

Mental Health Law Online

Monthly Update, April 2013

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Introduction

In addition to being available on the Mental Health Law Online website, each month's legal update is available in PDF format for printing, and in Kindle format for e-book reading. This update is based on the content at http://www.mentalhealthlaw.co.uk/April_2013_update It is a snapshot of the online page – the online page will be automatically updated when case and legislation pages are updated.

Conference

- **Conference.** Northumbria University are hosting 'The Seventh North East Mental Health Law Conference 2011' on Friday **12/7/13** from 9.00am to 4.30pm. The sessions this year are: 'A Critical Survey of recent developments in Mental Health Law' (Roger Pezzani); 'The Wind from the East: legal challenges from Europe and beyond' (Mat Kinton); 'Non-Medical Approved Clinicians: The Good, The Bad and The Conditionally Discharged' (Dr Bruce Gillmer and Prof John Taylor); 'A Spotlight on the Legal Framework for the Mental Health Care of Children and Young People' (Camilla Parker); 'Mind Your Ps and Qs' (Neil Allen); 'The Newer Legalism - Clinical Power and the Limits of Rights-based Approaches' (Prof Phil Fennell). Price: £240 (£190 for two or more from same company, or for any booking before 31/5/13). CPD: 6 hours. See [brochure](#) for further details and the booking form. See [Events](#)

Case law

- **COP case.** Parties identified and neutral citation available in previously anonymised case. [Stoke City Council v Maddocks \(2012\) EWHC B31 \(COP\), \(2012\) MHLO 111 \(COP\)](#) — (1) *One of JM's children, WM, had breached court orders by, amongst other things, (a) arranging for JM to be taken from the care home to hear judgment delivered, and separately to see a solicitor, (b) discussing the possibility of moving back home with him, (c) harassing her father and employees of the local authority and care home. (2) WM was sentenced to five months' imprisonment for contempt because (a) there had been a considerable number of breaches of court orders, and (b) she had no intention, unless restrained by a severe measure by the court, of obeying the orders herself.*
- **Upper Tribunal decision (postponement).** [RC v NHS Islington \(2013\) UKUT 167 \(AAC\), \(2013\) MHLO 34](#) — "This is an appeal by a patient, brought with my leave, against a decision of the Mental Health Review Tribunal for Wales refusing an application for the postponement of the hearing of the patient's appeal. ... The grounds of appeal argue that the ... policy on which the decision was based, of not postponing hearings other than to a fixed date, was unlawful and in any case there was nothing to prevent the tribunal from fixing a new date for the hearing even if the postponement was granted. ... The result of what I have held to be a flawed approach by the tribunal in relation to the patient's application for a postponement in this case may have had serious consequences. Rather than proceed with a hopeless appeal, the patient was forced to withdraw his application to the tribunal. Although his subsequent appeal was successful, the tribunal's refusal of the initial postponement application may have resulted in the patient's detention for longer than would otherwise have been the case. However, since any practical benefit of this appeal has now been overtaken by events, I ... simply declare the tribunal's refusal of a postponement to have been in error of law." [Summary required.]
- **Litigation capacity.** [Baker Tilley \(A Firm\) v Makar \(2013\) MHLO 33](#) — *During a detailed assessment costs hearing M became tearful and distressed and lay on the floor screaming. M refused to grant access to her medical files and at a further hearing, in the absence of medical evidence, the master decided that M was a protected person for the purposes of CPR Part 21, and stayed proceedings pending the appointment of a litigation friend. Held: The master put more weight on the incident than necessary, and should have taken account of M's ability to take part in other litigation. In the absence of medical evidence the court should be cautious before concluding that a litigant is suffering from a disturbance of the mind.* [No transcript: summary based on Lawtel/Westlaw summary.]
- **Upper Tribunal case.** [MD v Mersey Care NHS Trust \(2013\) UKUT 127 \(AAC\), \(2013\) MHLO 32](#) — "This case raises one issue: is the nature of the risk posed by a patient detained under the Mental Health Act 1983 relevant to the appropriateness of treatment under section 72(1)(b)(iia) of that Act?" [Summary required.]

