Mental Health Law Online

Annual Review 2011

Introduction

The ‘Annual Review 2011’ contains all Mental Health Law Online news which appeared in the monthly updates for 2011. The online version (at www.mentalhealthlaw.co.uk) will be updated automatically when case/legislation pages are updated, whereas the PDF version will remain static. The PDF version contains hyperlinks in the usual way. Brief summaries are featured here, and further details (including detailed summaries and case transcripts) can be read by clicking on the relevant links. This will be an annual publication, so comments and suggestions are welcome: contact the author, Jonathan Wilson, at jonathan@mentalhealthlaw.co.uk

The Mental Health Law Online CPD scheme enables you to obtain 12 CPD points per year by completing multiple-choice questionnaires based on the monthly updates. It is suitable for solicitors (SRA-accredited), barristers (established practitioners), psychiatrists, social workers and psychiatric nurses. For further details see www.mentalhealthlaw.co.uk/cpd/

Contents

Cases ............................................................................................................................................... 3
  Mental health cases, including Tribunal ..................................................................................... 3
  Mental capacity cases, including Court of Protection ................................................................. 9
  Criminal law cases ..................................................................................................................... 18
  Lasting Power of attorney cases ................................................................................................ 20
  Enduring Power of Attorney cases ............................................................................................ 28
  Other cases, including community care ..................................................................................... 29
  Scotland and Northern Ireland .................................................................................................. 36

Legislation ...................................................................................................................................... 37
  England and UK .......................................................................................................................... 37
  Other jurisdictions ....................................................................................................................... 39
  Further information .................................................................................................................... 40

Guidance and forms ....................................................................................................................... 42

Resources ...................................................................................................................................... 43
  Administrative Justice & Tribunals Council ............................................................................. 43
  Care Quality Commission ........................................................................................................ 43
  Court of Protection ..................................................................................................................... 44
Department of Health ................................................................................................................. 44
Law Society ................................................................................................................................. 46
Legal Aid ........................................................................................................................................ 46
Mental Health Tribunal .................................................................................................................. 49
Ministry of Justice .......................................................................................................................... 50
Newsletters ..................................................................................................................................... 51
Office of the Public Guardian ........................................................................................................ 53
Press/articles ................................................................................................................................. 54
Statistics .......................................................................................................................................... 58
Miscellaneous publications ............................................................................................................. 60
Wales ............................................................................................................................................ 61
Scotland .......................................................................................................................................... 63
Thanks ........................................................................................................................................... 65
Publication information .................................................................................................................. 66
**Cases**

The cases are set out below in rough categories, and alphabetically within categories. The categories are: Mental health cases, including Tribunal; Mental capacity cases, including Court of Protection; Criminal law cases; Lasting Power of attorney cases; Enduring Power of Attorney cases; Other cases, including community care; Scotland and Northern Ireland.

**Mental health cases, including Tribunal**

- **AH v West London MH NHS Trust (2011) UKUT 74 (AAC)** — (1) Once the threshold tests for establishing a right to a public hearing have been satisfied, Article 6 ECHR (reinforced by Article 13 CRPD) requires that a patient should have the same or substantially equivalent right of access to a public hearing as a non-disabled person who has been deprived of his liberty; such a right can only be denied a patient if enabling that right imposes a truly disproportionate burden on the state. (2) The threshold tests are: (a) is it consistent with the subjective and informed wishes of the applicant (assuming he is competent to make an informed choice)? (b) will it have an adverse effect on his mental health in the short or long term, taking account of the views of those treating him and any other expert views? (c) are there any other special factors for or against a public hearing? (d) can practical arrangements be made for an open hearing without disproportionate burden on the authority? (3) How the right to a public hearing can be practically and proportionately be achieved will depend on the facts of each individual case, including the hospital’s facilities. (4) The Tribunal directed that AH was to have a public hearing, not within Broadmoor hospital, with the press, public, AH and his representatives enabled to attend in person in the same hearing room. (5) It was likely that in future cases, if detailed evidence of how video-link and public-notification arrangements would work in practice is provided, that a video-link to off-site premises would suffice.

- **CB v Sussex County Council (2010) UKUT 413 (AAC)** — (1) Under s25 TCEA 2007 the Upper Tribunal issued a fine of £500, payable within 28 days, for failure to comply with a witness summons issued by the HESC chamber (education jurisdiction). (2) Under s16(3) Contempt of Court Act 1981 the Upper Tribunal specified a term of imprisonment of 7 days if payment was not made within the specified period.

- **CM v Derbyshire Healthcare NHS Foundation Trust (2011) UKUT 129 (AAC)** — (1) The Tribunal’s decision not to discharge was made in error of law, and was set aside, (a) because there was no real evidence to support its view that non-compliance with medication and the risk of consequent relapse in the near future would probably occur, (b) because it did not establish that in these circumstances it had complied with the ‘least restriction principle’, (c) because of the irrationality in paragraph 21 of its decision (in that as the risk was of what might eventually happen it was hard to see how the envisaged leave regime could test that risk), and (d) because continued detention for the purposes of avoiding a chaotic lifestyle or drug taking or the absence of drug counselling is not permitted by law on the facts of this case. (2) The judgment contains a discussion of the ‘nature’ and ‘degree’ tests.

- **CX v A Local Authority (2011) EWHC 1918 (Admin)** — A writ of habeas corpus was granted: (1) there had not been sufficiently informed consultation with the nearest relative before the s3 application was made; (2) the withdrawal of the nearest relative’s objection was not full and effective, since it was the result of the incorrect and misleading advice that she could not maintain
the objection without legal representation. [Judgment originally published under a different name.]

- **DL v South London and Maudsley NHS Foundation Trust (2010) UKUT 455 (AAC)** — The Tribunal failed to explain why it rejected medical and social reports which recommended absolute discharge. Their decision was set aside and the case remitted to the First-tier Tribunal for a rehearing.

- **DN v Northumberland Tyne and Wear NHS Foundation Trust (2011) UKUT 327 (AAC)** — It was argued before the FTT that DN should be discharged, deferred until arrangements under the MCA DOLS could be put in place in relation to residence and control of his alcohol consumption. (1) When the MHA applies, it has primacy over the MCA; however, if the MCA were applied in anticipation of discharge from detention then DN would NOT then be ‘within the scope’ of the MHA and therefore not ineligible for MCA DOLS. (2) The FTT erred in law by failing, when deciding not to discharge, to address the possibility of supervision under the MCA. (3) The Trust had not participated in the appeal so the UT erred on the side of caution by setting aside and directing a rehearing.

- **DP v South Tyneside DC (2011) Admin Court 14/7/11** — It was not practicable to consult the nearest relative because (1) DP was perceived to be potentially at risk from him (forced marriage/death) and (2) consultation was not possible without disclosing DP’s location (the duty of consultation not being one of mere notification): therefore the application for habeas corpus was refused.

- **JLG v Managers of Llanarth Court (2011) UKUT 62 (AAC)** — (1) An appeal to the Upper Tribunal can only succeed if ‘the making of the decision concerned involved the making of an error on a point of law’. The issue is whether the Tribunal did its job properly: whether (i) the tribunal asked itself the correct legal questions; (ii) it made findings of fact that were rationally based in the evidence; (iii) it answered the legal questions appropriately given its findings of fact; (iv) it gave the parties a fair hearing; and (v) it provided adequate reasons. (2) The UT is entitled to assume that the members of the Tribunal understand the basic legal concepts which they must apply, particularly with a specialist tribunal applying the same limited range of criteria repeatedly; the claimant’s argument was essentially that the Tribunal failed to mention these matters, but there was nothing in the reasons to show that they did not understand them. (3) The reasons, albeit discursively, had soundly and rationally addressed the statutory criteria. (4) There is no separate issue of proportionality: this is amply covered by the terms of legislation and the allocation of the burden of proof.

- **JP v Birmingham and Solihull MH NHS Trust (2010) Upper Tribunal 30/7/10 (HM/535/2010)** — Unsuccessful appeal in which it was argued that the Tribunal’s reasons for preferring the RC’s and responsible authority’s evidence to the evidence of independent experts were inadequate.

- **KL v Somerset Partnership NHS Foundation Trust (2011) UKUT 233 (AAC)** — Treatment in hospital and ‘long leash’ s17 leave. [Summary required.]

• **Massie v H (2011) EWCA Civ 115** — The general rule is that an appeal shall lie from a decision of a county court to the High Court. One exception is for final decisions in Part 7 CPR multi-track cases, which go to the Court of Appeal. (1) This exception does not apply in nearest relative displacement cases under s29 MHA as the application is made under Part 8 CPR; no other exception applied. (2) The court declared that it lacked jurisdiction and that a previous consent order was therefore a nullity. (3) Because of the passage of time and costs involved, rather than abandon the matter or simply transfer it to the High Court, the case was transferred to the High Court for one of the Court of Appeal judges to consider it as a High Court judge there and then.

