

Institution: Queen's University Belfast		
Unit of Assessment: 20 Social Work and Social Policy		
Title of case study: Informing the development and implementation of mental capacity legislation		
Period when the underpinning research was undertaken: August 2009 to June 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Prof Gavin Davidson	Professor of Social Care	01/08/08 to present
Prof Berni Kelly	Professor of Social Work	01/08/05 to present
Prof Geraldine Macdonald	Professor of Social Work	01/08/06 to 31/07/15
Dr Claire McCartan	Research Fellow	01/08/03 to present
Dr Aisling McLaughlin	Research Fellow	01/10/09 to 30/08/20
Dr Lorna Montgomery	Senior Lecturer in Social Work	01/10/13 to present
Dr Rebecca Shea Irvine	Research Fellow	01/09/13 to 30/08/17
Period when the claimed impact occurred: 01/08/13-31/12/20		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Professor Gavin Davidson has collaborated with a number of colleagues to develop a body of research on the effective facilitation of supported decision making. Davidson et al.'s research played a key role in informing the development of the Mental Capacity Act (Northern Ireland) 2016, a world-leading piece of legislation which, for the first time, combined both mental health and mental capacity provisions into a single legislative act. The research also provided significant data which assisted the Northern Ireland Department of Health in developing its plans for implementation of the legislation, including workforce planning and the production of a code of practice. Finally, the research played a central role in developing the knowledge, awareness and understanding of a significant proportion of the health and social care workforce in Northern Ireland with regard to the implementation of the legislation. The beneficiaries of the Act are the estimated 120,000 people in Northern Ireland who have impaired decision-making ability and so, ultimately, the research has contributed to a significant positive impact on this group of people.</p>		
2. Underpinning research		
<p>In 2012, Davidson led a research team which carried out a comprehensive review of the international literature on the development and effectiveness of supported decision making (Ref 1). His colleagues, Professor Berni Kelly (Queen's University Belfast) and Professor Geraldine Macdonald (then Queen's University Belfast), were part of this team. Supported decision making refers to approaches to support people whose decision-making ability is impaired to make their own decisions. This review included an analysis of the available international evidence on and approaches to supported decision making. Davidson et al. concluded that it was very difficult to ensure that supported decision making was effectively facilitated in all settings without a clear statutory requirement to this effect. This review of the evidence was the first time that international research findings had been analysed to inform the legislative framework in Northern Ireland.</p> <p>Subsequently, in 2013 Davidson teamed up with collaborators at universities in Ireland, Australia and Canada to carry out an international comparison of legal frameworks facilitating supported decision making (Ref 2). This study, which was also led by Davidson, compared developments in four jurisdictions: Ontario, Canada; Victoria, Australia; England and Wales; and Northern Ireland.</p>		

This comparative analysis, covering both mental health and mental capacity law, had not been completed before and provided further direction for how a new approach could work in Northern Ireland.

Reference 3 was co-authored with Dr Colin Harper, an Honorary Lecturer at Queen's and also with Professor Roy McClelland, an Emeritus Professor at Queen's. Professor McClelland was the former Chair of the Bamford Review which had recommended this new approach. The article comprised an overview and analysis of the new Act which identified the potential effects of the Act and some of the key issues to be considered for implementation. A central aspect of the information needed for implementation was the estimated prevalence of impaired decision making in Northern Ireland across causes of impairment which included: physical health; dementia; mental health; intellectual disabilities and brain injury.

In 2015, Davidson was commissioned by the Law Centre NI, to complete a report (Ref 4) to help identify the scope of the new legal framework in Northern Ireland. The study drew on the available research on impaired decision-making across causes and settings to develop estimates on the scale of the population likely to benefit from the legislation. The study found that an estimated 120,000 people in Northern Ireland had some level of impairment and so would come under the scope of the Act. It also concluded that those receiving inpatient treatment for their physical health and who lacked the relevant capacity were the largest single group (61,000/120,000).

In 2017-18 Davidson also led the Queen's contribution to an inter-agency qualitative research project on supported decision making in Northern Ireland. This study was funded by Disability Research for Independent Living and Learning, a UK-wide programme supported by the Big Lottery. This project used a co-production methodology to explore people with mental health problems and/or intellectual disabilities' experiences of decision making and needs for support (Ref 5). Davidson and his QUB colleagues, Dr Aisling McLaughlin and Dr Lorna Montgomery, were involved in all aspects of this project. Shea Irvine contributed to the literature review and Kelly contributed to the design and participatory approach. The findings reinforced the potential benefits of supported decision making and highlighted the central importance of time in these processes.

The Northern Ireland Department of Health's Office of Social Services also commissioned Davidson and his Queen's University colleague, Dr Claire McCartan, to conduct further research to inform workforce planning which was completed in June 2020 (Ref 6). This built on previous research on the operation of the Mental Health (Northern Ireland) Order 1986 and work on the prevalence of impaired decision making, to enable estimates of the additional staff needed to fully implement the Act.

