

## **MCA Capacity:**

**Where is the tipping point over borderline and fluctuating capacity, including distorted memories, false beliefs and personality change?**

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## Fluctuating Capacity

Royal Borough of Greenwich v CDM [2018] EWCOP 15

Cheshire West And Chester Council v PWK [2019] EWCOP 57

A, B & C v X, Y & Z [2012] EWHC 2400 (COP)

United Lincolnshire Hospital NHS Trust v CD [2019] EWCOP 24

Wakefield MDC and Wakefield CCG v DN and MN [2019] EWHC 2306 (Fam)

Guys and St Thomas v R [2020] EWCOP 4

## Distorted/False Beliefs - Anorexia

A Local Authority v E (by her Litigation Friend, the Official Solicitor) & Others [2012] EWHC 1639 (COP)

The NHS Trust v L (by her Litigation Friend, the Official Solicitor) & Others [2012] EWHC 2741 (COP)

A NHS Trust v Ms X [2014] EWCOP 35

Betsi Cadwaladr Uni Local Health Board v Miss W [2016] EWCOP 13

Cheshire and Wirral Trust v Z [2016] EWCOP 56

Northamptonshire v AB [2020] EWCOP 40

## Must Read Capacity Cases

- Kings College Hospital NHS Foundation Trust v C and V [2015] EWCOP 80

C considers that the prospect of growing old, the fear of living with fewer material possessions and the fear that she has lost, and will not regain, 'her sparkle'

- Tower Hamlets v PB [2020] EWCOP 34

” It is difficult to resist the conclusion that Dr Costafreda, having plainly identified a regime of abstinence and sobriety as being in PB's best interest, considered that his resistance to it and the stark consequences that might flow from it, must indicate an incapacity”

## Recent 'Borderline' Capacity Case

- Q v East Lancashire South Cumbria NHS Foundation Trust  
[2022] EWCOP 6
  - Bulimia
  - Capacity to litigate
  - Capacity to make medical decisions

## Recent 'Borderline' Capacity cases II

- PH v Betsi Cadwaladr University Health Board  
[2022] EWCOP 16

“The court has no business in telling capacitious individuals what is in their best interests ..... Such a regime would be fundamentally unhealthy in a mature democratic society and would have the collateral impact of undermining the principle of autonomy which is central to the philosophy of the MCA.” Hayden J

## Recent Borderline Capacity Cases III

- S v Birmingham Women's and Children's NHS Trust

[2022] EWCOP 10

“I am satisfied that S has amply enough 'pieces of the jigsaw to see the whole picture.' Even if aspects of her weighing are influenced by symptoms of her diagnosed condition, I am not satisfied that S is unable to use or weigh the information relevant to making a decision about termination of her pregnancy. Rather, in my judgment she is demonstrating the application of her own values to the decision in question.” HHJ Hilder

## Recent Capacity Case

- Re. Beatrice [2023] EWCOP 17 per Mostyn J
- “The weighing process requires her to recognise that into the scales go the stark fact that if she does not eat and hydrate normally, and very soon, she will die..... There is nothing to put on the side of the scales objectively in favour of starvation.”

**Thank you!**

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