• **MB v BEH MH NHS Trust (2011) UKUT 328 (AAC)** — Following the RC’s evidence, without hearing other witnesses or submissions on the law and evidence, the Tribunal judge stated that the patient could not obtain a conditional discharge and invited the patient to withdraw his application; the patient withdrew and appealed against the Tribunal’s consent to the withdrawal. (1) Consent to withdrawal is a judicial act and is appealable. (2) The judge’s expression of a preconceived concluded opinion (as opposed to a provisional view) amounted to a breach of the rules of natural justice and fair procedure in that the appellant was effectively denied a proper opportunity to put his case. (3) The UT’s concerns about remedy (that there had been no application to reinstate the case and no re-application by the patient during the relevant eligibility period) were outweighed by the practical benefit of a fresh hearing and the patient, if unsuccessful, retaining his right to apply during the current eligibility period; therefore, the matter was set aside and referred to the Chamber President for directions to arrange a hearing by a completely differently constituted panel in order that a fresh decision be made.

• **MP v Mersey Care NHS Trust (2011) UKUT 107 (AAC)** — The Tribunal panel discharged a s47 patient, deferred for six weeks for after-care arrangements, and stated in para 9 that it ‘would also invite Mr P’s care team to consider whether to implement a community treatment order’; a CTO was then made; however, the panel’s decision by discharging the section simultaneously discharged the CTO. On the responsible authority’s application under Tribunal rule 45, a FTT judge reviewed and set aside the decision (because the panel had frustrated its intention that there be a CTO); she then reviewed her own decision, upheld it, and remitted the case to a fresh panel. (1) The patient appealed, but both review decisions are excluded from the appeal jurisdiction (and not from the JR jurisdiction) so the appeal was treated as a JR application. (2) The panel’s decision that the first two statutory criteria were not met was not simply an oversight: it had specifically stated that the third criterion was met. (3) Para 9 was not expressed as a recommendation; the word ‘also’ showed that it did not form the basis of the reasoning. (4) In so far as there is an inconsistency, it is para 9 which should be given no weight; in any event, the reference to ‘care team’ rather than ‘RC’ was loose and legally inaccurate. (5) Where the panel find any of the statutory criteria not met, there is no power under s72(3A) to recommend a CTO: rather, there is a positive duty to discharge. (6) The review decisions were quashed and a declaration made that the panel’s decision be reactivated.

• **PS v Camden and Islington NHS Foundation Trust (2011) UKUT 143 (AAC)** — The Tribunal’s policy is that a reference made under s68(7) (triggered by the revocation of a CTO) will be treated as having lapsed if the patient subsequently is placed on a new CTO (see Guidance: References made under section 68(7) Mental Health Act 1983 (as amended)). When the patient’s representative argued that the case should be heard, the Tribunal treated that letter as the patient’s own application. (1) The policy is unlawful: (a) whether the reference has lapsed depends on the nature of the reference, which is a matter of statutory interpretation, so neither the
overriding objective nor the policy is relevant; (b) the subject matter of a reference under s68(7) (the duty to consider the s72 criteria) is not related to the circumstances that trigger it (the revocation of the CTO) so survives the change in circumstances; (c) the policy is inconsistent with s68(3)(c) (no six-month reference if revocation reference has been made) which would not be necessary if the revocation reference lapses. (2) The power to treat a letter as a Tribunal application is only appropriately exercised for the applicant’s advantage, not potential detriment; it is not permissible to override an unequivocal indication by the solicitor to the opposite effect, especially if to do so would deprive the patient of the chance to make an application later should discharge not be obtained on the reference. (3) If the hospital managers had been represented, the judge would have wanted to know why it took 12 days to complete the simple referral form. (4) The Tribunal Procedure Committee will be consulting on rule changes to make it easier to handle CTO revocation cases in which the patient does not ‘co-operate’: in the meantime, the judge suggested that proceedings could be stayed, or hearings conducted in patients’ absence.

- R (Baisden) v Leicester City Council (2011) EWHC 3219 (Admin) — Section 117 and accommodation. [Summary required.]

- R (Cart) v Upper Tribunal (2011) UKSC 28 — Judicial review of an UT decision which is unappealable (here, the UT’s refusal of permission to appeal to itself) is available where the second-tier appeal criteria apply (whether the case raises an important point of principle or practice or there is some other compelling reason for the court to hear it). [Detailed summary available on case page.]

- R (G) v South London and Maudsley NHS Foundation Trust (2011) EWHC 747 (Admin) — The claimant sought judicial review of the NHS Trust and the Met police in relation to a proposed visit to his home. (1) A civil restraint order had been made after the JR application was made: so he did not need leave of the High Court to have the claim considered on the papers; however, he did need leave for this renewed application for permission. (2) On the merits, permission would have been refused because (a) it is not the function of the court to review operational decisions such as this, and (b) the claimant had not been detained so the points regarding the MHA were academic. (3) In any event, the civil restraint order was thoroughly appropriate and would not be discharged.

- R (Hertfordshire CC) v LB Hammersmith and Fulham (2011) EWCA Civ 77 — The appellant sought: ‘A declaration that “is resident” in s117(3) Mental Health Act 1983 has the same (or substantially the same) meaning as “is ordinarily resident” under s24 National Assistance Act 1948, so that a person placed by a local authority under s21 NAA in the area of another local authority remains ordinarily resident in the area of the placing authority for the purposes of Part 3 NAA and s117(3) MHA.’ The court refused to grant the declaration as: (1) Parliament must have deliberately chosen a different formula for s117; (2) s117 was intended to be a free-standing provision, not dependent on the 1948 Act; (3) there was no legitimate way to interpret ‘resident’ as excluding a placement under s21. The court noted that the decision is in line with recent government guidance, and that the Law Commission’s current project provides a much better forum for considering and remedying any defects in the present law.

- R (Modaresi) v SSH (2011) EWCA Civ 1359 — The claimant’s s2 Tribunal application was faxed to the MHA Administrator’s office on New Year’s Eve, within the 14-day eligibility period, but was not faxed from there to the Tribunal office until after the bank holiday weekend, by which
time the 14-day period had expired; the Tribunal therefore rejected the application; the claimant was then placed under s3; the Secretary of State refused to make a s67 reference. (1) Where the Tribunal office is closed on the 14th day of the eligibility period, the period is extended to include the next day that it is open (this is the case even though a fax application can be made when the office is closed). (2) Since the application was made on time, the claim against the Trust (that their inadequate system breached Article 5(4)) was academic. (3) The Secretary of State’s decision was not vitiated by being based on the mistaken belief that the application was out of time (as the position was unclear then); requiring the claimant immediately to exercise her s3 right of application (rather than retaining that right until after a reference Tribunal) did not breach Article 5(4) as the Secretary of State would have to exercise his s67 discretion at a later date in accordance with public law principles. [Detailed summary available on case page.]

- R (Modaresi) v SSH (2011) EWHC 417 (Admin) — The claimant missed the 14-day deadline for submission of a s2 Tribunal application because of oversight/neglect on the part of Trust employees. Judicial review claims against the Tribunal (for deciding that the application was invalid), the Secretary of State for Health (for refusing to make a reference) and the Trust (for their actions) were all unsuccessful. [Caution.] [Detailed summary available on case page.]

- R (Sessay) v South London and Maudsley NHS Foundation Trust (2011) EWHC 2617 (QB) — The police entered the claimant’s private accommodation, unaccompanied and without a s135 warrant, purporting to be acting under ss5-6 MCA 2005 in her best interests; she was taken to hospital and, after a 13-hour delay in the s136 suite, detained under s2 MHA 1983. (1) Sections 135 and 136 MHA 1983 are the exclusive powers available to police officers to remove persons who appear to be mentally disordered to a place of safety. Sections 5 and 6 MCA 2005 do not confer on police officers authority to remove persons to hospital or other places of safety for the purposes set out in sections 135 and 136. (2) The MHA provides a complete statutory code for compulsory admission to hospital for non-compliant incapacitated patients, so the common law doctrine of necessity does not apply during the period in which a patient is being assessed for detention under the Act. If there is urgent necessity to detain then the s4 procedure should be followed; if even this procedure is too slow then the police can be asked to detain under s136 (an A&E department being a place to which the public have access); there is no lacuna in the MHA. There is unlikely to be unlawful detention or breach of Article 5 if there is no undue delay during the processing of an application under s2 or 4 MHA 1983. (3) On the facts, as the detention was purportedly under s5 MCA and the application for detention under s2 MHA was delayed, the claimant had been detained in hospital without lawful justification, and deprived of her liberty in breach of Article 5; she was entitled to damages.

