



Essex Partnership University
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'Mental Disorders' in Mental Health Act and Diagnostic Uncertainties

- *Where Medicine meets Law*

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EPUT

Objectives

- Review and recap the basics of Mental Health Act (MHAct): - concept of 'Mental Disorder' under the MHAct and the criteria for detention
- Highlight potential challenges clinicians could face in relation to MHAct when diagnostic uncertainty exists
- Practical tips on how to reconcile, translate and communicate such clinical uncertainties in relation to MHAct

Medico-legal issues related to diagnosis could extend beyond MHAct

- Criminal cases
- Personal injury litigation
- Professional regulation
- Insurance
- Employment litigation
- Immigration – asylum
- Social security/pension claims
- Gender/Neurodiversity

Etc etc etc.....

Not the focus today



DSM and ICD classifications in medico-legal reporting: misperceptions, misunderstandings and misuse

Published online by Cambridge University Press: 15 September 2025

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- Let us forget about the law for now

Why are we concerned about diagnostic uncertainty?

- Ensure right treatment
 - Outcomes
 - Safety
 - Medical ethics
-
- Right pathway
 - Best care

Dealing with uncertainties

- 'our bread and butter'
- 'HLO – curriculum'
- 'D/d' - Differential Diagnosis

Who are we?

- Clinician?
- Lawyer?
- Bit of both?
- Mental Health Act
 - Is it a clinical guideline?
 - Is it a service standard?
 - Will it resolve conflict between services/clinicians
 - Will it determine 'clinical responsibility'

