

Mental Health and The Law

31 January 2024, UoY

Event summary

On January 31st 2024, the **York Law School (YLS)** and the **Institute of Mental Health Research at York (IMRY)** collaborated to highlight groundbreaking research at the intersection of mental health and the law. Researchers convened at the York Law School Building to share inquiries and findings on the impact of mental health in people's experiences of the law.

Professor TT Arvind (Head of YLS) and **Dr Ailbhe O'Loughlin** (IMRY Faculty Lead for Social Sciences) extended a warm welcome to the attendees, noting the unexpected yet promising development of mental health research within the York Law School. This field presents a fertile ground for discussions about how individuals engage with the legal system in daily life, with Scholars from the University of York's Law School making significant contributions to this complex and sometimes problematic area. Four speakers presented their compelling research to stimulate interdisciplinary interest in the wide-ranging impact that law can have on individuals with mental health concerns.



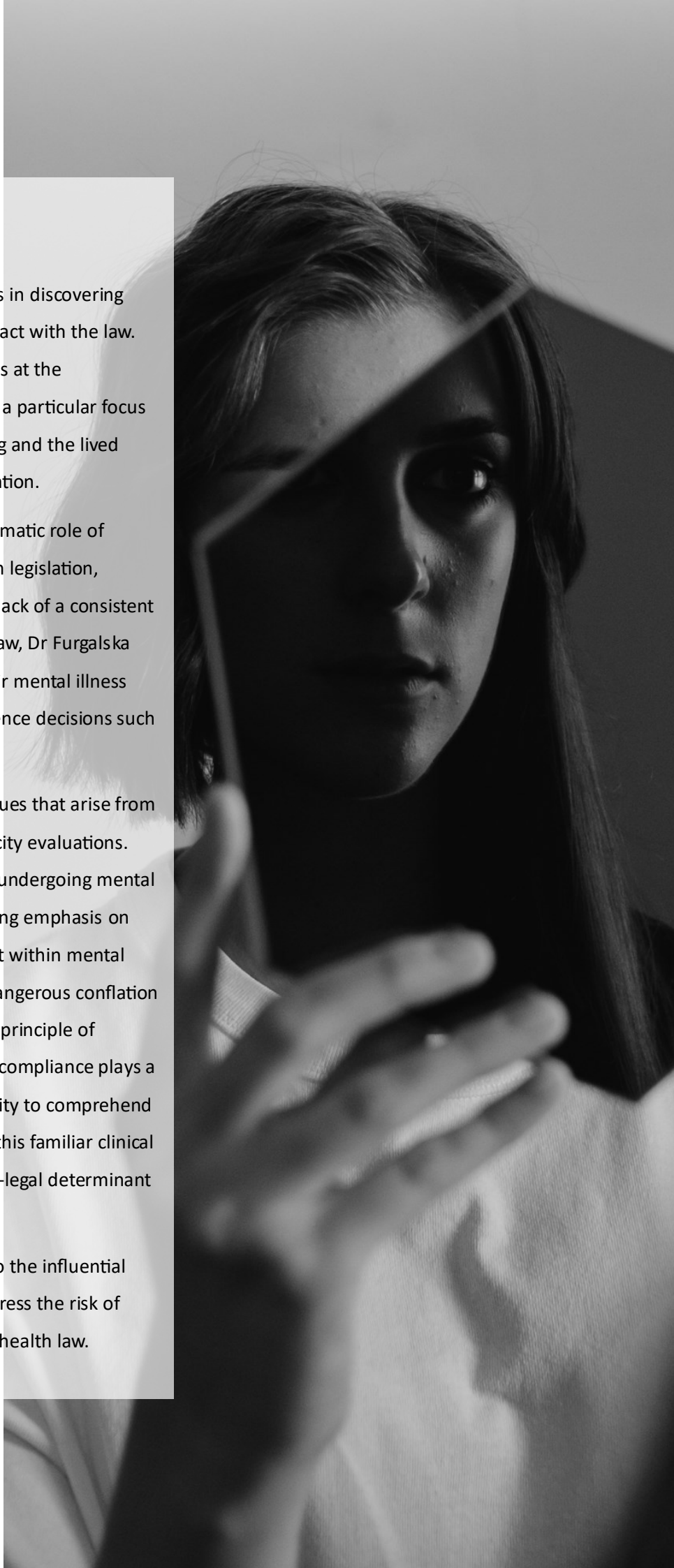
An insight into 'insight'

Dr Magdalena Furgalska is making great strides in discovering how individuals with mental health issues interact with the law. Her socio-legal research spans various problems at the intersection of mental health and the law, with a particular focus on the desirability of advanced decision-making and the lived experiences of psychiatric treatment and detention.

A central focus of her recent work is the problematic role of 'insight' within the application of mental health legislation, particularly concerning detention. Despite the lack of a consistent definition of insight within psychiatry and the law, Dr Furgalska explores how an individual's recognition of their mental illness and their compliance with treatment can influence decisions such as legal detention.

Her recent empirical research highlights the issues that arise from physicians' reliance on 'insight' in mental capacity evaluations. Through two-stage interviews with individuals undergoing mental health treatments, she has uncovered a troubling emphasis on treatment compliance. Dr Furgalska argues that within mental health treatment and practice, there exists a dangerous conflation of the clinical concept of 'insight' and the legal principle of 'capacity', wherein the presence or absence of compliance plays a significant role in determining a person's capacity to comprehend and consent to treatment. Her concern is that this familiar clinical concept is being used by physicians as an extra-legal determinant for psychiatric detention.