- R (Smith) v LB Camden (2011) EWCA Civ 1207 — Unsuccessful application for permission for second appeal against strike-out of claim for want of compliance with s139. (The claim was for damages of £100 billion for wrongful removal from his flat and for being forced to live in various mental health institutions where he claimed to have been assaulted many times.)

- R (SP) v SSJ (2010) EWCA Civ 1590 — The Secretary of State for Justice was entitled to rely on a medical recommendation under s47 which did not explicitly address the new ‘appropriate treatment’ test: (1) his case workers are not concerned to pursue medical reasoning, but only to see whether the expert had given some reasons which they considered adequate and did not conflict with the facts known or the statutory requirements; (2) he was entitled to give the reports a sensible meaning, and to satisfy himself that the ‘appropriate treatment’ test was met by
reference to matters which had been in the report by necessary implication. [Summary based on All ER (D) report of ex tempore judgment]

- **R (Sunderland City Council) v South Tyneside Council (2011) EWHC 2355 (Admin)** — SF moved from a residential college in Sunderland (ESPA) to a hospital in South Tyneside (Rose Lodge), initially informally then under section 3; the placement in Sunderland was terminated because of the hospital stay. The judge drew 10 propositions from the law, and concluded that Sunderland remained the authority with aftercare responsibility under s117. Relevant considerations were that (a) the informal admission was close to being involuntary (through force of circumstances) and was in what was intended to be short-term accommodation, (b) the termination of the Sunderland placement was not voluntary, and (c) the Tyneside placement was not part of SF’s regular order of life or for a settled purpose.

- **RB v Nottinghamshire Healthcare NHS Trust (2011) UKUT 135 (AAC)** — (1) The Upper Tribunal has power to award costs only where the First-tier Tribunal could do so; (2) in a mental health case, the FTT only has power to make a wasted costs order (and not a costs order ‘if the Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings’); (3) a wasted costs order may only be made against a legal or other representative; (4) it follows that there is no statutory authority to make an order for costs against the FTT, and the patient’s solicitors’ application to the UT was refused.

- **RB v Nottinghamshire Healthcare NHS Trust (2011) UKUT 73 (AAC)** — (1) The Tribunal’s reasons for not reconvening following non-implementation of its statutory recommendation were inadequate. (2) A decision had clearly been made not to transfer so there would be no point in requiring the Tribunal to reconvene or reconsider whether or not to do so; the decision was therefore not set aside.

- **Re Ian Brady (2011) First-tier Tribunal 17/10/11** — In a decision given on 17th October 2011, the application by Mr Ian Brady for a hearing in public that his application dated 4th August 2010 should be held in public was granted. The date of the hearing and appropriate arrangements are presently being determined and will be published as soon as possible. The fact of this decision should be published. The Tribunal also ordered that the reasons for the decision must not be made public. [Judge’s summary.]

- **RN v Curo Care (2011) UKUT 263 (AAC)** — (1) If the representative was right that the judge stated at the outset that the Tribunal would refuse to make a CTO recommendation, then reaching that firm conclusion (as opposed to an provisional opinion), and preventing the patient from arguing to the contrary, was a breach of natural justice and the ECHR right to a fair hearing. (2) In any event, the lack of reasons for not making the requested recommendation amounted to an error of law. (3) There would be no point in setting aside the decision if a recommendation were impossible or not a realistic possibility, but this was not a case where a CTO would never become a realistic option in the foreseeable future: the Tribunal can make a CTO recommendation not only if it considers that the criteria are satisfied (here it did not) but also in order to trigger consideration of future steps that could be taken to move the patient towards eventual release. (4) The decision was set aside and remitted to a differently-constituted panel for reconsideration.

- **Ross v SSWP (2011) UKFTT 8/8/11 (SEC)** — Unsuccessful application by BBC journalist to record and broadcast proceedings of First-tier Tribunal (Social Entitlement Chamber).
• **SSJ v RB (2010) UKUT 454 (AAC)** — (1) The Tribunal may conditionally discharge with conditions which amount to a regime of detention (deprivation of liberty) to any establishment which is not defined as a 'hospital'. [Caution.] (2) The Upper Tribunal will follow High Court decisions unless it is convinced they are wrong, but where highly specialised issues arise the UT may feel less inhibited than the High Court in revisiting the issues. [Detailed summary available on case page.]

• **SSJ v RB (2011) EWCA Civ 1608** — The Mental Health Tribunal may not grant a conditional discharge in circumstances where the conditions would inevitably lead to an Article 5 deprivation of liberty.

• **TR v Ludlow Street Healthcare Ltd (2011) UKUT 152 (AAC)** — (1) The appeal against an interlocutory decision not to order disclosure of medical records was unsuccessful. (2) The judgment also contains guidance on appealing case management decisions, in particular from the MHRT for Wales.

• **TTM v LB Hackney (2011) EWCA Civ 4** — (1) Where a local authority makes an unlawful application to a hospital for the detention of a patient under the MHA, it can be held liable in damages for false imprisonment when its unlawful act directly causes the detention; (2) although the hospital may act lawfully in detaining such a patient under s6(3) (if the application appeared to be duly made) that does not prevent the detention being held to be unlawful from the outset as against the local authority; (3) an application for detention that is made contrary to s11(4) (in the face of the Nearest Relative’s objection) is in breach of Article 5(1); (4) Article 5(5) entitles a person detained in breach of Article 5(1) to compensation, and s139(1) (no liability unless bad faith or lack of reasonable care) can be read down so as to allow such a claim to proceed; (5) the word ‘practicable’ in s12(2) (requiring a recommendation from a doctor with previous acquaintance of the patient if practicable) should be broadly construed; (6) (obiter) a breach of s12(2) does not go to jurisdiction, but is one made in the exercise of that jurisdiction, and as such is less likely to make detention unlawful; (7) on the facts, the local authority was liable in false imprisonment and breach of Article 5 because of the s11(4) breach, and permission was granted under s139(2) for a compensation claim to be pursued, but there was no s12(2) breach because it had been reasonable to obtain two independent opinions from doctors not acquainted with the patient, given the divergence of views between the treating doctors who were. [Detailed summary available on case page.]

**Mental capacity cases, including Court of Protection**

• **A Council v X (2010) EWHC B10 (COP)** — Direct contact between X, a 94 year old lady who lacked capacity due to advanced dementia, and her daughter Y was no longer in X’s best interests.

• **A Local Authority v DL (2011) EWHC 1022 (Fam)** — The inherent jurisdiction survives the Mental Capacity Act 2005. [Detailed summary available on case page.]

• **A London Local Authority v JH (2011) EWHC 2420 (COP)** — It was, in the interim, in JH’s best interests to return home with a package of care (rather than go to a care home). [Summary to follow.]
• **An NHS Foundation Trust v D (2010) EWHC 2535 (COP)** — (1) D lacked the capacity to decide on medical treatment for her prolapsed uterus, as she held the delusional belief that her condition was normal and did not require treatment. (2) It was in D’s best interests to receive surgery, as if untreated her condition could be life-threatening. (3) The proposed restraint and deprivation of liberty (including a general aesthetic six days before the surgery) was authorised, if absolutely necessary, as being in her best interests. (Summary based on press articles.)

• **Cardiff Council v Peggy Ross (2011) COP 28/10/11 12063905** — Cardiff Council used the Deprivation of Liberty Safeguards to prevent an elderly couple going on holiday cruise; the court decided that it was in the respondent’s best interests to go on the cruise, and gave permission for ITV Wales to report that decision and broadcast interviews; later the court decided that the respondent herself had capacity to decide whether or not to go.

• **Cheshire West and Chester Council v P (2011) EWCA Civ 1333** — The council sought a costs order against P in relation to the Court of Appeal proceedings. (1) The general rule on appeals from the COP to the Court of Appeal is, in accordance with CPR 44.3(2)(a), that the unsuccessful party will be ordered to pay the costs (subject, where relevant, to costs protection under s11 Access to Justice Act 1999). (2) The general rule in COP welfare cases (that there be no order as to costs) was irrelevant, as was the council’s discreditable conduct at first instance. (2) Other factors were taken into account and the court made no order as to costs: ‘Among the primary reasons for making no order is that the reason for and the importance of the appeal was not really at all about how P will be dealt with. The point of major importance for the local authority, and indeed local authorities generally, was how often they have to come back to court in this and other like cases.’

• **Cheshire West and Chester Council v P (2011) EWHC 1330 (COP)** — (1) The new care plan was in P’s best interests (paras 35, 39). (2) There was a deprivation of liberty (reasons given in paras 58-60). [Caution.] (3) A costs order was made against the local authority as the serious misconduct of its employees (including misleading the court under oath, failure to disclose documents and falsifying records) rendered the proceedings more costly (para 76). (4) The public interest in holding public authorities accountable amounts to a ‘good reason’ for naming the local authority; the scale of the possible identification of P was minor enough not to prevent this (paras 89-90). [Detailed summary to follow.]