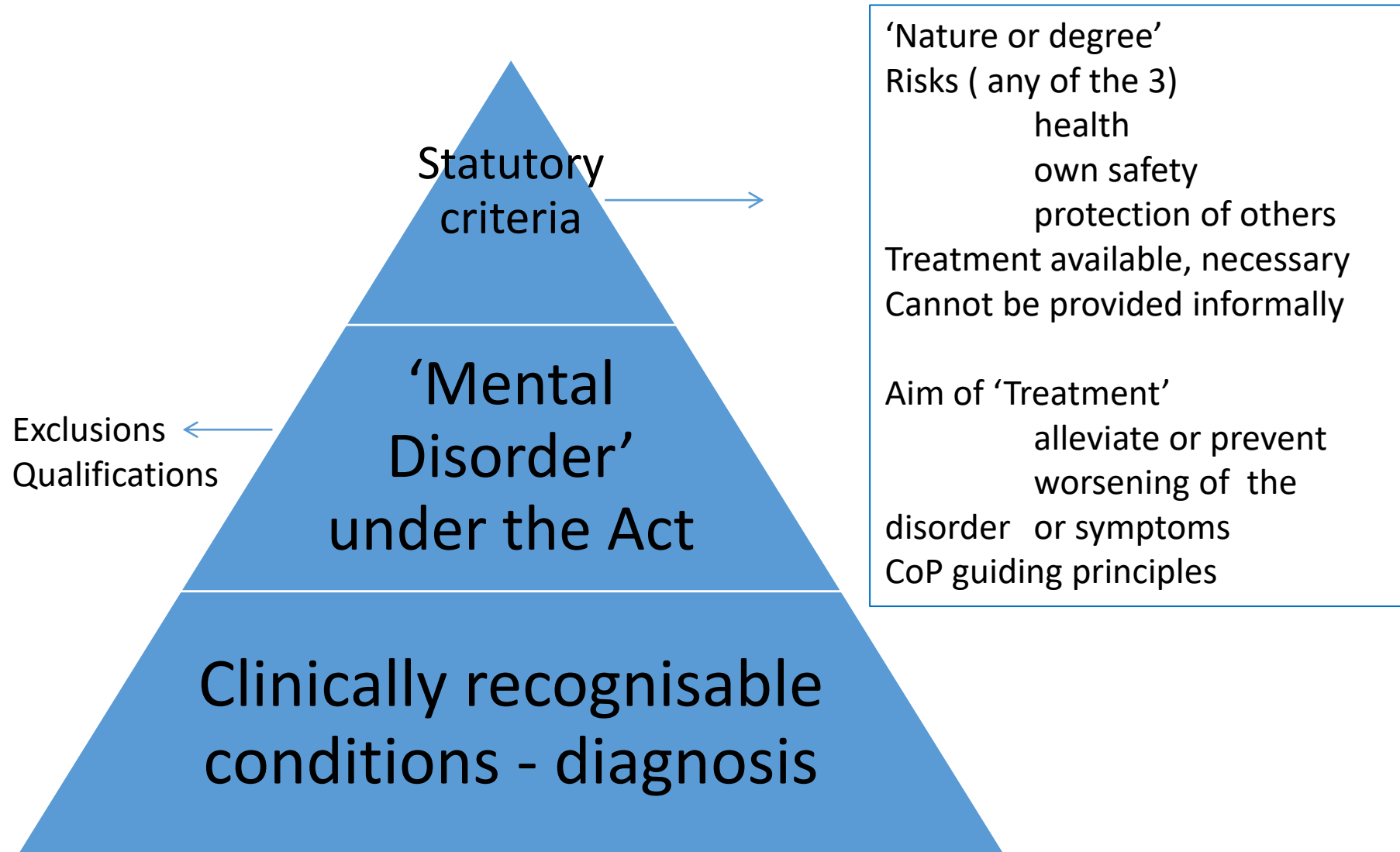
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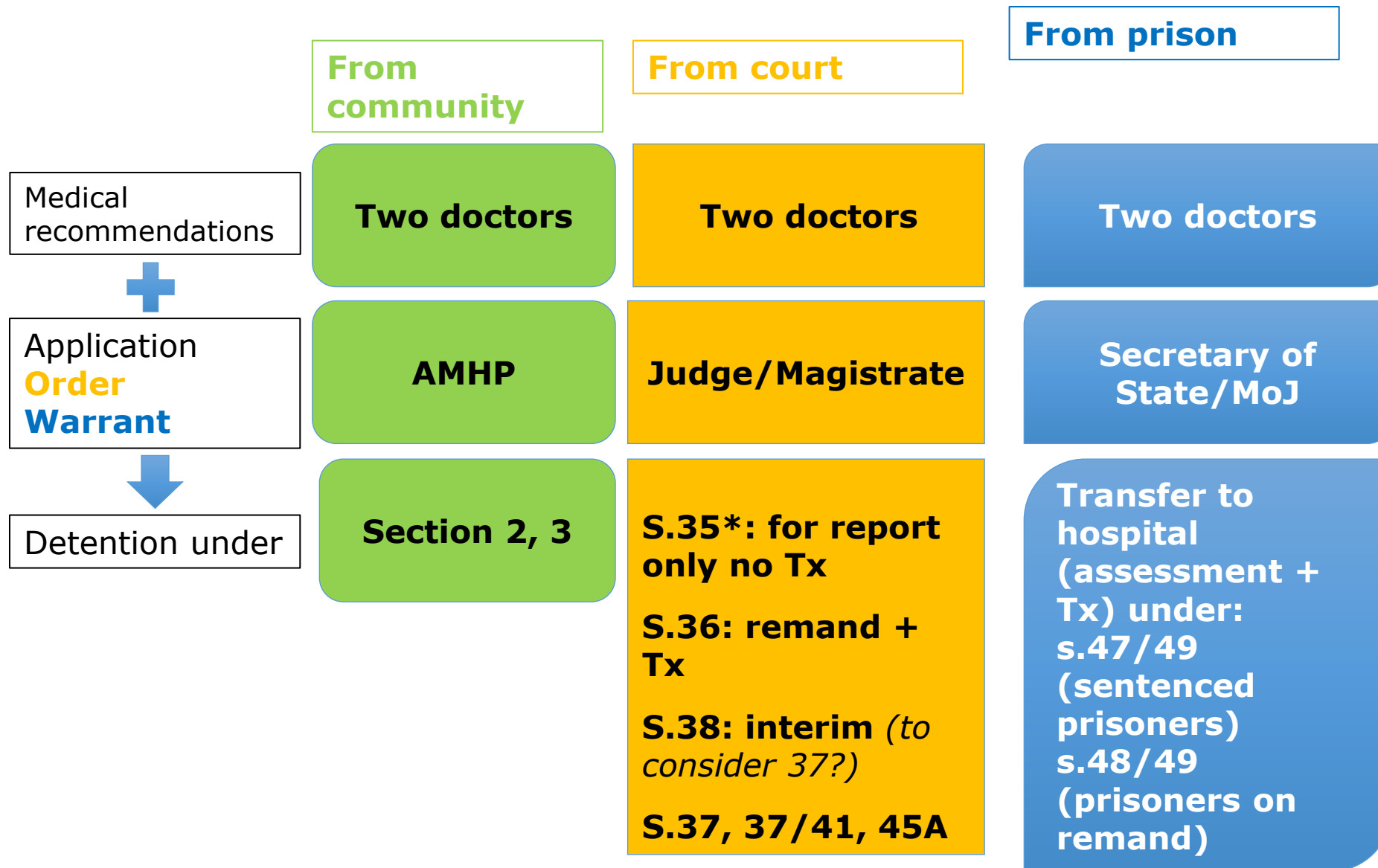
- Does 'diagnosis' matter under the Act?
- Diagnosis = 'Mental Disorder' ?

