe in a Digital World' focussed on online safety and about the need for cyber care plans.

Jeff pointed out the challenge of detecting technology-related issues and risks. Whilst the loss of a phone or wallet immediately raises alarms, online threats are less visible. Compromised devices do not exhibit any visual cues despite potential malware or phishing attacks, which may go unnoticed. Jeff questioned whether these devices have antivirus software and, if so, how effective it is.

Jeff introduced various safety principles for navigating the digital landscape, including Dunbar's number, which suggests a cognitive limit to meaningful relationships. If a client has significantly more followers or friends online than expected number for that client, it may be cause for assessing safety. Jeff introduced the principle of 'The Three Cs' to consider when identifying and assessing cyber risks and safety: content (what), conduct (how), and contact (who).

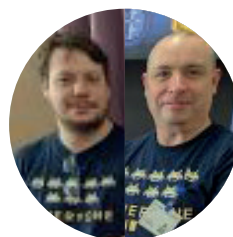
The presentation addressed the challenge of keeping pace with technological advancements and the importance of incorporating cyber care plans into overall care strategies. Keeping up with technology is extremely relevant - for example, the Nintendo Switch can be bypassed by people to access the internet, which if not planned for might lead to unrestricted and unmonitored internet access.



Dr Kathy McKay



Jeff Goodright

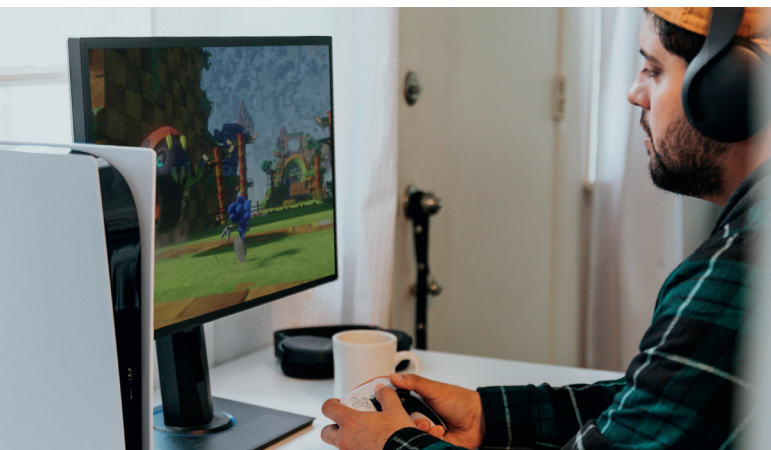


Andrew and Julian  
Everyone Can



Oliver Lewis





To stay safe online, there is a need for ongoing assessment and adaptation to mitigate risks associated with evolving technology. Cyber assessments are discussed in the framework of considering probability, magnitude, and cost. The presentation concluded with examples of cyber care plans and case studies.

The final speaker was Oliver Lewis of Lewis Support Ltd. Oliver is an Assistive Technology Consultant and specialises in enabling and empowering clients using technology. The talk explored this concept of optimising independence by delving into the case study of 'G'. G is a seven-year-old with new spinal injury, unable to move aside from their right fingers, and some head and neck control.

Initially G felt like they had no independence. Oliver sequentially targets ways in which equipment could be used to show G that they could achieve things. Technology introduced included eye gaze technology (with compatible games), voice recognition and a joystick which seamlessly switched between controlling the

wheelchair and controlling the computer mouse, a significant quality of life improvement.

A substantial aspect of G's development was introducing them to programmable toys using the available equipment. G learned to code robots and program a toy centipede to move in specific patterns, utilising eye gaze and other equipment. As well as enabling play for G, this served as a precursor to introducing G to environmental controls. G to gained skills applicable to tasks like opening doors or curtains and controlling smart home features such as lightbulbs.

Oliver discussed the obstacles, prime among them being that equipment is bespoke, not one size fits all, which introduces an element of problem solving and trial and error. Setting up software so that school homework and lessons can be adapted to eye gaze technology comes with having to train dedicated members of staff, which the talk explores in depth.

Oliver rounded the talk off with a summary of how G gained both more independence and confidence. The key takeaway Oliver highlighted from this case is the way equipment and technology were used to enable G to be able to interact more with the world and give them more options to do so.

Comments from BABICM attendees were positive, with feedback including: "I think it was a great initiative as internet access is always very tricky to handle", "All of the sessions were extremely informative".

/ You are not 'sailing singlehanded' - you won't have to act on your own without support and you don't have to change and fix everything all at once. I believe the aim should be momentum and development so that during time in office progress has been made. /



# Legal boundaries and the Sexual Offences Act

The implications in supporting clients

By Scarlett Parr-Reid



BABICM and the Professional Deputies Forum (PDF) hosted a webinar on the Sexual Offences Act (SE act) 2003, a pertinent topic for deputies and case managers involved in brain injury cases where the person under their care (P) lacks mental capacity. This was the first of a two-part series exploring the nuances of how the criminal justice system is applied to P and those involved in P's care.

The webinar was facilitated by Stacey Bryant, Legal Director, and lead of the mental capacity team at Enable Law. It was presented by Ian Brownhill, Barrister at 39 Essex Chambers, who specialises in matters relating to mental capacity, criminal justice, and human rights.

The webinar was well received, with one attendee describing the session as a 'fascinating and insightful presentation'.

The webinar was centred on learnings from a case involving the Secretary of State for Justice v A Local Authority & Ors [2021] EWCA Civ 1527. This was an appeal against a decision that care workers would not commit a criminal offence under section 39 of the Sexual Offences Act 2003 were they to make the practical arrangements for a 27-year-old man to visit a sex worker. The appeal was allowed. From here on in, the above case shall be referred to as Re C, that is in the matter of the 27-year-old man ("C").