• **Dunhill v Burgin (2011) EWHC 464 (QB)** — The claimant had settled a PI claim on unfavourable terms and now sought to have the consent order declared void for want of capacity; this judgment involves a consideration of litigation capacity. (1) In considering the issue of capacity historically, rather than prospectively, the court should confine itself to examining the decisions actually required of the claimant and should not expand its consideration to hypothetical circumstances (i.e. had she been advised differently). (2) On the facts, the presumption that she had capacity to enter into the agreement had not been rebutted.

• **G v E (2010) EWHC 3385 (Fam)** — Costs judgment. “In all the circumstances, I conclude that this is a case for departing from the general rule set out in rule 157 of the Court of Protection...
rules, and I make an order in the following terms: (1) That the local authority should pay the costs of G, F and E, including pre-litigation costs, up to and including the first day of the hearing before me on 14th January 2010 on an indemnity basis. (2) The local authority shall pay one third of the costs of G, F and E from that date up to and including the hearing on 6 May 2010 on a standard basis. (3) All costs will be subject to a detailed assessment, if not agreed.” [Summary required.]

- **KY v DD (2011) EWHC 1277 (Fam)** — Guidance on without notice applications. [Summary required.]

- **LB Tower Hamlets v BB (2011) EWHC 2853 (Fam)** — ‘There are two sets of proceedings which concern BB. In the first, her litigation friend, sought guidance from the court under sections 16 and 18(k) of the Mental Capacity Act 2005 about the conduct of proceedings concerning BB and declarations that she a) lacks capacity to conduct those proceedings and b) it is in her best interests that, in the event that her marriage to MA is a valid marriage, it be annulled or that there be a declaration that it is not recognised by the law of England and Wales. In the second, the local authority as substituted applicant seeks declarations that BB a) lacks the capacity to litigate, b) lacks capacity to decide where she should live, with whom she should have contact, who should provide her with care, what care should be provided to her and the medical treatment she should receive for her mental disorder. The court is asked to make decisions on her behalf as respects those questions which the court determines she is incapacitated to answer.’ [Summary required.]

- **LG v DK (2011) EWHC 2453 (COP)** — Application to Court of Protection to decide whether it is in DK’s best interests to provide DNA sample for paternity test. [Summary to follow.]

- **Manchester City Council v G (2011) EWCA Civ 939** — Manchester’s appeal against the costs order against it in the G v E case was unsuccessful.

- **P v Independent Print Ltd (2011) EWCA Civ 756** — Whether the Independent Newspaper should be authorised to attend the substantive hearing which would determine the living arrangements to be made for a young man who lacks capacity. [Summary required.]

- **Quigley v Masterson (2011) EWHC 2529 (Ch)** — The defendant’s application to the Court of Protection qualified as a notice of severance served under section 36(2) of the Law of Property Act 1925.

- **Re A; A v A Local Authority (2011) EWHC 727 (COP)** — A, represented by the OS, appealed under MCA 2005 s21 against a DOLS standard authorisation; the other parties, including A’s son, argued that A lacked capacity and that his current placement was in his best interests. The OS wanted an up-to-date assessment of capacity and a report on best interests, suggesting a COP Visitor report as being the proportionate method: the report would determine whether to dispose of the case by consent or seek further directions. Given the clear evidence, had it been a child best interests case there would have been summary judgment; however, the MCA laid down stringent conditions for deprivation of liberty, so the court cannot act as a rubber stamp and the OS must be allowed to carry out his duty of representing A as he thought fit. Having regard to the overriding objective, the COP Visitor method, and likely disposal without a further hearing, was the best way forward.

- **Re AB; AB v LCC (A Local Authority) (2011) EWHC 3151 (COP)** — There is no impediment to a RPR acting as a litigation friend to P in a s21A application provided that: (i) the RPR is not
already a party to the proceedings; (ii) the RPR fulfils the COP rule 140 conditions (that he can fairly and competently conduct proceedings on behalf of P, and has no interests adverse to P’s); (iii) the RPR can and is willing to act as litigation friend in P’s best interests; and (iv) the procedure as set out in COP rule 143 is complied with. The judge set out the pros and cons of this course of action; in this case, he appointed the RPR to as P’s litigation friend.

- **Re AB; D Borough Council v AB (2011) EWHC 101 (COP)** — (1) The test for capacity to consent to sex is set at a relatively low level: ‘does she have sufficient rudimentary knowledge of that the act comprises and of its sexual character to enable her to decide whether to give or withhold consent?’ (2) Capacity to consent to sexual activity is act-specific, not partner-specific; decisions to the contrary were based on a conflation of capacity to consent to sex and the exercise of that capacity. (3) The test requires an understanding and awareness of (a) the mechanics of the act, (b) that there are health risks involved, particularly the acquisition of sexually transmitted and sexually transmissible infections, and (c) that sex between a man and a woman may result in the woman becoming pregnant; however, not all criteria will apply to every type of sexual activity. (4) The test does not require an understanding (a) that sex is part of having relationships with people and may have emotional consequences, (b) that only adults over the age of 16 should do it (and therefore participants need to be able to distinguish accurately between adults and children), or (c) that both (or all) parties to the act need to consent to it. (5) AB did not have the capacity to consent to and engage in sexual relations, and the regime for his supervision and for the prevention of future sexual activity was in his best interests. (6) The declarations were made on an interim basis, to be reviewed in nine months, with the local authority ordered to provide sex education in the hope that he gains capacity. [Detailed summary available on case page.]

- **Re AH; AH v Hertfordshire Partnership NHS Foundation Trust (2011) EWHC 276 (COP)** — (1) The case concerned the proposal to move 12 adults from a specialist residential service (SRS) to alternative homes, and this judgment is a ‘firm provisional decision’ on one case in the hope of assisting resolution of all cases. (2) It was clearly not in AH’s best interests to be moved: only the closure of SRS could justify the turmoil of a move. (3) This case illustrates the point that guideline policies (here, the campus closure programme) cannot be treated as universal solutions.

- **Re AM; B (A Local Authority) v RM (2010) EWHC 3802 (Fam)** — (1) When considering whether to transfer an application for a care order (under the Children Act 1989) to the Court of Protection (to be dealt with under the MCA) the essential thrust is whether the young person’s welfare will be better safeguarded within the Court of Protection. The court will take into account matters such as whether: (a) the child is over 16 (otherwise there is no power); (b) the child manifestly lacks capacity in respect of the principal Children Act decisions; (c) the incapacity is lifelong or at least long-term; (d) all decisions and issues about welfare can be resolved during minority; (e) the COP powers are more appropriate to resolve the issues; and (f) the welfare needs can be fully met using COP powers. (2) AM’s welfare would be better protected within the COP because: (a) there should be a court determination about the placement; (b) the court door should remain open during planning the placement; (c) the judge was far from satisfied that the issues could be resolved during AM’s minority; (d) her disabilities and acute care needs are lifelong; (e) COP declarations avoid the negative consequences of a care order but still set the framework within which AM’s needs can be addressed; and (f) her lack of relevant capacity is manifest. (3) The case was transferred to the Court of Protection under article 3 Mental Capacity Act 2005 (Transfer Of Proceedings) Order 2007 on the judge’s initiative, he reconstituted as the
Court of Protection to avoid a separate hearing, and made various orders on capacity, best interests, and procedure.

- **Re AVS; AVS v A NHS Foundation Trust (2011) EWCA Civ 7** — Court of Appeal refuse permission to appeal from Court of Protection decision in medical treatment case. [Official summary available.]

- **Re C; C v A Local Authority (2011) EWHC 1539 (Admin)** — Judgment in related COP and Admin Court proceedings relating to an 18-year old with severe autism and severe learning disabilities living at a residential special school. Issues considered include deprivation of liberty and seclusion. [Summary required.]

- **Re CM; LBB v JM (2010) COP 5/2/10** — “The local authority took the view that since the intervention of the court would engage a potential breach of the Article 8 rights of the parties, that it may be incumbent upon them to establish on a factual basis why it was that the court’s jurisdiction should be exercised. Broadly speaking, I would endorse that approach and recognise that where an Article 8.2 justification is required then the case should not be dealt with purely as a welfare case if there are significant factual issues between the parties which might bear on the outcome of the consideration under Article 8.2 as to whether state intervention was justified.” [Detailed summary available on case page.]