Mental Health Tribunal

- **Neil Skelton, 'Note to All Mental Health Tribunal Stakeholders: Mental Health Tribunal: process changes' (HMCTS, 15/4/13).** In relation to applications or

referrals submitted on or after 13/5/13, MHT cases will no longer be listed by negotiation in England. There is no change for section 2 cases. When a case is registered by the tribunal secretariat, new form HQ1 will be sent to parties, who will have 14 days (in practice, usually via the representative and MHA Administrator) to provide availability during the following listing windows: (a) for unrestricted cases, 5-8 weeks from the the secretariat's receipt of the application or referral; (b) for restricted cases, 12-14 weeks. The secretariat aims to select a date and notify the parties within 21 days of receipt of the application or referral. See also: HMCTS, 'Mental Health Tribunal: Process Changes: Frequently asked Questions' (15/4/13); Form HQ1 (April 2013 version). See [Mental Health Tribunal](#)

CQC

- **CQC DOLS report.** (1) CQC, 'Monitoring the use of the Mental Capacity Act Deprivation of Liberty Safeguards in 2011/12' (28/3/13); (2) CQC, 'Monitoring the use of the Mental Capacity Act Deprivation of Liberty Safeguards in 2011/12: Summary' (28/3/13); (3) CQC, 'CQC finds Mental Capacity Act not well understood across all sectors and calls for more work by providers and commissioners to improve' (press release, 28/3/13) See [CQC#CQC - DOLS](#)
- **Commentary on CQC DOLS report.** (1) Lucy Series, 'No longer early days' (The Small Places Blog, 7/4/13); (2) Chris Doidge and Rob Cave, 'Majority of "deprivation of liberty" cases unreported, says report' (BBC, 7/4/13); (3) BBC, '5 Live Investigates' (MP3 file, 7/4/13). See [CQC#CQC - DOLS](#)

Newsletter

- **Newsletter.** 39 Essex Street, 'Court of Protection Newsletter' (issue 32, April 2013). The cases mentioned in this issue are: Aintree University Hospitals NHS Foundation Trust v David James (2013) EWCA Civ 65, (2013) MHLO 17 — Re RGS (2012) EWHC 4162 (COP), (2012) MHLO 173 — PS v LP (unreported, 6 February 2013) — HT v CK (2012) EWHC 4160 (COP), (2012) MHLO 175 — PB v RB (2012) EWHC 4159 (COP), (2012) MHLO 174 — R (A) v Chief Constable of Kent Constabulary [2013] EWHC 424 (Admin) — Webb Resolutions Ltd v JT Ltd [2013] EWHC 509 (TCC) — Re M, N v O & P (unreported, 28 January 2013). There is also information under the following headings: (a) Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: No more treatment without consent; (b) Parliamentary Scrutiny; (c) OCTET Study; (d) Avoiding Invalid LPAs; (e) Reducing LPA waiting times; (f) Court of Protection Practitioners' Association; (g) Medical Mediation Foundation; (h) Plans to move the Court of Protection. See [39 Essex Street COP Newsletter#April 2013](#)

Legal Aid

- **Legal Aid news.** To coincide with the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the abolition of the Legal Services Commission, both of which take effect on 1 April, the Legal Aid Agency has announced that neither the fixed fees system nor the matter start system is 'fit for purpose'. A spokesman stated that (a) the mental health fixed fee system has reached a

level of complexity of which Heath Robinson would have been proud, so from today future payments will be based on a reasonable hourly rate for work reasonably incurred; and (b) the matter start system is unnecessary because of the abolition of fixed fees (in any event, ECHR obligations mean the total number of cases is determined by the number of patients detained by the state), so from henceforth individual firms may carry out as many cases as reputation and market forces permit. The Federation Of Outpatient Lawyers issued the following initial statement: 'This common sense approach seems too good to be true.' [**April Fool!**] See [Legal Aid](#)

Other

- **Banking.** (1) Law Society, 'Managing a bank account for another person to become easier thanks to new framework' (3/4/13); (2) Law Society and others, 'Guidance for people wanting to manage a bank account for someone else' (3/4/13); (3) Law Society and others, 'A framework for authorising people wanting to operate a bank account for someone else' (3/4/13). See [Law Society](#)

Website and CPD

- **MHLO books.** The Mental Health Law Online [Annual Review 2012](#) has been published in [paperback](#) and [Kindle](#) format, and is now available on Amazon. The Annual Review 2012 contains all news items, arranged thematically, which were added to the website during 2012. The [Annual Review 2011](#) is also now available in [paperback](#) and [Kindle](#) formats. See [Books](#)
- **CPD scheme.** The questionnaire for February-March 2013 is now available. Obtain 12 accredited CPD points online for £60 by subscribing today. See [CPD scheme](#)
- **Donations.** Mental Health Law Online is free to use and maintained on a voluntary basis. If you or your organisation find this website useful, please consider making a donation to contribute to its upkeep. See [Donations](#)
- **Cases.** On 30/4/13 Mental Health Law Online contained [1355 categorised cases](#)
- **Chronology.** See [April 2013 chronology](#) for this month's changes to the website in date order