The session began with a breakdown of some of the misconceptions regarding the SE Act and P,

/ There is an expectation of the law and CQC regulation of safeguards to ensure that P does not engage in sexual activity that they do not have the capacity to engage in. /

followed by examples of what Re C did not say in relation to sections 38, 39 and 42 of the SE Act, and closed with best practice for continuous care and support arrangements.

Ian framed the session by outlining the importance of applying the law on a case-by-case basis where P lacks mental capacity, emphasising that P's capacity to consent is paramount. He went on to say that there is an expectation of the law and CQC regulation of safeguards to ensure that P does not engage in sexual activity that they do not have the capacity to engage in. He noted that this is, however, multifactorial, and must consider factors such as age and type of sexual activity. Thus, he explained that Re C can be seen as a prompt to consider the legality of arrangements.

Ian outlined that Re C did not say the following: a) if P lacks mental capacity, P can no longer engage in sexual activity and b) if P lack mental capacity, P cannot be supported to engage in sexual activity, and c) if P is supported to make friends and meet people, if P has sex with them, the carers would be committing an offence.

Whilst the Court of Appeal has drafted a judgement stating that there are some circumstances where carers may be exposed to criminal liability if they support P in engaging in sexual activity, one must look carefully at the individual circumstances where that might happen. Re C could not set out all of the possible scenarios regarding sexual activity that play out in a care plan.



In this way, Ian clarified that the door to the court is not closed, and a case manager can present facts about a caring situation to the court and ask if it is lawful, but cannot simply propose a hypothetical situation that is not grounded in fact. To address any concerns regarding whether to present the facts of a caring situation to the court, Ian showed the value of looking at sections 38 and 39 of the SE Act together.

Later in the session, Ian explored how the terms 'causing' or 'inciting' can be defined in a legal case, as highlighted in *Re C*. He explained that 'causing' must involve culpable conduct which more than minimally contributed to the outcome, as opposed to inciting, when one seeks to persuade another to commit an offence. As section 42 of the SE Act considers all involved in a case, not only carers, he advised that case managers act explore when they feel something may be crossing a legal line.

/ Deputies and case managers should look carefully at their case plan and P's capacity. /



Ian finished the session by discussing the fact that the CPS and the College of Policing have not issued guidance in respect of *Re C*, asking what must come next. As a take home message, he directs deputies and case managers to look carefully at their case plan and P's capacity. If P lacks capacity, then deputies and case managers can ask what is in their best interest in respect to section 4 of the SE act.

Where a scenario in question is a grey area, Ian shares that deputies and case managers may require a declaration from the court of protection. In grey area scenarios, Ian points out that it can help to have a barrister to advise, although that this is not a requirement.

**To watch the full webinar, [click here](#).**

### **Click here**

To watch part 2 in this webinar mini-series (from 26th January): Criminal Justice System – Capacity, Understanding the System, the Role of a Deputy / Case Manager and How Best to Support Your Client'.

To contact Ian Brownhill, you can find him through the below channels:

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CORPORATE MEMBER

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SUPPORTER



# Delving into **The Criminal Justice System**

By Scarlett Parr-Reid

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Capacity, Understanding the System,  
the Role of a Deputy/ Case Manager  
and How Best to Support Your Client

The second webinar, presented again by Ian Brownshill, was based on the case of *A Local Authority v JB* [2021], UKSC 35. In this case, the Supreme Court for the first time looked in detail at what it means to have or lack capacity to make a decision in the context of sexual relations. The central question was whether the man in question, JB, had to be able to understand, use and weigh the information that any prospective sexual partner must be able to, give, and maintain consent to any sexual activity he was initiating.



A further question raised was whether these were concepts anyone should understand, and thus whether it would be discriminatory to hold someone with cognitive impairment (in the case of JB, this being Autism Spectrum Disorder), to this standard.

In the webinar, Ian covered the following areas: P as a victim and a perpetrator of crimes, the function and process of ABE interviewing of P, the role of a deputy or case manager in obtaining P's consent to forensic medical examination, and how best interest decisions are made on P's behalf.

Ian began by sharing key statistics on the effects of gender, mental ill health, and brain injuries on rates of crime, particularly sexual assault. For example, Ian raised that 60% of the UK's young adult offenders report having suffered brain injuries, according to research conducted by the University of Exeter. Ian emphasised that P has an equal right to justice as someone who has without a brain injury, asserting the importance of section 6 of The Equality Act 2010. It cannot be assumed that because of P's brain injury, they automatically become an unreliable witness.

This led Ian to discuss the importance of Achieving Best Evidence (ABE) interviewing by specialist police officers. Ian set out key recommendations to help understand whether P has mental capacity to consent to an ABE interview. Ian suggested that P needs to understand that the interview is a) for the purpose of giving evidence in relation to a crime, b) the interview is being recorded and may be viewed in court, and C) for which purpose the interview recording may be used, e.g., for a civil claim or a disciplinary proceeding.



Ian discerned that there are instances in which P may lack mental capacity to consent to an ABE interview, but the interview will still take place under a best interest decision by the police in respect of section 4 of the Mental Capacity Act 2005 and P's past or current wishes and feelings (which can change over time). Deputies and case managers cannot consent to an ABE interview on P's behalf, but may assist in the process. He noted that it is vital to ask whether giving evidence may incur any risk to P.

Later, Ian discussed cases in which forensic medical examination of P may be required, but where P lacks mental capacity to consent. He provided an example of a case in which an individual was given prophylaxis for HIV after being the victim of a sexual assault, having lacked the mental capacity to consent to the procedure. In this scenario, a best interest decision was made to carry out the procedure to protect P following the assault.

Case managers and deputies cannot consent to a forensic medical examination on P's behalf; this is the role of medical doctors along with P or a valid authority such as an appointed trusted individual or independent advocate. However, in some instances, for example where P is in a heightened emotional state, deputies and case managers may wish to facilitate a delay to a forensic medical examination in P's best interest. Although, this must be reconciled with potential risks to acquiring possible evidence of delaying the forensic medical examination.