- **Re CW; A Primary Care Trust v CW (2010) EWHC 3448 (COP)** — (1) Medical treatment is of no benefit to a person in a persistent vegetative state because he is not sentient and has no prospect of recovery; whether the withdrawal of life-sustaining treatment measures is in P’s best interests depends on whether the diagnosis of PVS is correct; if it is correct then the provision of any treatment is futile and cannot be in his best interests. (2) CW was in a persistent vegetative state with no prospect of recovery; it was in his best interests for artificial nutrition and hydration to be withheld, which could be done lawfully; it was in his best interests to receive treatment and nursing care to ensure that he retains the greatest dignity possible until death.

- **Re DU; A NHS Trust v DU (2009) EWHC 3504 (Fam)** — It was in DU’s best interests to be permitted to return to Nigeria subject to the making of practicable arrangements. [Official summary available.]

- **Re FL; HN v FL and Hampshire CC (2011) EWHC 2894 (COP)** — ‘The primary issues requiring determination by the court were as follows: (1) FL’s capacity to make personal welfare decisions; (2) FL’s mental health needs; (3) FL’s medication; (4) The Z Home’s ability to meet FL’s physical and mental health needs; (5) Whether HN had conducted herself inappropriately or whether such conduct was justified; (6) Whether HCC and or The Z Home conducted themselves inappropriately or whether such conduct was justified; (7) Depending on the outcome of (5) and (6) whether restrictive orders should be made.’ ‘IPL were permitted to publish details about the case subject to the restrictions in that order.’ [Summary required.]

- **Re GM; FP v GM and A Health Board (2011) EWHC 2778 (COP)** — This was an application for a DOLS standard authorisation to be discharged, thus permitting GM, on discharge from hospital, to return to his home rather than be sent to an EMI home. (1) For there to be an order preventing GM from returning home (in practice, permanently) it would have to be ‘so contrary to his interests to return that the court must not even contemplate seriously a placement’ at home.
(2) Factors in favour of a return home included: the 'emotional dimension'; GM’s short life expectancy, and the fact that a move to EMI accommodation would be permanent; and Article 8 considerations. (3) Factors against were: the probability of a lesser quality of physical care at home; the risk of risk of breakdown and conflict; and the risk of deterioration, for instance in sleep pattern. (4) The DOLS authorisation was discharged. (5) As GM was ready for discharge from hospital, and the decision would have permanent effect, Hedley J decided the issue in one day in January instead of waiting for a five-day hearing in May (before a DJ) or October (before a High Court judge). He commented that ‘it seems to me that it is absolutely essential that the Court of Protection establishes a practice that these interim cases must be dealt with quickly, and, having regard to the demands on the system generally, proportionately, that is to say almost certainly without detailed oral evidence.’

- **Re HM; PM v KH (2010) EWHC 2107 (Fam)** — Costs orders against PM. [Summary required.]
- **Re HM; PM v KH (2010) EWHC 3279 (Fam)** — PM sentenced to 4 months’ imprisonment for contempt of court. [Summary required.]
- **Re HM; SM v HM (2011) COP 11875043 4/11/11** — ‘The issue is whether it is ever, and if so in what circumstances, appropriate for the Court (ie the Court of Protection) to authorise the creation of a trust – in particular a personal injury trust – of P’s assets as the means of administering those assets for him, rather than appointing a deputy for him under s 16 of the 2005 Act.’ [Summary required.]
- **Re JP; DP v JCP (2010) COP 11692737** — DP’s application to be appointed financial deputy for her father JP was opposed by her siblings, who also disputed DP’s claim to the ownership of their mother’s ashes. Guidance was given as to the ownership of the ashes. DP was capable of acting as deputy but did not have the necessary independence so a panel deputy was appointed. [Summary based on Eld LJ case report.]
- **Re KM; NCC v KM (2009) COP 1145479102** — Consideration of the legal aid position in relation to deprivation of liberty reviews following final hearing.
- **Re LD; London Borough of Havering v LD and KD (2010) EWHC 3876 (COP)** — (1) The practice of the Court to appoint personal welfare deputies only relatively rarely, in the most extreme cases, is the correct approach, considering the intention of s16(4). Specific decisions of the court are to be preferred to the ongoing appointment of a deputy and when a deputy must be appointed it is to be for the narrowest scope and the shortest time reasonably practicable in the circumstances. (2) The local authority’s application to be appointed as LD’s personal welfare deputy until further order was rejected: the case was not especially unusual or difficult; residence had recently been resolved by the court, and the other issues were either routine (and thus subject to s5) or very major (requiring court scrutiny); the absence of a deputy would not cause problematic delay in decision-making, as as court orders can be obtained very swiftly, and was not preventing care or services being provided; mere convenience to a local authority in avoiding future court applications is not relevant.
- **Re M; W v M (2011) EWHC 1197 (COP)** — Reporting-restriction orders and non-contact injunctions. [Detailed summary available on case page.]
- **Re M; W v M (2011) EWHC 2443 (COP)** — M is in a minimally-conscious state (the three categories of disorders of consciousness being coma, vegetative state and minimally-conscious state); family members applied to court to argue that the withdrawal of artificial nutrition and hydration was in M’s best interests. (1) The Official Solicitor’s argument that withdrawal can never be in the best interests of a clinically-stable MCS patient was rejected in favour of the usual ‘balance sheet’ approach to best interests, although clinical stability is an important factor. (2) In analysing best interests, the judge considered (a) preservation of life, (b) M’s past wishes and feelings, (c) pain, (d) enjoyment of life, (e) prospects of recovery, (f) dignity, and (g) wishes and feelings of family members and carers. (3) It was not in M’s best interests for ANH to be withdrawn: the preservation of life was the decisive factor in this case. (4) The judge made the following observations for future cases: (a) a decision to withhold or withdraw ANH from a person in VS or MCS must be referred to the court; (b) no such application should be made unless the necessary assessments for MCS have been carried out; (c) non-means-tested Legal Aid should be available for family members in such applications; (d) consistent with privacy, it is imperative that the press should be free to report such cases. (5) A radical review of M’s care plan will be the subject of further submissions; in the meantime, the do-not-resuscitate order was continued and other treatment left to clinical discretion.

- **Re P (2010) COP 23/12/10 (Mostyn J)** — There was effectively a presumption against deprivation of liberty (pursuant to MCA 2005 s1(6)) and, on the facts, the balance tilted in favour of P returning home pending a final hearing at which full evidence could be considered. [Summary based on counsel’s case report.]

- **Re P and Q; P and Q v Surrey County Council; sub nom Re MIG and MEG (2011) EWCA Civ 190** — Judgment of Parker J upheld: neither P (aged 18, in a foster placement) nor Q (aged 17, in a small group home) was deprived of her liberty. [Detailed summary available on case page.]

- **Re P; A Local Authority v PB (2011) EWHC 2675 (COP)** — Case concerning residence, contact, and deprivation of liberty. [Summary required.]

- **Re P; A Local Authority v PB (2011) EWHC 502 (COP)** — (1) The judge’s view was that in exercising a welfare or best interests jurisdiction (whether under the Children Act, under the inherent jurisdiction, or under the MCA) the court is choosing between available options; a point then arises whether the COP can add to the available options (by application of public law and HRA tests in the private law proceedings) or whether judicial review is necessary; these jurisdictional issues should be addressed well before a case comes on for final hearing, so that the relevant authority does not refuse to provide the services after the court has decided that they are in P’s best interests; in this case there may be a further hearing to decide the issue. (2) At an appropriate stage in most COP welfare cases, a direction along the following lines should be given (paraphrased) - Each party shall serve a document on the other setting out (a) the facts he asks the court to find, the disputed facts he asserts the court need not determine, and the findings that he invites the court to find by reference to the former facts; (b) the investigations he has made of alternative care and thence the alternatives he asserts should be considered (and by whom the relevant services should be provided); (c) by reference to (a) and (b), the factors he asserts the court should take into account; (d) the relief sought and why he asserts the factors support the granting of that relief; (e) the relevant issues of law. (3) Procedural/substantive fairness did not require overnight contact at the mother’s home before the final hearing, and this would not be in P’s best interests.
• **Re PH; PH v A Local Authority (2011) EWHC 1704 (COP)** — The following declarations were made: (1) PH lacks capacity in relation to the question on whether or not he should be accommodated at Y Court for the purposes of being given care and treatment; and (2) PH lacks capacity to make a decision as to his residence and care (the second declaration to remain in force for six months).

• **Re RB (Adult); A London Borough v RB (Adult) (No 1) (2010) EWHC 2423 (Fam)** — This case under the inherent jurisdiction concerned RB’s best interests in relation to residence and contact. Of the 16 issues considered by the judge, he found for RB’s partner MF in relation to one sub-issue (which was a ‘saddening example of the institutional inability of some bureaucracies ever to admit that something has gone wrong’) but against him in relation to all others (most of which were MF’s unfounded criticisms of almost everybody involved in the case: the judge’s own criticisms of Dr Kahtan and the MP are worth reading). Had she not died during the hearing, it would have been, given MF’s inability to cooperate with any community care package, in RB’s best interests to continue residing at the care home.