Mental Health Act

- The Basics
- The process

MHAct general criteria





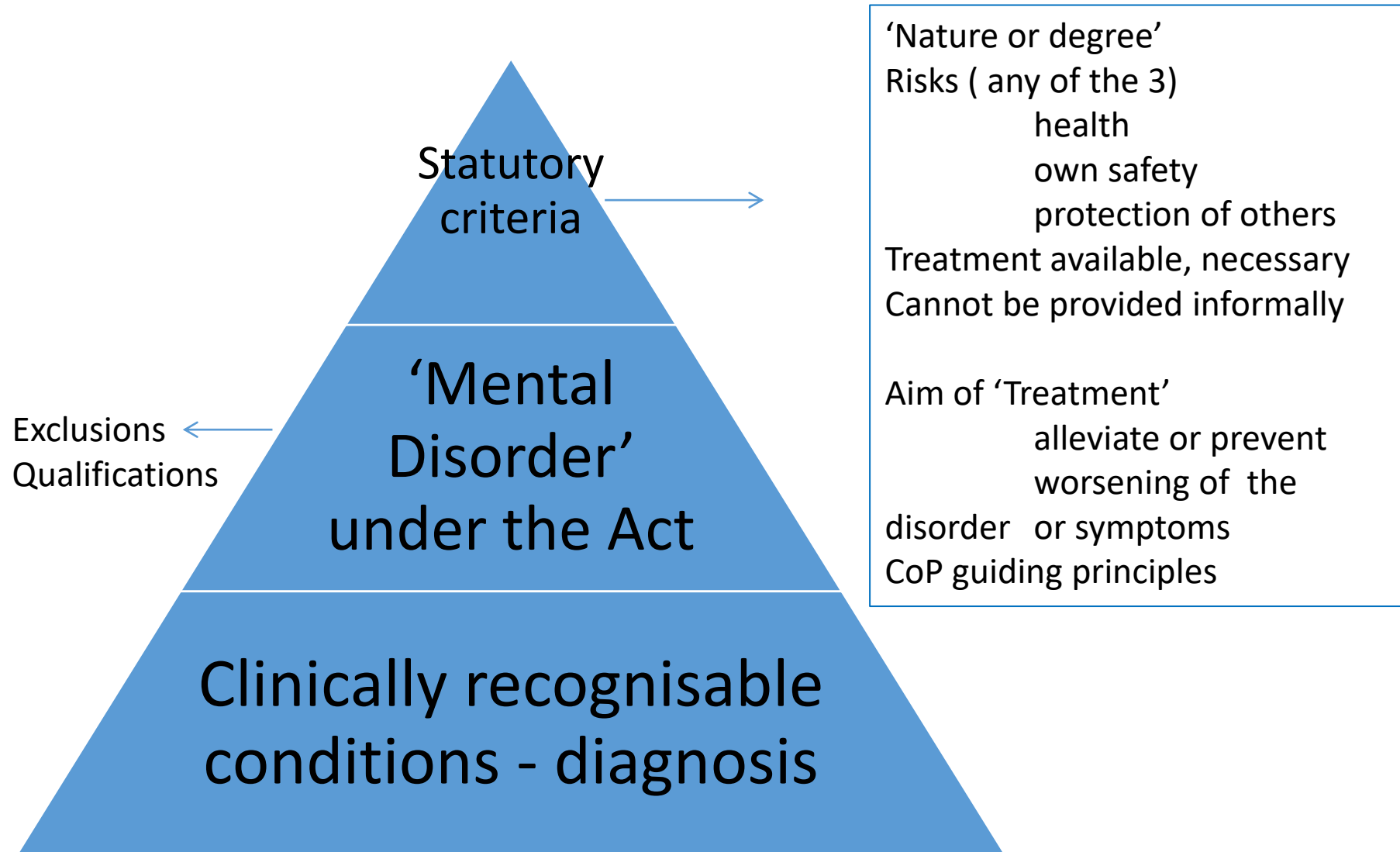
*If Tx (treatment) is necessary will have to be considered for concurrent civil section like s.2 or s.3

