



Home Office


Minister of State for Policing and
Crime

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2 June 2026

Dear Mr Potter,

Thank you for your letter of 27 March 2026 enclosing a copy of the Regulation 28 Report to Preventing Future Deaths, following the inquest into the death of Robert Joseph Day. I am responding as the Minister for Policing and Crime.

I would first like to express my deepest condolences to Robert's family for their loss in what must be a truly difficult time for them.

The Mental Capacity Act 2005 is designed to protect individuals who may lack the mental capacity to make their own decisions about care or treatment. The legislation states that a person lacks capacity in relation to a matter if they are unable to make a decision for themselves on that matter due to an impairment of, or a disturbance in the functioning of, the mind or brain. Further, a person is unable to make a decision for themselves if they are unable to understand relevant information; to retain that information, to use or weight the information to make a decision or to communicate their decision. A person is to be assumed to have capacity unless it is established otherwise and making what might be considered to be an unwise or irrational decision is not by itself, proof that someone lacks capacity. Where a person is deemed to lack capacity, others, including police, may intervene in certain vital or imminent circumstances such as to enable them to receive life sustaining treatment.

The College of Policing's Authorised Professional Practice (<https://www.college.police.uk/app/mental-health/mental-capacity>), which is the official, evidence-based guidance for policing in England and Wales, is clear that where an issue of capacity has arisen and "where health or social care professionals are on the scene, police should defer to their expertise and provide support as appropriate and in accordance with local protocols" which was the case in this event with the attendance of paramedics.

There are limited powers which are available to the police in these types of circumstances. I see that you have acknowledged that Section 136 of the Mental Health Act could not be used as Mr Day was not in a public space, which is of course correct, and your view that section 135 was inappropriate given the critical timing of the situation. In order for section

135 to have been used, an approved mental health practitioner (AMHP) would have needed to be involved as they are the only professional who is able to apply for the warrant needed (although as you note, it may be unlikely that a warrant could have been granted and executed swiftly enough given the urgency of an overdose.)

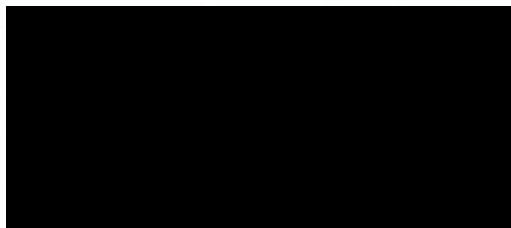
Further to this and the case law of R (Sessay) v South London and Maudsley NHS Foundation Trust & Anor [2011] EWHC 2617 (QB)

(<https://www.bailii.org/ew/cases/EWHC/QB/2011/2617.html>), suggests the police would not have been able to remove Mr Day from the premises as the judge in that case gave clear direction that intervention of this kind must be conducted under the Mental Health Act, either admission under s4 MHA or the execution of a s135(1) MHA warrant. The judgement highlights that the MCA and common law doctrine of necessity cannot be used by the police to remove a person from a private premises as an alternative to using the MHA 1983 s135 (where a warrant must be obtained) or s136 (where the power can only be used in a place to which the public has access).

Unfortunately, there was little that the police could have legally done in this particular sad situation where Mr Day lost his life, as the officers must have regard to that person's rights and freedom of action, which he was deemed to have under the mental capacity act; an unwise decision does not amount to an automatic lack of capacity – people are entitled to make unwise decisions and decline medical treatment, where they have legal capacity to do so.

Thank you again for your letter.

Very best wishes,



Minister of State for Policing and Crime