Ian concluded by debunking the myth that P either does or does not have 'mental capacity to commit a crime'. Ian assured case managers and deputies that there is no written legal concept for 'mental capacity to commit a crime', but rather the criminal justice system assesses one's 'mental capacity to form intent to commit a crime'.

Finally, Ian left case managers and deputies with a useful acronym 'THANKS' to support them in the process of sharing information with the police about P.



### **Time**

In which timeframe must the information be provided to the police? Do you have time to seek independent legal advice before handing any information over?

### **Have**

Do you have the information in question?

### **Advice**

Is it required for you to seek independent legal advice as you look into the information the police require?

### **Necessary**

To what extent is the information you are about to hand over relevant? For example, if the police are interested in P's whereabouts and activities on one specific day, do not hand over information on their whereabouts and activities from an entire month.

### **Keep a log**

Any interactions, data or advice sought in relation to sharing information about P with the police must be logged carefully.

### **Someone else**

Is the information in question in someone else's possession? If so, it is not your responsibility as a case manager or deputy to hand it over.

**Watch the webinar here.**





# Family care payments

The Office of the Public Guardian (OPG) has updated its practice note relating to family care payments.

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This practice note, SD14, sets out the legal framework and the OPG's view of how Court of Protection Deputies should approach family care payments, including factors for them to consider when deciding on the level of such payments.

The principal changes are that OPG will now require Deputies to document who is in receipt of a family care payment, how many hours of care they provided and at what rate of pay.

This information including the total amount paid should be recorded in the 'other payments' box on the annual report.

As with the previous version, the OPG states that any family care payments must be made in the client's best interests and reflect a saving on the commercial cost of care.

OPG states that the commercial cost of care to be the Mean hourly salary for care workers taken from the latest Annual Salary and Hourly Earnings (ASHE) database, less 20 per cent for tax.



The current mean rate for 2023/24 is £12.89 and this would make OPG's benchmark rate £10.31 per hour allowing for tax deduction. This rate is updated yearly. This rate will next be updated in November 2024.

OPG expects all professional Deputies to be compliant with the new directions by 29th July 2024.

Stacey Bryant, partner at Enable Law, says: "This is relevant to all case managers – many will be working for clients where family care payments are in place and where they prepared a calculation of the family care in place for the Deputy.

"This will likely trigger all Deputies now reviewing all grant care payments currently in place given."



Irwin Mitchell's recent update about their due diligence survey, which many members have received triggered BABICM to provide the information below to remind members of its best practice guidance in relation to CQC registration. BABICM has also contacted CQC to ask if they would be able to share their views on the advice that IM have received from Counsel.

# Best Practice Guidance on Registering with the CQC

what to keep in mind.



**What is important to remember is:**

- It is the responsibility of each individual/ service/company to decide if their service should be registered by understanding if they are carrying out regulated activity
- You will be best placed to know your service, what it does and how it does it
- Case managers are not an exempted role in CQC terms
- You cannot register non-regulated activity
- No one externally can tell you if you should or shouldn't register
- If external parties wish to, they can raise an issue of non-compliance with CQC



The BABICM Best Practice Guidance assists case managers and case management services to review the need for CQC (Care Quality Commission) registration and is available via the BABICM website. Within the guidance you will find useful information, references and links. You can access the guidance here: [www.babicism.org/wp-content/uploads/2020/01/BABICM-Best-Practice-Guidance-CQC-registration-FINAL.pdf](http://www.babicism.org/wp-content/uploads/2020/01/BABICM-Best-Practice-Guidance-CQC-registration-FINAL.pdf)

Our guidance assists members of BABICM to understand and make decisions regarding the need to register with the CQC. Ultimately it refers case managers back to the CQC's own documents and guidance and the legislation as it remains the responsibility of each service to determine for itself if it is carrying out regulated activity and if so under which description (most usually for Personal Care or Treatment of Disease Disorder or Injury) it should register.

The CQC does not provide a description or guideline specifically for case management, nor for many other services. It expects each service to work through the information it has provided and determine for itself - from the position of knowing the full extent and nature of the service it offers - to determine whether or not it is carrying out regulated activity and if it therefore falls within the scope of CQC for registration purposes.

Case managers are not specified on the list of 'professionals NOT included in the scope of regulated activity'.

If case managers work in a service providing regulated activity it is not necessarily the case that every client will be in receipt of regulated activity and therefore not all of their provision to clients will fall within scope for the CQC. No formal surveys have been carried out to date but BABICM understands from informal conversation across its membership that in most services clients requiring regulated activity directly attributable to the case management provider (including directing and controlling the regulated activity) make up a small percentage of their work.

There is not an option for any service that does not provide regulated activity to register with the CQC. Indeed, there is a period after initial registration within which the provider must begin providing regulated activity to continue to hold their registration.

It is not the case that parties external to the organisations providing services to clients - such as litigators, deputies, barristers, family members or indeed clients themselves - can determine whether any service in England must be registered with the CQC, as the responsibility to determine whether there is regulated activity lies with each service themselves and in the case of case management it is specific to each case. If such external parties have any concerns about services to clients they are able to raise these concerns directly with the CQC.

All case management services should bear in mind that it is an offence for any person (individual, partnership or organisation) who provides regulated activity in England not to be registered with the CQC.

Case management providers can use this document and the BABICM guidance via the link at the start of this article as suitable reference points for establishing best practice. Both documents are for guidance and providers MUST read the relevant legislation and documents before reaching a decision on the need to register with one or more bodies for themselves.

This document refers to CQC in England only. There are different regulators depending on where you are based, as a guide;

- England – The CQC.
- Wales - The CIW (Care Inspectorate Wales)
- Scotland - The Care Inspectorate
- Northern Ireland - The Regulation and Quality Improvement Authority (RQIA).