Doctors and 'diagnosis' involved at the point of admission in all settings?

- Mental 'Health' Act
- 'Section 12 doctors'
- 'Triage and diagnosis'

- Diagnostic uncertainty could confront us at various stages
- May vary depending on the stage and type of section of the Act
- What are the key points where this could be relevant?

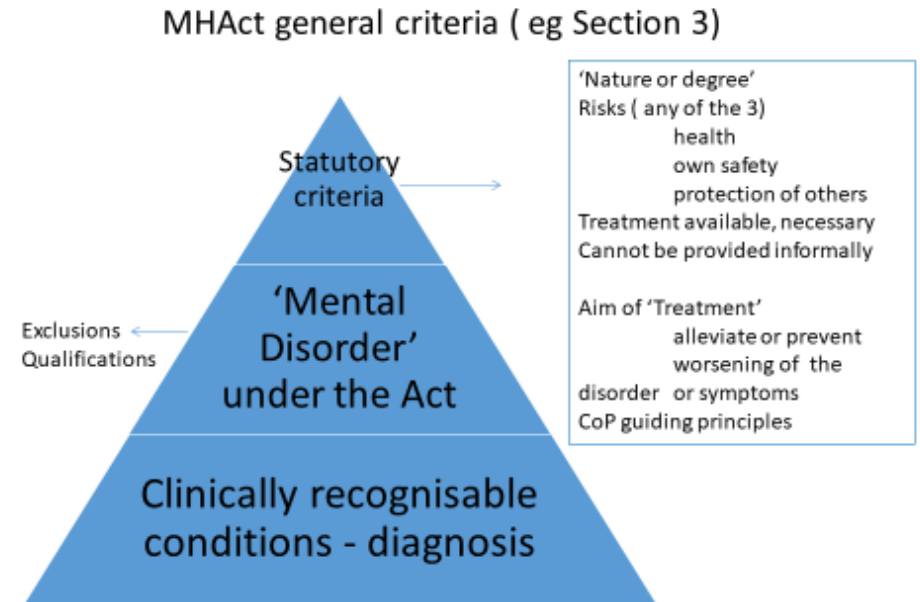
MHAct general criteria (eg Section 3)



- Medicine:
 - Comfortable with uncertainty.
 - Diagnosis is a "working hypothesis"
- Law:
 - Demands certainty.
 - Expects us to be 'black and white'
- This fundamental clash could be perceived as a significant challenge for clinicians applying the MHA – is it really?

Does 'diagnosis' matter in 'Law' ?