• **Re RB (Adult); A London Borough v RB (Adult) (No 2) (2011) EWHC 112 (Fam)** — MF’s applications for permission to appeal and for a re-trial were refused as being devoid of merit.

• **Re RB (Adult); A London Borough v RB (Adult) (No 3) (2011) EWHC 2576 (Fam)** — (1) MF’s claim for compensation was dismissed as it had no factual foundation; it also had no legal basis. (2) MF sought costs from the local authority; the Official Solicitor sought costs against MF (from a certain date) and the local authority (to the extent that costs were increased by their stance): there was no order for costs, except that MF was to pay 20% of the Official Solicitor’s costs between certain dates, to reflect the time spent on the peripheral issues which MF had raised and the ‘extravagant, strident and on occasions vicious way in which he chose to pursue them’.

• **Re RB (Adult); A London Borough v RB (Adult) (No 4) (2011) EWHC 3017 (Fam)** — There is no statutory provision regulating the publication or reporting of judgments given or handed down in the Family Division in proceedings under the inherent jurisdiction in respect of adults, so it is not a contempt of court to publish or report a judgment (whether in whole or in part) merely because it was given or handed down in private (in chambers) and not in open court.

• **Re RK; RK v BCC (2011) EWCA Civ 1305** — (1) An adult in the exercise of parental responsibility may impose, or may authorise others to impose, restrictions on the liberty of the child. However restrictions so imposed must not in their totality amount to detention. Detention engages the Article 5 rights of the child and a parent may not lawfully detain or authorise the detention of a child. (2) The restrictions authorised by RK’s parents did not amount to deprivation of liberty: they were no more than what was reasonably required to protect RK from harming herself or others within her range. [Detailed summary available on case page.] (NB Transcript revised to contain concurring judgments of Gross and Baron LJJ.)

• **Re RK; YB v BCC (2010) EWHC 3355 (COP)** — (1) Given the terms of s20(8) Children Act 1989 (that any person with parental responsibility may at any time remove the child) the provision of accommodation to a child under s20(1), (3), (4) or (5) will not ever give rise to a deprivation of liberty within the terms of Article 5. If the child is being accommodated under the auspices of a care order, interim or full, or if the child has been placed in secure accommodation under s25, then the position might be different. (2) In any event: (a) the objective element of
deprivation of liberty was not remotely close to being met on the facts; (b) the subjective element was not met, as the parents had consented on RK’s behalf; (c) RK’s placement was at the behest of her parents and could not be imputed to the state. [Detailed summary to follow.]

- **Re S; D v R (the deputy of S) (2010) EWHC 3748 (COP)** — Costs judgment in Court of Protection: (1) up to the December 2009 hearing, because the proceedings had been necessary, the normal rule that costs were to be paid by S’s estate was to apply, but (2) from that point onwards, because of her conduct of proceedings, Mrs D was to bear her own costs, plus 75% of the Deputy’s costs on the standard (not indemnity) basis.

- **Re Steven Neary; LB Hillingdon v Steven Neary (2011) EWHC 1377 (COP)** — (1) By keeping Stephen away from his home, Hillingdon breached Article 8 and Article 5(1) (notwithstanding DOLS authorisations granted during later stages). (2) By (a) failing sooner to refer the case to the COP, (b) failing sooner to appoint an IMCA, and (c) failing to conduct an effective review of the best interests assessments, Hillingdon breached Article 5(4).

- **Re Steven Neary; LB Hillingdon v Steven Neary (2011) EWHC 413 (COP)** — (1) The judge directed that: (a) the named media organisations could send designated representatives to court, subject to further directions; (b) the media could identify the parties by name, rather than initials; (c) the media could report any information already in the public domain when reporting the proceedings; (d) any application to report information during the course of any private hearing is to be determined by the court at the conclusion of the relevant hearing. (2) The reasons given were that: (a) the circumstances are already in the public domain to a significant extent; (b) there is no evidence of a real possibility of detriment or distress to Stephen of anything other than a trivial nature; (c) it would be impossible to prevent the media from reporting parties’ names at the end of proceedings. (3) In relation to future care, directions had been given for a mediated solution to be attempted. (4) In relation to lawfulness of the past deprivation of liberty, a hearing was listed for May 2011.

- **Sharma v Hunters (2011) EWHC 2546 (COP)** — Unsuccessful application by Hunters Solicitors against wasted costs order in the Court of Protection.

- **SMBC v WMP (2011) EWHC B13 (COP)** — HSG’s application to be discharged as a party in a forced marriage protection order case was refused because there was good cause to believe that he may lack capacity (the test for interim orders). The judge set out a list of lessons learnt for future cases. [Summary required.]

- **V v R (2011) EWHC 822 (QB)** — Litigation capacity. The experts agreed that, as a result of her impulsive nature, V lacked capacity to manage her financial affairs; however, they disagreed on whether she had litigation capacity. The critical future decisions would be in connection with settlement offers (including the global value of the claim, provisional damages and periodical payments) albeit in the context of the common understanding that she would not have unfettered access to the money. V would have difficulties in weighing the evidence and making decisions, but they could be ameliorated, if not entirely overcome, by the careful and structured support that the statute contemplates: the decisions would be made in the presence of her mother and lawyers; there was no suggestion that V would be left to make decisions on her own. On balance she did not lack capacity to litigate.
WCC v GS (2011) EWHC 2244 (COP) — (1) GS lacked capacity to conduct litigation, to make decisions in respect of her care requirements, to decide where she wants to live and to decide issues relating to contact with her family. (2) It was in GS’s best interest to remain at a care home. (3) Having set out an general guidance in relation to conditions imposed on contact, the court approved an agreed contact schedule between GS and her son.

Wychavon District Council v EM (HB) (2011) UKUT 144 (AAC) — (1) The tenant lacked capacity so the tenancy contract was not valid, which meant that there was no liability to pay rent and therefore no entitlement to Housing Benefit. (2) The contract was void, not voidable, because the landlord knew the tenant lacked sufficient mental capacity to reach such an agreement. [Caution.]

Criminal law cases

AG’s ref (no 54 of 2011) (2011) EWCA Crim 2276 — (1) The restricted hospital order was quashed and a six-year IPP imposed. The judge had failed to take into account the differences between the two regimes: (a) release on licence from IPP depends on lack of danger for any reason, whereas release from hospital order depends on lack of danger for medical reasons only; (b) an IPP licence can be revoked for danger resulting from crime, whereas a conditional discharge can only be revoked if the medical condition relapses. It was essential in this case that the power to recall upon criminal relapse was available. (2) The s45A hybrid order regime would have been perfect in this case, but it is only available to those subject to imprisonment; however, the defendant was under 21 and imprisonment is only available to those 21 or over (the court recommended that this be reconsidered). (3) The notional determinate term of 12 years was not unduly lenient. (4) The hearing was adjourned in order to allow for an immediate s47 transfer direction to be made upon the imposition of the IPP sentence.

R v Abdi (2011) EWCA Crim 2179 — Unsuccessful appeal against s41 restriction order.

R v Clark (2011) EWCA Crim 2516 — The defendant appealed against a sentence of 56 months’ imprisonment for GBH (financial worries had led him to decide to kill his wife and himself). The sentencing guidelines could never have been intended to apply to such an exceptional case; the sentence was replaced with a community rehabilitation order with a mental health treatment requirement.

R v Goucher (2011) EWCA Crim 1456 — The hearing of an application for an extension of time and for permission to appeal against a restricted hospital order was adjourned in order to obtain evidence from the new Responsible Clinician.

R v Goucher (2011) EWCA Crim 2473 — On appeal, the restriction order was quashed: the judge had applied the correct test (whether it was necessary to protect the public from serious harm) but, as confirmed by a psychiatric report prepared for the appeal, he had got the answer wrong. [Summary based on All ER (D) report.]

R v Heaney (2011) EWCA Crim 2682 — The appellant had been convicted of two offences under MCA 2005 s44 and sentenced to consecutive 3- and 6-month sentences of imprisonment; on appeal, these were ordered to be served concurrently. The court took into account that ‘neither of the victims in fact sustained any distress or injury and they were very short incidents’, that the
consequences for the appellant had been grave because she had lost her career, that she was a middle-aged woman with two young daughters, and that she was of previous good character.

- **R v Henz (2010) EWCA Crim 3121** — The appellant appealed against a sentence of 18 months’ imprisonment as being excessive; then, following her transfer to hospital she instead sought a community order with a mental health requirement. Her mental condition, and lack of insight, led to the conclusion that a hospital order was required to ensure that she continued to receive treatment.

