

# Mental Capacity Act 2005 Update

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# AM v SLAM& DH [2013] UKUT 0365 (AAC)

## Admission:

Non compliant incapacitated patient-detained under s.2 MHA

## In hospital:

Extended s.2 in place

Compliant incapacitated patient- which regime should now apply?

## Legal Challenge:

Least restrictive option was use of MCA 2005?



## 3 Questions to answer?

1. Does P have capacity to consent to admission/treatment informally?
2. Might the hospital rely on the MCA?
3. If there is a choice between MHA/MCA, which is the least restrictive option?



# MCA/MHA Interface

- P now detained under MHA
- So MCA no longer relevant
- Or is it?



# MCA/MHA interface

- **Fact sensitive inquiry**
- **Consider least restrictive arrangement**
  - **Compliant, capacitated patient- s 131 MHA (informal)**
  - **Non compliant, capacitated- use MHA**
  - **Non compliant incapacitated patient- use MHA**
  - **Compliant, incapacitated patient:**
    - **MCA or**
    - **MCA + DOLs or**
    - **MHA?**



# Questions for clinicians- incapacitated compliant P

- Is there a capacity assessment?
- Has the capacity assessment been properly recorded?
- When will/should capacity be reviewed?
- Which regime should apply? (MCA or MHA)?
- If MCA are there any limitations?
  - Is the act in best interests?
  - Is there a contrary decision : LPA/AD?
  - Is deprivation of liberty necessary for assessment/ treatment?



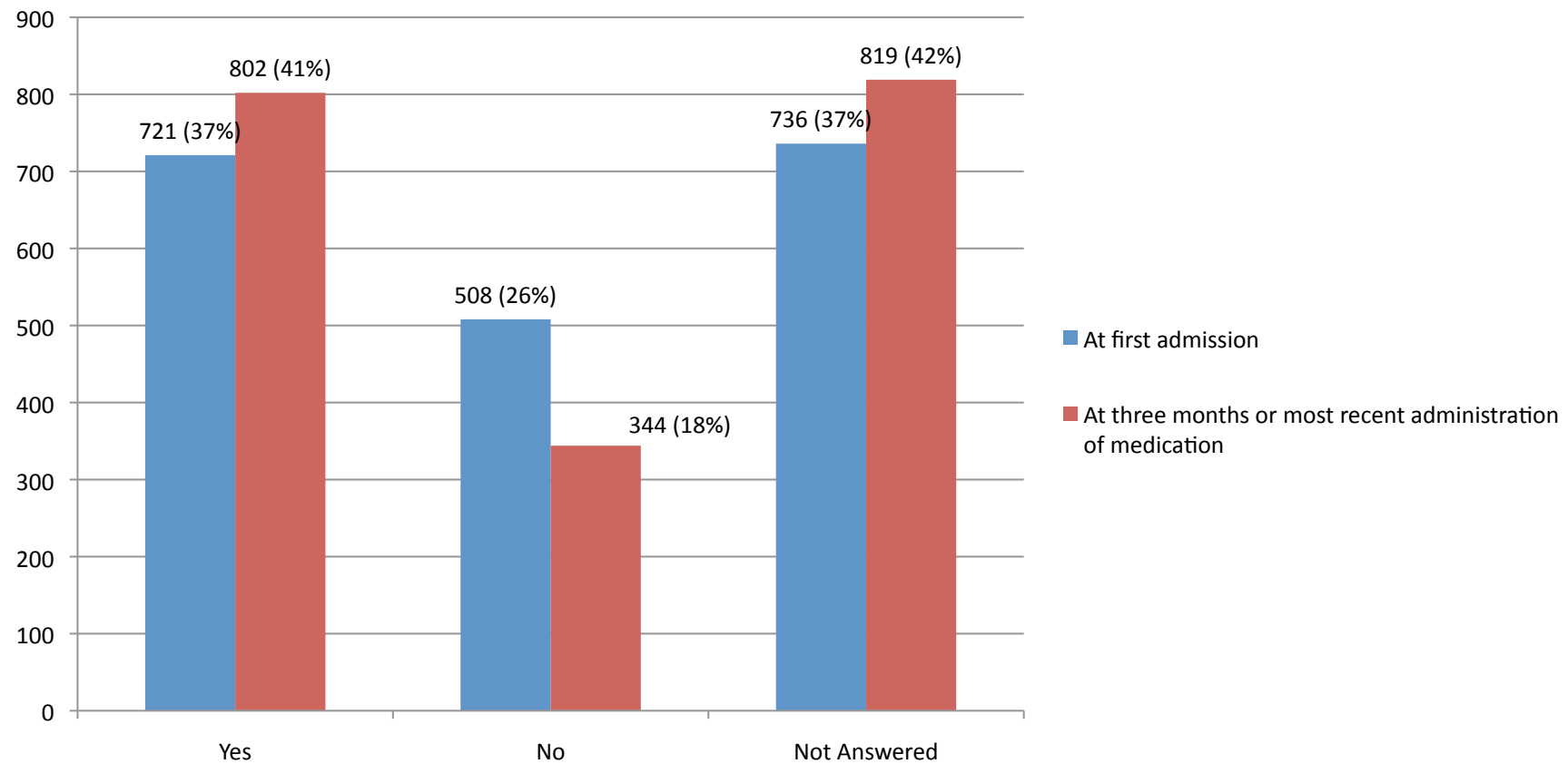
# CQC Monitoring The Mental Health Act in 2012/2013

## Key finding regarding capacity and consent

“We continue to observe that in a significant proportion of records there are no recorded assessments of patients’ consent or capacity at the point of admission or at the three month stage in detention”.



## Evidence that AC has assessed capacity to consent to treatment – Oct 2012 to April 2013 (Source: CQC)





# CQC Monitoring The Mental Health Act in 2012/2013

- Evidence of good practice
- Forms should not encourage tick box approach to assessments
- Evidence of generic capacity assessments



# Debate

**The Future of Capacity Assessments on PICU: This House Believes That Within the Next 5 Years the Monitoring of Capacity Assessments on PICU will Largely be Fully Integrated in to the Process of Good Practice Shared Decision Making**