3. References to the research

1. Davidson, G., Kelly, B., Macdonald, G., Rizzo, M., Lombard, L., Abogunrin, O., Clift-Matthews, V., & Martin, A. (2015). Supported decision making: a review of the international literature. *International Journal of Law and Psychiatry*, 38, 61-67. DOI: <https://doi.org/10.1016/j.ijlp.2015.01.008> [Cited 64 times - source: Google Scholar]
2. Davidson, G., Brophy, L., Campbell, J., Farrell, S. J., Gooding, P., & O'Brien, A-M. (2016). An international comparison of legal frameworks for supported and substitute decision-making in mental health services. *International Journal of Law and Psychiatry*, 44, 30-40. DOI: <https://doi.org/10.1016/j.ijlp.2015.08.029> [Cited 37 times – source: Google Scholar]
3. Harper, C., Davidson, G., & McClelland, R. (2016). No Longer 'Anomalous, Confusing and Unjust': The Mental Capacity Act (Northern Ireland) 2016. *International Journal of Mental Health and Capacity Law*, (22), 57-70. DOI:

<https://doi.org/10.19164/ijmhcl.v2016i22.552> [Cited 14 times (source: Google Scholar) and downloaded 4,149 times from Queen's repository]

4. Davidson, G. & Harper, C. (2016) *Levels of impaired decision making ability in Northern Ireland: estimates from the literature*. Belfast: Law Centre NI. Available on request.
5. Webb, P., Davidson, G., Edge, R., Falls, D., Irvine, R., Keenan, F., Kelly, B., McLaughlin, A., Montgomery, L., Mulvenna, C., Norris, B. & Owens, A. (2020). Service users' experiences and views of support for decision-making. *Health & Social Care in the Community*, 28(4), 1282-1291. DOI: <https://doi.org/10.1111/hsc.12961>
6. Davidson, G. & McCartan, C. (2020) *Approved Social Worker (ASW) workforce planning estimates*. Belfast: Department of Health. Available on request.

4. Details of the impact

Informing the development of the Act

The Mental Capacity Act (Northern Ireland) 2016 has been described by the Northern Ireland Department of Health as "... a ground-breaking piece of legislation that, when fully commenced, will fuse together mental capacity and mental health law for those aged 16 years old and over within a single piece of legislation ..." (A). The Head of the Department's Mental Health and Mental Capacity Unit has described it as "...a world first fusing mental health and mental capacity legislation into one" and as "...an innovative and progressive approach which promotes the rights and autonomy of everyone in Northern Ireland whose decision making ability may be impaired." (B)

Davidson drew on his international research on supported decision-making to contribute to the development of this unique Act in two ways. Firstly, Davidson sat, as the professional representative for social work, on a Reference Group which was convened by the Department to inform the development of the legislation. Davidson was originally appointed to this Group in 2009, due to his relevant experience, expertise and research (B, D). This Group held 16 meetings up to June 2015 when the Mental Capacity Bill was tabled in the Northern Ireland Assembly (C).

A pivotal aspect of this process was when the Northern Ireland Departments of Health and Justice were considering the specific content of the draft legislation in 2014 and 2015; Davidson was one of three members of the Reference Group who were asked to attend a series of meetings with the Departments involved (B). The Group's Chair, who is also Director of Law Centre NI, confirms Davidson's contribution to the work of the Group:

Gavin was fully involved in all the discussions of the Reference Group and was able to draw extensively on his research, especially on legal frameworks in other jurisdictions, to inform the deliberations of the work of the Reference Group and the process. (D).

Secondly, from 2009 to 2015, Davidson was a key contributor to the Northern Ireland Mental Health and Learning Disability Alliance (D). This group was an alliance of health professionals, users of services and not for profit organisations which was led by Law Centre NI and which worked alongside the Reference Group to contribute ideas for progressive legislative development. His contribution to this parallel process is described thus by the Law Centre's Director:

Gavin generously shared and drew on his research to inform a number of critical Chatham House Roundtables with key decision makers during the law reform process ... (D).

In short, Law Centre NI's Director believes that, through both these avenues, "Gavin's research work and academic expertise made an important contribution to the development of this new legislative framework..." (D).