## Brotherwood deliver One-of-a kind WAV

At Brotherwood we believe in always going the extra mile to provide vehicles that fit our clients' needs down to the finest detail – so when Diane and Stuart Grant came to us with a special request for a highly personalised version of our 'Klaster' Mercedes-Benz V-Class Wheelchair Accessible Vehicle (WAV), we were delighted to be able to help.

One of the key requirements for the adaptation was a bespoke Orange colour scheme – son Cameron's favourite colour. Through our partnership with specialist Mercedes-Benz VIP coachbuilders Senszati we were able to offer a full customisation to the Grant's specifications.

"We choose Brotherwood through looking for a luxury car for Cameron – at first it was just a dream that one day hopefully we could find a luxury car for him. We came across Brotherwood through our search and even though we live in Scotland nothing was too much trouble."

The 'Klaster' conversion for the Mercedes-Benz V-Class is the most advanced WAV available today – with a long, flat level lowered floor, it offers unbeatable ride comfort, inclusion, and visibility for the wheelchair user.

But for a truly personal finish, our partnership with Senszati takes the comfort of this amazing vehicle to another level – with a sensory LED headlining; centre touchscreen console with Apple TV, DAB radio and Bluetooth with on-board 4G multi-user wi-fi; improved soundproofing and more.

“One of the best parts is the Apple TV – Cameron can be watching it whilst music is playing for the driver. I can’t believe how smooth it is to drive, giving Cameron the upmost comfort. The panoramic sunroof is also a key feature as it allows Cameron to look out when he’s resting in his wheelchair. The sensory lighting gives him a complete calming effect and adds that extra luxury touch.”

The Grants were kept up-to-date throughout the build by regular video updates from their Brotherwood WAV consultant Andy – even down to checking the colour swatches for the bespoke bright Orange interior detailing.

“Having Andy on hand throughout for any issues or questions, no matter how small we have had throughout the full process has been a god send. It was so helpful that he brought a demonstration car for us to see and fulfilled our dream for Cameron. I couldn’t recommend the full service enough and one day (a long time away) we will order another.”

The upgrades to this incredible accessible vehicle make it a unique combination of accessibility, inclusion and style, making it a truly one-of-a-kind WAV that we were delighted to be able to deliver – just in time for Christmas!



## About Brotherwood

Brotherwood are the UK’s Wheelchair Accessible Vehicle (WAV) Specialists and are recognised as the market leader in Wheelchair Accessible Vehicle Design. We believe that every WAV should prioritise comfort, inclusion, and safety for the wheelchair user.

Offering a range of new Wheelchair Accessible Vehicles for sale, as well as factory refurbished WAVs; Brotherwood also offer flexible, long or short-term accessible vehicle hire.

Brotherwood offer free, no-obligation home demonstrations across the UK, and work in conjunction with Case Managers and Occupational Therapists to deliver mobility solutions for wheelchair users.

Brotherwood are also a certified CPD Member, offering free training sessions, study days and workshops to healthcare professionals involved in the provision of accessible transport; ensuring that Case Managers are equipped with the knowledge to enable them to perform transport needs assessments, and ensuring their client’s needs are accurately measured and met.

Brotherwood are also members of WAVCA (The Wheelchair Accessible Vehicle Convertors Association) and are approved suppliers to the Motability scheme.

For more information contact Brotherwood today on **0330 1747 555** or visit **Brotherwood.com**.



# Brain injury and the Criminal Justice System

## *A 360 Degree View*

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In the general population, the statistic that one in three people will sustain a brain injury in their life is a deeply concerning statistic - but the fact that as many as six in ten people in the criminal justice system may have a brain injury is staggering.



/ The scale is huge - but what are we doing to support these people? /

/ Advocacy, research and commitment is really helping to drive this topic forward /

/ we hear from a number of those working within the criminal justice system about their experiences /

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The prevalence of brain injury among what is very often a vulnerable population is huge, and is even disproportionately higher in female prisoners.

Research has shown that 64 per cent of the female prison population have injuries indicative of brain injury, compared to 47 per cent of males in prison.

Further, 70 per cent of male prisoners were found to have sustained brain injury before their first offence. In women, 62 per cent of brain injuries in females were caused by domestic violence.

The scale is huge - but what are we doing to support these people? How are we making life better for them within the criminal justice system? What steps are being taken to help them divert away from the cycle of offending? What more needs to be done?

Certainly, this is an area in which progress is being made, with the development of the Brain Injury Screening Index helping to determine brain injury among people within prisons, and training now

being rolled out to 63,000 staff working within the criminal justice system to help them better recognise and support brain injury.

Advocacy, research and commitment from organisations including Brainkind, UKABIF, Headway and others is really helping to drive this topic forward as an area which has previously been underserved - but in which change is beginning to take effect.

With the release of the ABI Strategy, hopes are high that further steps will be taken to address the needs of those in the criminal justice system - enabling the professionals working with these people understand how to better support them.

Here, we hear from a number of those working within the criminal justice system about their experiences of brain injury and in supporting clients; how effective support is within the system; what change is needed; and what more case managers and other professionals can do to collectively play a role to enable a better future for those who live with brain injury.



‘Clients being able to flag up their brain injury is hugely valuable’



### **Kirsty Blaen**

Lead case manager at A Chance for Life

Brain injury can often lead to significant challenges around behaviour, so it is not surprising for brain injury case managers that some of the clients we work with may come into contact with the criminal justice system at some point in their lives.

While we do everything we can to ensure, through their care and rehabilitation, that we can support them in managing self-regulation, sometimes circumstances work against us.

Two of our young male clients have had very different experiences of the criminal justice system - one where his life was sadly spiralling out of control, with very little input we could give; and the other who we were thankfully able to support in his police interview, who avoided further action.