- **R v Hopkins; R v Priest (2011) EWCA Crim 1513** — Prosecution under MCA 2005 s44. [Summary required.]

- **R v Inglis (2010) EWCA Crim 2269** — Appeal allowed and retrial ordered on the basis of fresh evidence which showed that the appellant suffered at the time of the killing from bipolar affective disorder and supported a defence of diminished responsibility.

- **R v Lavender (2011) EWCA Crim 2420** — (1) On the material before the sentencing judge, there was nothing wrong in principle with an extended sentence. (2) However, given the recent psychiatric evidence, it was now arguable that the option of a hospital order with or without a restriction order needed to be considered, so leave to appeal was given and a representation order was granted.

- **R v O (2011) EWCA Crim 376** — Life sentence quashed and s37/41 restricted hospital order substituted. The life sentence had been passed in the context of confusion about bed availability, and the lack of a second s37 recommendation. There was utility in making the Appellant a patient rather than a prisoner because: (1) it was manifestly the right order to make on all the evidence; (2) there were advantages in terms of treatment; (3) it had advantages to the Appellant in terms of benefits; (4) it would best ensure the protection of the public.

- **R v Shah (2011) EWCA Crim 2333** — Following a special verdict of not guilty by reason of insanity, a restricted hospital order was imposed; an appeal, relying on post-sentence medical evidence, was made against the restriction order. (1) In exceptional cases the court can consider good progress after sentencing, but in this case the task was to decide whether, on the material before him on the date of sentence, the judge’s sentence was wrong in principle or manifestly excessive: it was not. (2) The sentence provides a mechanism for release by a Tribunal from the restriction order and the full rigour therefore of the hospital order [this is incorrect], so the appeal court should not taken over the function of that body.

- **R v Welsh (2011) EWCA Crim 73** — Welsh appealed against a discretionary life sentence for diminished responsibility manslaughter, but was unsuccessful because (1) his propensity for violence, even before he suffered from paranoid schizophrenia, and the gravity of the offence, meant that public confidence would not be maintained by making a restricted hospital order, and (2) there was ample justification for the conclusion that he bore substantial responsibility and that there was a risk he would remain a source of danger even if his condition substantially improved once he received treatment and medication.
Lasting Power of attorney cases

- **Re Baker (2011) COP 4/2/11** — In Part A of the instrument the donor put his middle name in the box for “Last Name” and omitted his surname completely. As his middle name could have passed for a surname, this error was not noticed by anybody and the instrument was registered. The attorney applied for a declaration that the LPA was to be treated as valid under paragraph 3(2) of Schedule 1 of the MCA 2005, under which the court may declare that an instrument is to be treated as if it had been made in the prescribed form even though it differs in a material respect from the prescribed form. The court exercised its discretion under paragraph 3(2) because, although the error was material, it was satisfied that the instrument was intended to be an LPA. The Public Guardian was directed to amend the register and attach a note to the instrument to this effect. (Note: for a similar case concerning an EPA, see Re Orriss (2010) COP 20/10/10, under the “Rectification” heading.) [OPG summary - LPA case.]

- **Re Brindley (2011) COP 11/5/11** — The donor appointed three attorneys, A, B and C, to act jointly and severally. She then imposed the following restriction: “C does not attain the age of 18 until 21.12.2012 upon which date along with A and B she will act jointly and severally as attorney.” On the application of the Public Guardian the appointment of C was severed as invalid on the basis that it contravened section 10(1)(a) of the MCA. [OPG summary - LPA case.]

- **Re Careford (2011) COP 16/2/11** — The donor of a property and affairs LPA included the following provision in the guidance section; “While my husband is my attorney, he may use my own money and property for his benefit in any way he wishes. My replacement attorneys may use my money and property for the benefit of my husband in any way they think fit. All of my attorneys may make gifts to my husband from my estate.” On the application of the Public Guardian the provision was severed on the ground that it contravened section 12 of the MCA 2005. Although the provision was expressed as guidance, it was not open to the donor to give guidance about gift making in terms going beyond the statutory power. [OPG summary - LPA case.]

- **Re Clare (2011) COP 8/9/11** — The donor made two LPAs, each appointing an attorney and a replacement attorney. In each she directed as follows: “My Attorney may at any time appoint a substitute to act as my Attorney and may revoke any appointment without giving a reason. Each appointment is to be in writing signed by my Attorney. Every substitute has full powers as my Attorney as if appointed by this Deed, except the power to appoint a substitute.” On the application of the Public Guardian the provision was severed as being a plain breach of section 10(8)(a) of the MCA, which provides that an LPA cannot give the attorney power to appoint a substitute or successor. [OPG summary - LPA case.]

- **Re Clarke (2011) COP 19/9/11** — The donor made an LPA for property and financial affairs, appointing her husband and daughter as attorneys and her other two daughters as replacement attorneys. She also made an LPA for health and welfare, appointing her husband and three daughters as attorneys. When an application was made to register the instruments, the husband objected on the ground that the instruments had not been properly witnessed. He alleged that the witness had not been in the house when the donor signed, but had added his signature later. The court preferred the evidence of the witness and one daughter, to the effect that the donor had signed at the dining room table and that the witness was in an adjacent room and could see her sign through glass doors separating the two rooms. Applying the old case Casson v Dade (1781), the court held that the instruments had been properly witnessed. (The husband also objected on...
the ground that the donor lacked capacity to make an LPA, but this was also dismissed. The donor’s GP had acted as certificate provider and the court commented on the difficulties facing GPs who act as certificate providers within the time constraints of an appointment at the surgery). [OPG summary - LPA case.]

- **Re Cranston (2011) COP 18/2/11** — The donor appointed attorneys to act jointly in some matters and jointly and severally in others. He included in the list of matters which should be decided jointly “changing my will”. On the application of the Public Guardian these words were severed on the ground that an attorney has no authority to change a donor’s will. An attorney may apply to the court for an order authorising the execution of a statutory will if a donor lacks testamentary capacity. [OPG summary - LPA case.]

- **Re Cretney (2011) COP 24/2/11** — The donor made an LPA on the “new” form prescribed in 2009 but omitted the attorney’s date of birth in Part A. The Public Guardian refused to register on the ground that the instrument differed materially from the prescribed form. On the application of the attorney (who was over 18) the court declared in the exercise of its discretion under paragraph 3(2) of Schedule 1 of the MCA that the instrument was to be treated as if it were in the prescribed form. [OPG summary - LPA case.]

- **Re Dadd (2010) COP 17/10/10** — The donor made an LPA using the “new” form prescribed in 2009. She appointed two attorneys but provided no date of birth for either. The Public Guardian was willing to register in favour of one attorney because her title was given as “Mrs”, so that it could reasonably be inferred that she was at least 18. It was overlooked that the other attorney was described in the instrument as the donor’s husband. On the attorney’s application the court directed registration. As it could be inferred from the instrument that both attorneys were at least 18, the instrument differed from the prescribed form in an immaterial respect within paragraph 3(1) of Schedule 1 of the MCA 2005. [OPG summary - LPA case.]

- **Re Dhir (2011) COP 15/11/11** — The donor set out eight restrictions, one of which was: “My attorney must not sell any of my properties unless it is required for my wife’s medical treatment.” On the application of the Public Guardian the restriction was severed on the ground that it authorised the attorneys to make gifts beyond the scope of the statutory power set out in section 12 of the MCA 2005. [OPG summary - LPA case.]

- **Re Drude (2011) COP 31/5/11** — The donor made LPAs appointing A and B as her attorneys, to act jointly, and C and D to be her replacement attorneys. She then imposed the following restriction: “Both C and D should jointly replace the first attorney who needs replacing so that on the first replacement there will be 3 acting attorneys. No further replacements will be needed.” On the application of the Public Guardian the court severed the restriction. There is nothing in section 10(8)(b) of the MCA, which deals with the appointment of replacement attorneys, to displace the fundamental principle that the survivor of joint attorneys cannot act. Where one of the original joint attorneys can no longer act, the replacement(s) will step in and act alone, to the exclusion of the surviving original attorney. This ruling reflects what is stated to be the “better view” in paragraph 4.44 of Cretney and Lush on Lasting and Enduring Powers of Attorney (6th edition). [OPG summary - LPA case.]

- **Re Fisher (2011) COP 28/7/11** — The donor included the following provision in his LPA: “I direct that if I lack mental capacity or for any other reason am unable to deal with my day to day
financial affairs then my Attorney is to pay from my business the sum of £4,000 per calendar month into the bank account of my wife.” On the application of the Public Guardian the provision was severed on the ground it contravened section 12 of the MCA 2005. [OPG summary - LPA case.]