Informing the implementation of the Act

The Department's Reference Group has also played a major role in advising on the implementation of the Act. The Head of the Department's Mental Health and Mental Capacity Unit states:

As part of that [Reference Group] process he [Davidson] was able to present findings from his research about the operation of mental health law in Northern Ireland, his analysis of legal frameworks in other jurisdictions and research on supported decision making to directly inform implementation of the new Act. (B)

In particular, Davidson was appointed to a small group of relevant individuals who were commissioned by the Department of Health in April 2019 to develop key training resources to enable all health and social care staff in Northern Ireland to fully implement the Act (B, E). Davidson was asked to be part of this group specifically because of his research in the area of mental health and mental capacity law (E). He was directly involved in drafting the training resources and in training the trainers who delivered the resources. He also worked with the co-lead, and with QUB colleagues who specialise respectively in drama and in medical education, to develop a series of video case studies and other resources to support implementation. His research on mental health and mental capacity law was "... used and referred to in the development of the training resources, and helped to provide both international and Northern Ireland evidence to support implementation." (E)

Through its central contribution to the development of the training resources, the research has had a considerable beneficial impact on the knowledge and understanding of a substantial proportion of the health and social care workforce in Northern Ireland. Up to January 2020, just over a quarter (15,939 - 26%) of all health and social care staff in Northern Ireland had taken part in the face-to-face version of the training programme (F). A robust evaluation process was put in place to monitor the impact of the face-to-face training. 81% of participants took part in an evaluation survey. Of these, nearly all (96%) indicated that the stated learning outcomes were met (F). These included the understanding of a number of key concepts including specifically to "Understand and apply the key principle of supporting individuals to make a decision" which was directly informed by the research. 91% of respondents rated the training programmes as good, very good or excellent (F). Moreover, the online version of the training resources had been accessed 54,000 times by January 2020 (E).

More recently, in March 2020, Davidson was commissioned by the Department of Health's Office of Social Services to develop and deliver training on the temporary modifications to the Mental Capacity Act made by the UK Government's Coronavirus Act 2020. This training, which has been delivered to all relevant social work staff across Northern Ireland, has drawn on Davidson's research. (G)

The research also played a key role, in the lead-up to the implementation of the Mental Capacity Act in 2019, in helping the Department of Health to secure the funding needed to properly implement the Act and to help plan that process (D). This occurred through the use that the Department made of Davidson's research (Ref 4) on the prevalence of impaired decision-making in Northern Ireland and on the the implications of implementing the Act (D, G).

As mentioned previously, Davidson was also commissioned by the Office of Social Services to undertake research estimating the number of social workers who would be needed to fully implement the Act. This research, which was completed in June 2020, was used by the Office to inform its workforce planning for the implementation of the Act (G).

Impact of the Act outside Northern Ireland

Northern Ireland's Mental Capacity Act has attracted much attention from policymakers and relevant professionals around the world. In England, the most recent review of mental health law, in 2018, identified the impact of the Mental Capacity Act in Northern Ireland as one of the key developments to inform future reform in England. It has also been formally considered as part of current process of mental health law reform in Scotland, and Davidson was invited to provide evidence to the Scottish Review process. Internationally it is also being considered in the Australian State of Victoria, and in other jurisdictions across the world (H).

5. Sources to corroborate the impact

- A. Northern Ireland Department of Health '[Mental Capacity Act Background](#)'.
- B. Letter, dated 11th January 2021, from the Head of the Mental Health and Mental Capacity Unit, Department of Health. The writer can also corroborate that Davidson was one of three members of the Reference Group who were asked to attend a series of meetings with the Departments involved.
- C. Harper, C., Davidson, G., & McClelland, R. (2016). "[No Longer 'Anomalous, Confusing and Unjust': The Mental Capacity Act \(Northern Ireland\) 2016](#)" *International Journal of Mental Health and Capacity Law*, (22), 57-70.
- D. Letter, dated 11th January 2021, from the Director of the Law Centre NI.
- E. Letter, dated 12th January 2021, from Nursing Officer, Nursing, Midwifery and Allied Professionals Unit, Department of Health, who co-led the Department's training initiative.
- F. HSC Clinical Education Centre *Overview Report January 2020. Development and delivery of a range of training packages to support the phased implementation of the Mental Capacity Act (NI) 2016 – Deprivation of Liberty Safeguards*, pp. 4 & 6. A table on p. 4 confirms that 15,939 health and social care staff took part in the training up to the end of December 2019. The total health and social care workforce in Northern Ireland, as of September 2020, was 61, 553. (Figure from Department of Health [Health and Social Care Northern Ireland Quarterly Workforce Bulletin September 2020](#)). Information on p. 6 of the *Overview Report* provides headline survey data. The Clinical Education Centre can corroborate the stated learning outcomes for this training.
- G. Letter, dated 12th January 2021, from Social Services Officer, Office of Social Services, Department of Health.
- H. Letter, dated 12th January 2021, from Professor and Discipline Lead, Social Work and Social Policy, School of Allied Health, Human Services and Sport, La Trobe University. The writer's research includes international perspectives on mental health, human rights and mental capacity law. She was also part of the International Advisory Group for the initial research project on supported decision-making undertaken by Davidson, Kelly and Montgomery.