/ Sadly, for Tom, the influence his circle of friends had over him was very detrimental to our rehab efforts. /

Our first client, ‘Tom’, was a young man who sustained a life-changing brain injury in a car accident, in what was a contentious case that left him with limited resources. He became estranged from his family and was homeless, falling into a friendship group which was very bad for him. His behaviour started to deteriorate dramatically and he ended up in prison.

The support of his probation officer was invaluable and it was very helpful to work alongside them. They had knowledge of brain injury which was hugely beneficial and isn’t always a given within the system.

Sadly, for Tom, the influence his circle of friends had over him was very detrimental to our rehab efforts - we would schedule appointments and set alerts in his phone, reminding him where and when to attend, but he was frequently persuaded otherwise. He was not able to work so had no money coming in, and ultimately his claim was very small. While we made representations that he did not have capacity to manage his finances, it was decided he did, so he was given the money and he subsequently terminated our services.





Our other client, 'Dan', was involved in a provoked altercation with a family member, who then reported him to police. He lives with a serious brain injury which can impact all aspects of his life.

I acted as his advocate in his police interview, but the conditions were poor - we were sent to the wrong part of the police station, made to wait over half an hour past our appointment time, and the room was boiling hot with no water offered. For someone with a brain injury like Dan, who struggles with fatigue and self-regulation issues, these conditions can be very challenging.

The main problem I saw in both cases was that unless brain injury was highlighted by our clients, it is probable it wouldn't have been picked up, as neither had any physical presentation. If that had happened, they would not have been given an advocate for interview, which is vital.

We need to look more closely at how brain injury is picked up and managed by the criminal justice system, as there is clearly potential for people to slip through the net.

Our very different experiences of such cases have shown the importance of working alongside and educating the police and probation services on how our clients are affected by their brain injury, and also of supporting clients to let relevant parties know immediately that they have a brain injury.

Had both not flagged this up at the very outset with the police, and been granted access to an advocate, their experience of the justice system could have been very different, as we know it is for many others.

/ We need to look more closely at how brain injury is picked up and managed by the criminal justice system, as there is clearly potential for people to slip through the net. /



## 'Breaking the cycle of brain injury, homelessness and criminality'



### **Ellie Atkins**

Manager and safeguarding lead,  
The Entrenched Rough Sleeper Social  
Work Team, Manchester City Council

Too often, people who are homeless are shunned and dismissed by society. The fact a brain injury very commonly underpins their behaviour and choices is not acknowledged.

Statistics indicate that around 50 per cent of people who sleep rough have experienced brain injury in their lives, but because of their lifestyle, they aren't treated like the nice old lady who lives in a care home who has dementia; who similarly displays challenging behaviour which isn't her fault and can lash out.

Homeless people aren't given the chance to be considered as brain injury survivors or as living with underlying conditions, but this can be absolutely fundamental to the reasons for their behaviour and the lifestyle choices they make.

Brain injury affects executive function, which causes difficulty in personal interaction,

challenges in behaviour, trouble maintaining routines. All of these factors are very often seen in people who are homeless - and can bring them into contact with the criminal justice system.

All too often, we see the cycle of a homeless person sleeping rough, offending, being arrested and perhaps imprisoned, and then it starts again.

On the streets where our team works, we see the apathy that is so often associated with brain injury; the lack of emotional regulation; the struggle with impulse control that sees them go from 0-60 without much encouragement; the resultant interactions with police.

/ All too often, we see the cycle of a homeless person sleeping rough, offending, being arrested and perhaps imprisoned, and then it starts again. /



But this is a cycle that so many homeless people become trapped in. They are not moral failures, they are not making lifestyle choices.

Most commonly, we come across three main hidden disabilities - acquired brain injury, neurodivergence and undiagnosed trauma or PTSD, all of which affect executive function.

Often, the people we work with are seen as a failure. Beryl, for example, was dismissed by society as someone who drinks. She acts on impulse and ends up in trouble with the police. But when Beryl was diagnosed with ADHD and ABI, she was no longer just someone who drinks and is 'bad news', she is a survivor and will be supported.

Beryl is a great example of showing what can happen if you give someone the right conditions around them, and create the social scaffolding they need to rebuild their life. The future for her is brighter.

I believe as professionals we have a duty to help break the cycle of homelessness and involvement in the criminal justice system.

We must listen to the stories of the people we work with, to find out who they are and what has brought them to this point. What events in their past have led them to the life they now live?

Professional curiosity is also important in getting to the bottom of a person's behaviour. By digging that bit deeper, we can find out why someone is sleeping rough, drinking and taking drugs and behaving badly.

Together, we can be the force for change which can transform the reality and outlook for homeless people, who have already been through so much, and can help break the cycle to allow them to look to a more hopeful future.



/ Together, we can be the force for change which can transform the reality and outlook for homeless people, who have already been through so much, and can help break the cycle to allow them to look to a more hopeful future. /



## 'No means to detect 'hidden' brain injury when entering custody'



### Bill Waddington

Consultant solicitor, Williamsons Solicitors

In almost 40 years of practicing as a defence solicitor, to my knowledge, I have never represented a client with a brain injury.

I asked a colleague who also has decades of experience in representing people in the criminal justice system and they also said they have never acted for a brain injured person.

Clearly, given the fact that one in three people will sustain brain injury at some point in their lives, so I am told, either we are very fortunate in Hull, or, more probably, this is something that has never been brought to our attention or has not been self evident.

In reality, there is no mechanism that would pick up a 'hidden disability' like brain injury. As far as I am aware, there is no screening process or assessment when someone is first taken into custody to look specifically for brain injury.

If someone has a mental health condition, then that is different, and there are processes in place to support people within the criminal justice system, such as the diversion from custody programme if necessary. I represent people with mental health conditions regularly.

Similarly if there is some presentation of physical disability, there will be an assessment of what additional support is needed. But for people living with a brain injury, who have no physical issues to accompany it, they are clearly flying under the radar in securing support.