- Definition of 'mental disorder'
- 'Exclusions and Qualifications'
- 'Appropriate Treatment'
- Diagnosis > 'Mental Disorder' > Links with
 - Manifestations
 - Treatment
 - Risks/Behaviour
- Could get more complicated in 'Forensic' sections
 - Links with
 - offending
 - 'Culpability'



May vary

- Initial Detention (e.g., Section 2):
- Long-Term Detention (e.g., Section 3)

Let us have look through the criteria in a bit more detail

Mental Disorder

Legal definition of mental disorder within the MHA does not necessarily correlate with manuals such as the ICD or DSM

- More than one diagnosis together could make up the 'mental disorder'
- One could be a complicating or perpetuating factor of the other

1983	2007	Exclusions & Qualifications (2007)
4 categories: 1. 'mental illness' 2. 'mental impairment' – (arrested or incomplete development of mind) 3. 'severe mental impairment' 4. 'Psychopathic disorder'	All into one broader definition 'any disorder or disability of the mind'	Excluded: Just 'Dependence' alone Qualification: If only LD, associated with 'abnormally aggressive or seriously irresponsible conduct' to be considered as 'mental disorder'

Nature and/or Degree

‘nature’ and ‘degree’ are not synonymous
must be specifically applied to that individual’s disorder

‘Nature’	‘Degree’
‘nature’ refers to • the mental disorder itself, • its chronicity • Its pattern over time, • its prognosis • the patient’s previous response to treatment. <u>For the particular patient</u> <u>Formulation</u>	• current manifestation of the disorder.

‘Climate and weather analogy’

Reason

Short term (Section 2) – assessment & treatment	Longer term (Section 3) - treatment
• ‘warrant’ and • ‘justified’	• ‘appropriate’ and • ‘necessary’

Linked to the condition / ‘disorder’- in turn to the diagnosis

Risks

Health	Safety	Protection of others
Non adherence leading to - deterioration or - relapse	Not only 'self harm/suicide' - Exploitation - Vulnerability - Safeguarding	- Aggression - Violence - Forensic history

Linked to the condition/'disorder'- in turn to the diagnosis
- formulation

Case Law examples

- Diagnosis/classification related issues more pre 2007 due to understandable reasons
 - Could become a focus again under the proposed provisions with the Mental Health Bill 2025 currently going through parliament, which brings in another additional term
 - 'Psychiatric Disorders' = 'mental disorders' – (Autism , LD)
- R (B) v Ashworth Hospital Authority, House of Lords 2005:
'Whether a patient could be treated on a ward, specialising in a form of mental disorder other than the one from which he was classified for the purposes of detention?'
House of Lords held that the law permitted this, and in so doing disagreed with the Court of Appeal'

Case law – DL-H v West London MH Trust - 2017

- Pt appealed as FtT
 - did not discharge
 - Paranoid Schizophrenia – *religious beliefs or delusions*
 - Personality Disorder – EUPD or Dissocial
 - Religious beliefs – despite expert evidence from a Chaplain

Upper Tribunal held:

‘In deciding whether a patient is manifesting religious beliefs or mental disorder, a tribunal is entitled to take account of evidence from both religious and medical experts.

A tribunal is entitled to use its own expertise to make a different diagnosis from those of the medical witnesses, provided it allows the parties a chance to make submissions and explains its decision’

‘Appropriate Treatment’

- Treatment is not limited to pharmacological interventions.
- Section 145 of the MHA defines it widely as:

‘nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care’

- Clinical rationale – link to diagnosis/symptoms and standard treatment
- Necessity – not limited to ‘pharmacological’ interventions
- Remember wider meaning
- Section 17 leave is ‘treatment’

Case Law: SF (2023)

SF v Avon and Wiltshire Mental Health Partnership [2023] reinforced that "warehousing" a patient—confining them without a clear therapeutic purpose—is not considered appropriate treatment.

'Warehousing' and the limits of appropriate treatment under the MHA 1983 – important new Upper Tribunal case

Posted on 25 August 2023 Updated on 21 September 2023

The issue facing the Upper Tribunal in *SF v Avon and Wiltshire Mental Health Partnership* [2023] UKUT 205 (AAC) was crisply delineated by UTJ Church thus:

1. *This appeal is about RB, a woman with a primary diagnosis of autism spectrum disorder and a secondary diagnosis of complex post-traumatic stress disorder. RB was at the relevant time detained in hospital for treatment under section 3 of the Mental Health Act 1983 (the "MHA").*
2. *An application was made to the First-tier Tribunal to review her section and it was the tribunal's job to hear evidence and argument and to decide whether the criteria set out in section 72(1)(b) MHA were satisfied. If they were not, it had to discharge her section.*
3. *The circumstances of this case are very distressing. By all accounts, RB was very unwell and unhappy. The witnesses from the clinical team accepted that RB needed psychosocial support, but this was not available in her current setting on an acute psychiatric ward at Fountain Way. They accepted that being on such a ward was "not beneficial" to RB's mental health. However, the witnesses from the clinical team didn't support RB's discharge because they held justifiable worries that, were her section to be discharged, RB might harm (or even kill) herself, or harm others.*

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Medicine to Law

- Different language – ‘words do matter’
- Translating ‘clinical’ to ‘legal’ can be a bigger challenge than resolving uncertainties in diagnosis in common practice
- Examples:
 - Diagnosis > ‘Mental Disorder’
 - ‘Medical’ Treatment – wider than pharmacological
 - ‘Testing out’ on section 17 leave is a ‘treatment’
 - ‘Necessary’ Vs ‘Desirable’

Tips

- We are clinicians
- We have a clinical formulation
- Pt at the centre
- Family, MDT
- We are clear about the clinical need/'necessity' for the proposed interventions based on our knowledge, skills and evidence based practice as applied to the patient
- Mental Health Act is a 'clinical intervention'
- For the purpose of MHAct we need to translate that clinical formulation into legal language to demonstrate how it meets the criteria under the Act

Tribunal

- Not concerned with
 - clinical nuances
 - Service disputes
 - Not a case conference/care planning meeting/CPA
- Its focus is on legal criteria.
- Seek to answer specific questions:
 - Mental Disorder
 - Nature
 - Degree
 - Risks – health, safety ,protection of others
 - Appropriate treatment
 - ‘Necessary’ Vs ‘Desirable’
 - Why not possible in community
- Code of Practice principles

Evidence to Tribunals



BJPsych Advances

Article contents

Summary
References



Giving medical evidence to the First-tier Tribunal (Mental Health)

Published online by Cambridge University Press: **11 July 2025**

[Elliott Carthy](#) , [Ben Thompson](#), [Joan Rutherford](#), [Phillip Westcott](#), [Georga Godwin](#) and [Rob Cornish](#) [Show author details](#) ▼

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Summary

To mitigate the risk of harm to themselves or others, people with mental disorders may require compulsory admission to hospital for in-patient treatment. In England and Wales this is authorised under the Mental Health Act 1983 (MHA). Patients have the right to appeal against this involuntary detention at a hearing before the First-tier Tribunal (Health Education and Social Care Chamber) Mental Health, and psychiatrists may be called on to provide written and oral evidence to the tribunal. The purpose of this article is to help psychiatrists, particularly trainees, understand the sections of the MHA involved, the patient's right of appeal, the role of the tribunal, their own role as a professional witness, and how to improve the quality of evidence they provide.

<https://www.cambridge.org/core/journals/bjpsych-advances/article/abs/giving-medical-evidence-to-the-firsttier-tribunal-mental-health/DEF20A559BD6A22ABB5B565FC71E5ED9>

Clinical > MHAct practice

Clinical medicine

- History, Examination

- Clinical signs >>>> diagnosis/differential diagnosis

- Formulations and Mx plan

When recommending MHAct , we are saying the intervention is necessary/proportionate even without a valid consent

Mental Health Act – to ‘enable’ / ‘facilitate’ clinical necessity within a legal frame work

- Focus on Criteria

- Demonstrate each limb by objective ‘evidence’- history

- Examples symptoms/ behaviours /risks linked

- Follow ‘Practice Direction’

Summary

- First and foremost we are clinicians
- Working with our patients and their families along with MDT colleagues
- Be mindful about the tension between ‘medical uncertainty’ and ‘legal certainty’ when faced with diagnostic complexities
- Learn to reconcile with these nuanced gaps and limits of MHAct in shaping our clinical practice / available resources
- Tribunal reports and oral evidence must be tailored and focussed to address the core matters under consideration – the criteria of the Act
- Translate our clinical formulation into concise legal language as necessary aiming for safe, quality care for our patients in line with Code of Practice

Thank you



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