

Oral presentation

## Fusion of mental health and incapacity legislation

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### Background

Single legislation covering the treatment of both 'physical' and 'mental illness', based on general incapacity principles, has been suggested by a number of participants in recent UK law reform debates. In this paper we propose a legal framework for comprehensive legislation of this type and consider in some detail the legal provisions it should contain.

### Methods

First we examine the distinct functions and characteristics of the common forms of (i) incapacity legislation and (ii) civil commitment (or mental health) legislation. Principles are then proposed for their 'fusion' into a single scheme. Special attention is paid to mental disorder as a cause of impaired decision-making capacity and to the consequences of applying incapacity principles to forensic care.

### Results

We show that legislation combining the particular, and complementary, strengths of both incapacity and civil commitment schemes can be readily constructed, based on the incapacity criteria found in the Mental Capacity Act 2005 for England and Wales.

### Conclusion

Such legislation would be an important step in reducing unjustified legal discrimination against mentally disordered persons and in providing a sound basis for 'coercive' treatments in psychiatry. Consistent ethical principles would be applied across all medical law.