Of course, there are times when you suspect someone may have additional needs, but if it isn't presented to you as part of their medical records and information you need to know, then there is little you can do.

I have never directly asked a client 'Do you have a brain injury?' This would not be a good conversation opener and I imagine may offend some people and would adversely impact our relationship.



We do see some people very regularly, there are quite a number of persistent low-level offenders whose issues may well go deeper than the drug use which may be typical of their lifestyle - but when they enter custody, the presence of any underlying brain injury will most likely not be picked up.

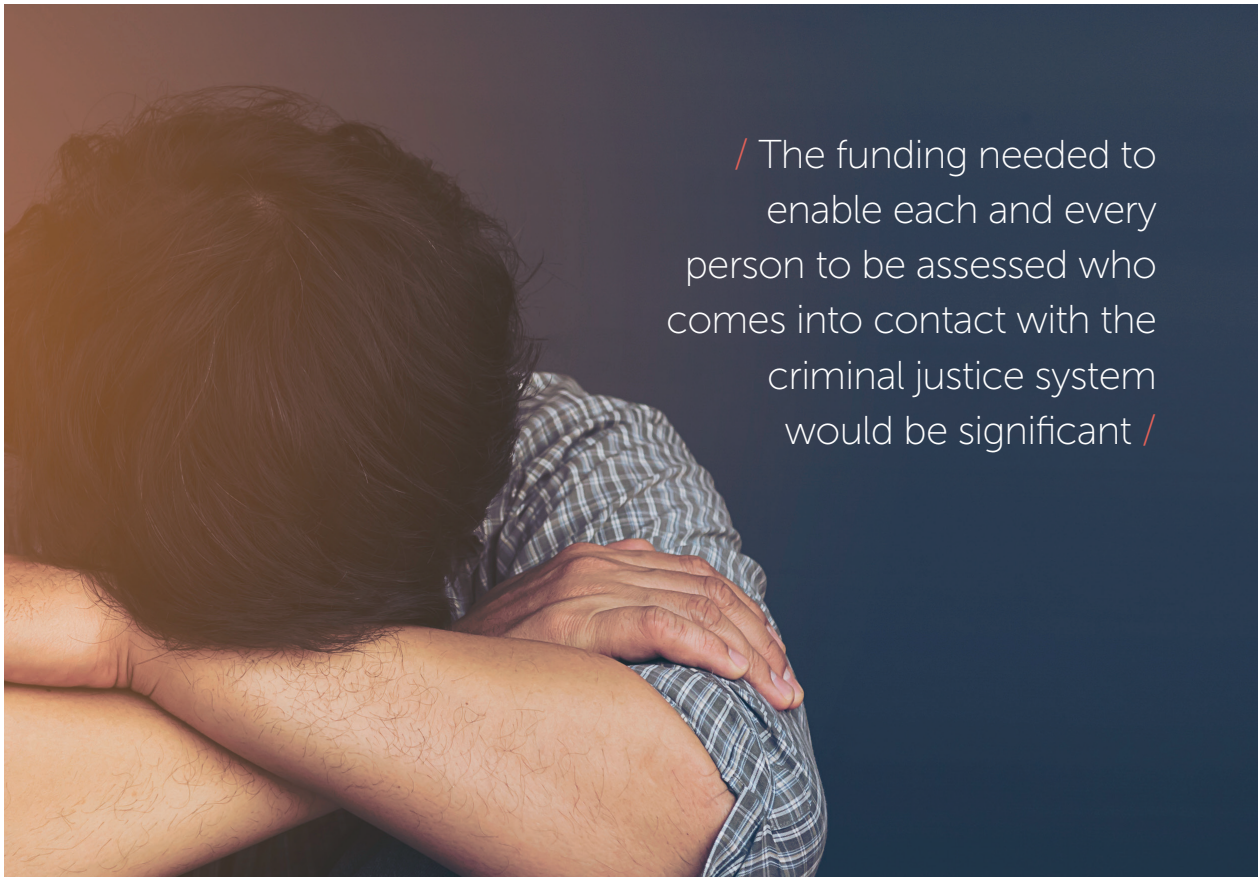
But for us as defence lawyers, the knowledge that someone has a brain injury could actually be very useful in mitigation.

Armed with this information, which could help to explain their behaviour, this is very valuable, and we could have medical reports prepared. This could be very powerful evidence which could help us achieve a more favourable

result for that client, and could also help them to access the support they probably need.

Of course while this could potentially work very well, the resources needed to support it just aren't there. The funding needed to enable each and every person to be assessed who comes into contact with the criminal justice system would be significant - and unfortunately there aren't any votes in it, so it isn't something I can see being implemented any time soon.

For now, we'll continue to represent clients as best we can, and if a brain injury is flagged up to us, then we will make sure they are supported in every way possible.



/ The funding needed to enable each and every person to be assessed who comes into contact with the criminal justice system would be significant /



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'Research and innovation  
underpin change'



**Dr Annmarie Burns**

Consultant clinical neuropsychologist, Brainkind

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The prevalence of brain injury among the prison population is immense. Among the male population it is around 46 per cent, and in females 60 per cent. This represents a huge number of people within the criminal justice system.

We know this makes a difference in them being able to access standard treatment and rehabilitation - but if they are unable to access this, then they are not being given the best chance of reducing risk of reoffending and helping them to escape what is often a vicious cycle. We know brain injury also increases the risk of substance misuse and poor mental health, and the population within prisons are often from disadvantaged backgrounds with a lot of challenges in their lives.

/ We know brain injury also increases the risk of substance misuse and poor mental health /

The question we should be asking ourselves is how can we best support these people to access these programmes and interventions, and set them on a new pathway for the future? This should be our focus.

I think we are at the start of the journey of change being made, but clearly there is a long way to go. Research and innovation are at the core of this.