Dr Furgalska advocates for further research into the influential extra-legislative role of 'insight' in order to address the risk of potential coercion in the application of mental health law.



Rethinking responsibility: The insanity defence

Our next speaker, **Dr Jane Richards**, advocates for enhanced communication between the criminal justice system and disability rights proponents. Through her critique of the divisive insanity defence, she exposes the ableism that is embedded within the criminal justice framework.

Dr Richards argues that the insanity defence marginalises individuals with mental disabilities, leading to discrimination and rights violations. Drawing on the United Nations' Convention on the Rights of Persons with Disabilities, her research aims to balance public safety with the rights of vulnerable offenders.

Her work examines the tension between justice and protecting the rights of individuals lacking criminal responsibility. Dr Richards focuses on the contested role of autonomy in the application of the insanity defence. She explores how mental incapacity can constrain decision-making, often resulting in actions being performed without a full comprehension of the repercussions or legal consequences.

Dr Richards argues that we must challenge the underlying norms within the criminal justice system, such as the insanity defence, that pit those with mental disabilities as 'other' to recognise a more nuanced understanding of autonomy that recognises the difficulties in decision-making under mental impairment. She emphasises the importance of a dialogue between the criminal justice system and disability rights advocates to encourage the creation of a criminal justice system that does not infantilise and discriminate against individuals with mental incapacities.

However, her work leaves us with one crucial question that she fears lacks a simple answer: How can we establish a criminal justice system that more effectively respects the nuanced rights of every individual whilst also ensuring that the public receives the protection that it deserves?

The use of psychiatric evidence in sentencing

Dr Ailbhe O'Loughlin's work also focuses on the contentious issues arising out of the experience of defendants with mental health concerns within the criminal justice system. Her current research delves into the role of psychiatric evidence in sentencing, prompted by the worrying shortage of mental health hospital beds which had led to increased incarceration of mentally ill offenders. This emphasis on the use of the prison system has exacerbated the mental health crisis within the UK's prisons, with record levels of assault and self-harm being recorded.

Dr O'Loughlin's study questions the underuse of hospital orders, aimed at uncovering the reasons behind judicial decision-making regarding sentencing options – whether that be prison, hospital, or a hybrid of the two.

Her analysis of the case law reveals two judicial approaches: the punitive strand prioritises punishment and public protection, while the therapeutic strand balances public safety with offender welfare and is often heavily influenced by psychiatric evidence. However, Dr O'Loughlin raises concerns about psychiatrists exceeding their role within the legal system by commenting on defendants' culpability, risk, and release regimes. This underscores her concern that psychiatric expert witness evidence is being used to substantiate judicial decision-making regarding whether to make a penal or psychiatric order.

Dr O'Loughlin plans to carry out further qualitative research with psychiatric experts to assess their role and the risks associated with relying on psychiatric evidence in sentencing.





ASD preparatory offences – A reliance on ‘mindset’ evidence?

Dr Kajsa Dinesson investigates the correlation between Autism Spectrum Disorder (ASD) and preparatory terrorism offences. Despite limited data, there appears to be a noticeable trend of neurodiverse men being prosecuted for such offences. Her focus on this link between ASD and terrorism offences stems from the fact that 42% of individuals incarcerated for terrorism offences who were radicalised online have mental health issues and/or neurodivergence.

She attributes the disproportionate prosecution of neurodiverse individuals to selective enforcement. This discretion allows authorities to intervene based on perceived terrorism threats, often relying on evidence that Dr Dinesson terms ‘mindset material’. She argues that contextual evidence, often used in these preparatory offence prosecutions, unfairly paints individuals with ASD as high risk – this ‘mindset’ evidence appears to blur the line between obsessional special interests and a reliable risk of an intent to commit an act of terrorism. She suggests that clearer prosecutorial guidelines and ASD-specific protections should be introduced to address the potentially discriminatory prosecution practices.

Like the other speakers at this showcase, Dr Dinesson advocates for further conversation between mental health practitioners and the legal field to address challenges such as discrimination at this intersection.

Perceptions of administrative fairness within the UK

Dr Jed Meers presented the recent initiatives of the Administrative Fairness Lab, focusing in particular on the SPARKS funded project titled 'Administrative Fairness in Healthcare'. Ahead of their public involvement day on February 19th 2024, he summarised the lab's recent projects analysing the impact of positive and negative interactions with state services. Their research findings reveal a significant scarring effect on public perceptions, with individuals being twice as likely to trust state decision-making procedures if their experience is positive. These findings suggest that experiences strongly influence future engagement with public administrative services.

Dr Meers announced the lab's plan to analyse public experience of healthcare services in the UK, particularly focusing firstly on perceptions of GP access. He invited colleagues to the public involvement day to learn more and contribute suggestions for the Lab's larger project on healthcare service access and administration, especially concerning mental health.



Closing remarks

In his closing remarks, **Professor Martin Webber**, IMRY Associate Director of the Social Sciences, thanked the Scholars from the law school for sharing their insightful developments at the intersection of mental health and the law. He emphasised the influence of mental health within all aspects of life and academia – it is an issue that impacts everybody. The research conducted by the York Law School is making significant contributions to this vital field. Professor Webber invited all to think about mental health research in an interdisciplinary way.

Many thanks to all of the researchers for sharing their projects; We hope that this event will inspire further exploration and research at the important intersection of mental health and the law.

Author: Paige Hardwick

Design: Theano Pavlidou