Ongoing research is absolutely critical to continuing the innovation which will change people's lives, and I don't think we would be expanding our Linkworker programme without research.

Through our pioneering Linkworker initiative, we have really tried to develop a service that is affordable and scaleable to run in prisons. Currently we are working with three prisons in Wales, but over the next year are ready to move into more.



/ For lasting change to happen, it is really important that the general population has a better awareness of brain injury. /



This approach was created in response to the lack of access to specialist neuro-rehab in prisons. Our Linkworkers can deliver one-to-one support, identifying someone who has or may have a brain injury to help them make real progress - this can be seemingly small steps like giving someone extra time to complete a task, enabling them to use the gym during a quiet period. What can seem a simple interaction can actually make a massive impact on a person's day to day life and their experience of the system.

It is enormously motivating for us to know what we are offering is working. Research has shown

the positive impact of our Linkworker programme on men's mental health, with improvements in their anxiety and depression.

For lasting change to happen, it is really important that the general population has a better awareness of brain injury - often, this is misattributed to things like memory problems, not paying attention, disruptive behaviour.

Through better recognition can come better signposting, and at an earlier stage too. This can be hugely beneficial to the support people then receive.



## 'How prison support is leading to positive progress'



### **Ryan Jones**

Brain Injury Linkworker

I believe I can best begin to discuss the importance of the role of a Brain Injury Linkworker by a question that was put to me during the interview process.

That judgement of a person in our criminal justice system fails to consider the context of where that person has come from, their experiences and how this has shaped them and affects how they respond to stressors, which can lead to criminal behaviour.

This perspective has solidified whilst I have been a Brain Injury Linkworker, an initiative pioneered by Brainkind, where many of the men I work with in custody or on probation reported sustaining their first head injury when they were children at the hands of their parents or other adults who were meant to be caring for them.







/ A Brain Injury Linkworker provides a space for offenders, a portion of the often misunderstood population, to be listened to and legitimise the consequences of their head injuries, often dismissed as 'excuses'. /

A Brain Injury Linkworker provides a space for offenders, a portion of the often misunderstood population, to be listened to and legitimise the consequences of their head injuries, often dismissed as 'excuses'.

We aim to empower people in prison or on probation to understand their issues and behaviours whilst also acting as an advocate, communicating their needs to other professionals working with them and building a support network.

The people in prison who have screened positive for a brain injury have engaged well,

appreciating the support and the time spent one-to-one to talk about their history, developing an insight into their cognition and behaviour and are generally well-mannered and polite, which may be to the surprise of many.

A challenge we have faced is people's perceptions of offenders, mainly if they are wrong on paper. This can lead to the offenders' reduced opportunities, making it difficult to reform and rehabilitate. We must treat these people as individuals, acknowledging that there is more to them than the offences they have committed.

Doing so enables us to develop a therapeutic relationship with the offenders, offering a non-judgemental space and empowering them to understand themselves and their behaviour. I frequently discuss cases with probation officers and other healthcare professionals to encourage a holistic and compassionate approach.

If we begin to change the culture and attitudes towards offenders with brain injury, surely it will spread to other prominent psychological issues in this population.

/ A challenge we have faced is people's perceptions of offenders, mainly if they are wrong on paper. This can lead to the offenders' reduced opportunities, making it difficult to reform and rehabilitate. /



‘Change is happening, but greater awareness is key’



### **Gemma Buckland**

Director of Do It Justice and policy and public affairs advisor for UKABIF’s Acquired Brain Injury Justice Network

There has been a huge increase in awareness around neurodivergence and certain neurodisabilities in the criminal justice system - but the awareness of brain injury specifically I would say is emerging.

In the last year in particular, there has been a significant rise in interest around brain injury in the criminal justice system, something which has been building for many years. I spent 12 years as advisor to the Justice Select Committee and there was certainly the desire from some MPs to really grasp the nettle to push forward positive change for people with neurodisabilities.

The report into neurodivergence in the criminal justice system, commissioned by former Secretary

of State for Justice, Sir Robert Buckland, marked a big step forward in raising awareness. We hope the forthcoming ABI Strategy will mark another significant moment in this.

There has been a lot of very good work done, with initiatives like prison and probation screening and the Linkworker service delivering support on the ground. We do need more infrastructure within the system - for example, there is an autism accreditation and autism-specific wings in prisons, but nothing equivalent for brain injury – however work in this area is gathering pace.

But we still have a lot to learn. Research is vital and is happening, but we need more. Recently, UKABIF carried out some research into police custody suites, but were unable to get information on prevalence or related needs. This kind of information is invaluable to us looking at the wider picture in society.



We need to continue to ensure professionals are trained right across the system, so we can deliver appropriate support and treatment. Links with health and social care need to be stronger, and we should be looking to build closer relationships with clinicians for people who could benefit from neuro-rehabilitation. Individuals and teams should be curious to establish why people act in a particular way, and what the underlying reason is for this. It may well be brain injury.

Awareness of brain injury in professional circles and wider society is hugely important. If we can better understand who are likely to have been exposed to violence either in childhood or adult life, raising the possibility of them living with brain injury, that will really help us in supporting these people, and helping them navigate away from the criminal justice system.

What impact does brain injury have on their life and behaviour? What adjustments can we make for them, both in the community and within the criminal justice system, to help improve the lives they lead?

Better awareness will bring greater confidence to those working with people who may have brain injury, and can also help us gain a richer understanding of how brain injury intersects with other neurodisabilities and protected characteristics.

Certainly we have moved forward significantly on this issue, but we need to keep going, and professionals working in this area all have a role to play in awareness, recognition, signposting and support.





## Sexual Offences Act A deputy's view

### Paul Kelly

Slater and Gordon

As a deputy our role is to make decisions with P which they cannot make themselves. Engaging in sexual relations is a common query we have as deputy and more recently what the implications are for a case manager and support worker if P requires assistance with access to sex.

As with lots of decisions a deputy makes, the decision spans both areas of deputyship i) health and welfare, i.e. does P have capacity to understand the issues around their safety during sex and b) property and affairs, where P is accessing the services of a sex worker, how is that arranged and ultimately paid for. I intend to focus on my view from a property and affairs deputy.

One of the biggest issues is that on many occasions where P is accessing sex, they are being assisted to, whether directly or indirectly by their support staff, whom the Deputy may directly employ. (There are

also employment law considerations here, which are outside the scope of this article).

This creates issues, in particular with the Sexual Offences Act ("SO Act"), where the deputy needs to consider if they are encouraging or promoting one of their employees to commit an offence of intentionally causing or inciting another person to engage in a sexual activity as detailed in S.39 of the SO Act.

The issue was highlighted in the case of Re C which was an appeal to the original decision that support workers would not commit a criminal offence under section 39 of the SO Act were they to make arrangements for P to visit a sex worker. The appeal was allowed and rightfully heightened concerns amongst support workers, case managers and deputies as to if what they had been doing, in some circumstances, for many years, may now land them with a criminal conviction.



When receiving these requests from case managers or family members the deputy needs to consider if this is supported within the care plan and what safeguards are in place, both for P and their support staff.

As with any decision, there cannot be a broad-brush approach applied and each request needs to be carefully considered on a case-by-case basis. The first step in the decision-making process is to consider if P has capacity to engage in sexual relations. Assuming that they do, then we need to consider with the case manager how we can fulfil P's wishes in the confines of the law and Re C should play a part in this. Measures could include; P sourcing their own access to sex workers, P being able to access the funds to pay for the service without the support of his support workers, P being able to make his own way to/from the service provider.

Re C did not provide situations whereby a support worker would not be criminally liable. But in my view, if there was to be any concern that the

approach taken could lead to that, then directions should be sought from the Court on that person's particular arrangement.

Sections 38-42 of the SO Act are established to protect vulnerable individuals who lack capacity from abuse, whether by the carer directly (s.38) or by the carer causing the act (s.39). The court would consider the best interests of the individual when making decisions on their behalf and would take into account the measures introduced by the SO Act to protect them from sexual abuse.

The Court of Protection operates within the framework of the Mental Capacity Act ("MCA"), and its decisions are guided by the principles of the MCA. These principles include the presumption of capacity, the right to make unwise decisions, and the requirement to act in the best interests of the individual. The court's view of the SO Act would be informed by these principles, and its decisions would aim to protect the rights and interests of vulnerable individuals who lack capacity.



# EDI Latest

## Update on Our Work to Improve Equality, Diversity and Inclusion Across All That We Do.

Delivery of Council's strategy to open up more opportunity across our working groups began with asking each group to consider how we can increase representation, equity, belonging and opportunity across the groups and work of BABICM.

The groups have adopted the BABICM Working Groups Equality Diversity and Inclusion Commitment Statement (printed in our last issue), which mirrors commitments Council have made and that we are seeking across our suppliers, providers and partner organisations.

During the first half of 2024, with support from Positive About Inclusion, each group is considering how the commitment can prompt development and positive change across their group and will make recommendations to Council by June on the following intersecting aspects for each group:

- Workable limits to lengths of tenure for working group members
- Increasing representation of the BABICM membership categories
- Improving on equity for members who join Working Groups
- How to increase opportunities to join Working Groups
- How to support the sense of belonging within Working Groups
- Further ideas to increase equity, belonging and opportunity

Council will then be able to consider the proposals and firm up on changes to be made or to work toward. What we wish to achieve is that more members will feel they could volunteer because they can envisage that they could belong and flourish in



our Working Groups and on Council. This will be of mutual benefit as they would bring even more skill, experience, knowledge and ideas with the potential for us to understand more about what our members want and need from us.

We want to widen the impact and learning opportunities about equality, diversity and inclusion and so Positive About Inclusion - the organisation who have been opening our minds, supporting us here at BABICM to review our biases and providing welcome challenge to develop, and improve inclusivity, representation and belonging - will be joining us at this year's annual conference on day two, to provide a session entitled "Self-Awareness is Your Superpower", which will be an interesting and enjoyable opportunity for delegates to benefit from.

We remain aware that the true measure of our success and organisational learning lies in the feedback we receive from our members and others we encounter. We welcome feedback without judgment, and we remain resolute in our commitment to hear it, learn from it, and continue to improve as a result. With the addition of our new Engagement and Communications Officer to our employed team, we hope to create more opportunities for feedback and listening to support our aims in this regard.



# Event Calendar



**SOLD OUT**  
**New and Would Be**  
Case Management  
Foundation Workshop Level 1,  
Milton Keynes, Kents Hill Park



**SOLD OUT**  
**FND Masterclass**  
Pendulum Hotel  
and Manchester  
Conference Centre



**SOLD OUT**  
**Beyond the Beginnings**  
Case Management Foundation  
Workshop Level 2,  
Novotel, Manchester Centre



**Optimising Care:**  
**Case Management in**  
**an Evolving Landscape**  
Ambassadors Bloomsbury



**BABICM Annual**  
**Conference 2024**  
Coventry Building  
Society Arena



**Vacation,**  
**Vacation, Vacation:**  
the fundamentals of client's  
travelling abroad Manchester

< **Save the date** >



**New and Would Be**  
Case Management  
Foundation Workshop  
Level 1 Manchester  
Novotel Manchester Centre



**Beyond the Beginnings**  
Case Management Foundation  
Workshop Level 2, Milton Keynes,  
Kents Hill Park Training and  
Conference Centre



**Paediatric Event:**  
Bridging the  
Gap Between Education  
and Rehabilitation

# Insight

THE  BABICM MEMBERS' MAGAZINE