- **Re Freeman (2011) COP 17/8/11** — The donor appointed A and B as attorneys to act jointly in some matters and jointly and severally in others. He specified that they were to act as follows: “Major capital expenses jointly. Day to day expenses A.” In his application the Public Guardian submitted that the donor had not specified any decisions to be made jointly and severally and so the words “Day to day expenses A” should be severed, with the effect that decisions not specified to be taken jointly should by implication be taken jointly and severally. The court was also asked to sever the word “Major” on the ground of uncertainty. The court accordingly severed these words so that the attorneys were appointed to act jointly for “capital expenses” and (by implication) jointly and severally for everything else. [OPG summary - LPA case.]

- **Re Gardner (2011) COP 6/7/11** — The donor included the following statement in the guidance section of the instrument: “If I am suffering from a terminal illness I would ask that my attorneys assist me in travelling to a country where it is legal for me to take my own life should I choose to do so.” On the application of the Public Guardian the court severed the guidance for the following reasons: (i) section 62 of the MCA 2005 provides that nothing in the Act is to be taken to affect the law relating to murder or manslaughter or the operation of section 2 of the Suicide Act 1961 (assisting suicide); (ii) the donor was purporting to authorise the attorneys to commit the criminal offence of assisting suicide, and the fact that a person who assists a suicide is not always prosecuted in England and Wales does not detract from the fact that it remains a criminal offence; (iii) although the statement appeared in the guidance section, it is not open to a donor to provide guidance to the attorneys relating to the commission of a criminal offence. [OPG summary - LPA case.]

- **Re Gee (2011) COP 22/8/11** — The donor of a property and affairs LPA included the following guidance: “Although I authorise my Attorneys to make gifts of money to either grandchild in cases of extreme need (for which I rely on my Attorneys’ discretion) no benefit directly or indirectly should go to my daughter. If my house has to be sold I authorise my Attorneys to distribute any furniture, household and personal effects to X, Y and my grandchildren as if I had died.” In making the application the Public Guardian referred the court to the view expressed by the Law Commission in its report on Mental Capacity (Law Com. No. 231) to the effect that an LPA attorney could provide for the needs of others as part of his duty to act in the donor’s best interests, even in the absence of an express provision such as is conferred on EPA attorneys. The Public Guardian asked the court to consider whether the view of the Law Commission could be relied on in cases where the donor contemplated that the attorneys could provide for the needs of others in circumstances outside the statutory gifting power. However, the court severed the guidance on the ground that it contravened section 12 of the MCA 2005. [OPG summary - LPA case.]

- **Re Hamilton (2011) COP 25/10/11** — The donor appointed one primary attorney and one replacement attorney. On page 5 of the LPA the donor inappropriately ticked the box indicating that the attorneys were appointed to act jointly for some decisions and jointly and severally for other decisions, and continued: “My No 1 Attorney will make all decisions re my everyday expenses and decisions [and] will make joint decisions with the Replacement Attorney in
reference to any large decisions re the selling of investments, property and the eventual need of a
nursing home etc.” On the application of the Public Guardian the provision was severed on the
ground that, having appointed the attorneys to act successively, the donor could not authorise
them to make any decisions concurrently, whether jointly or jointly and severally. [OPG summary
- LPA case.]

- **Re Hodgkiss (2011) COP 25/8/11** — The donor of a Health and Welfare LPA selected Option B,
which states that the attorneys have no authority to give or refuse life-sustaining treatment. He
then directed as follows: “Attorneys must consent to any life sustaining treatment if I am in a
persistent vegetative state.” On the application of the Public Guardian this provision was severed
as being incompatible with his selection of Option B. The court added that, if the donor had
wished to give his attorneys authority to consent to life-sustaining treatment if he were in a
persistent vegetative state, he should have selected Option A. [OPG summary - LPA case.]

- **Re Hurren (2011) COP 28/9/11** — The Public Guardian refused to register the instrument as an
LPA because the Part B certificate had been signed before the donor signed Part A, in
contravention of Regulation 9 of the Lasting Powers of Attorney, Enduring Powers of Attorney
and Public Guardian Regulations 2007. (The donor had subsequently lost capacity.) On the
attorney’s application, the court declared in the exercise of its discretion under paragraph 3(2) of
Schedule 1 of the MCA 2005 that the instrument was to be treated as if it were in the prescribed
form and directed registration. The Public Guardian applied to set aside the order on the ground
that paragraph 3(2) did not apply in the case of defective execution. The court set aside the order,
and confirmed that the discretion given to the court under paragraph 3(2) applies only to an
instrument which is not in the prescribed form and does not apply to any prescribed requirements
in connection with its execution. [OPG summary - LPA case.]

- **Re Ingham (2011) COP 15/8/11** — The donor appointed four attorneys to act jointly for some
decisions and jointly and severally for others. She then directed as follows: “A. While all
attorneys are acting: 1. All may complete any transaction with a value not exceeding £2,500. 2.
All must complete any transaction with a value exceeding £2,500. B. In the event that only two or
three Attorneys remain capable of acting those Attorneys are bound by A1 and 2 above. C. In the
event that only one Attorney remains capable of acting that Attorney has full powers to complete
transactions of any value.” On the application of the Public Guardian directions B and C were
severed on the ground that they were incompatible with the joint aspect of the appointment: if one
attorney ceased to act, the matters to be decided jointly would not be able to be decided by the
continuing attorneys. [OPG summary - LPA case.]

- **Re J (2010) COP 6/12/10** — Under MCA 2005 s22(3) (‘Powers of court in relation to validity of
lastling powers of attorney’) the court can consider any past behaviour or apparent prospective
behaviour by the attorney (not just behaviour as P’s attorney); depending on the circumstances
and gravity of any offending behaviour found, it can then take whatever steps it regards as
appropriate in P’s best interests (this only arising if P lacks capacity) whether by revoking the
power or by taking some other course.

- **Re Jackson (2011) COP 17/8/11** — The donor of a property and affairs LPA included the
following guidance: “If my attorneys believe I lack mental capacity or am becoming mentally
incapable of managing and administering my property and financial affairs then I wish them to
realise all my stocks, shares and other investments and transfer the proceeds and the balances
from all bank and other accounts in my sole name into a joint account in the names of myself and my wife to ensure that my wife has full access to all funds.” On the application of the Public Guardian the guidance was severed because it contravened section 12 of the MCA 2005. [OPG summary - LPA case.]

- **Re Knight (2011) COP 18/2/11** — The donor of a property and affairs LPA included the following provision in the guidance section: “I wish my attorneys, if they think fit, to pay my sister by way of gift the sum of £3,000 annually and to pay by way of gift the sum of £250 annually to my brother in law, my nephew, his spouse and all my nieces including spouses (other than to X), my great nephew and great niece, all of whom are listed on page A2 being the amounts of gifts exempt from inheritance tax under the current inheritance tax laws or such other annual sums by way of gift as shall for the time being be exempt from inheritance tax or other tax payable on death.” On the application of the Public Guardian the provision was severed on the ground it contravened section 12 of the MCA 2005. Although the provision was expressed as guidance, it was not open to the donor to give guidance about gift making in terms going beyond the statutory power, and although it might be possible for the attorneys to make the desired gifts on “customary occasions”, the donor did not appear to have been contemplating customary occasions at all. [OPG summary - LPA case.]

- **Re McGregor (2011) COP 16/11/11** — The donor appointed attorneys to act jointly in some matters and jointly and severally in others, and directed as follows: “Jointly - decisions on sale of house. Decisions on type of care received if no longer able to stay in own home. Severally - financial matters regarding bank accounts and general cash flow.” On the application of the Public Guardian the words “decisions on sale of house” and “Severally - financial matters regarding bank accounts and general cash flow” were severed because they purported to give Health and Welfare attorneys authority to make decisions regarding the donor’s property and financial affairs. (The result would be that, by implication, the attorneys would be able to decide jointly and severally all matters other than the type of care the donor would receive if no longer able to stay in his own home.) [OPG summary - LPA case.]

- **Re McKenna (2011) COP 1/2/11** — The donor purported to appoint a replacement attorney who, at the date the donor signed the instrument, was 16 years old. The donor added the following restriction; “My replacement attorney shall only act if she is over the age of 18.” On the application of the Public Guardian the appointment of the replacement attorney was severed as it contravened section 10(1)(a) of the MCA 2005, which provided that an attorney must have reached 18. [OPG summary - LPA case.]

- **Re Munn (2011) COP 28/1/11** — The donor of a property and affairs LPA included the following provision in the guidance section; “My finances should be managed so that X can continue to live at [a named property] for as long as she wishes and receives income from all investments and holiday lettings.” On the application of the Public Guardian the provision was severed on the ground that it contravened section 12 of the MCA 2005. Although expressed as guidance, it was more in the nature of a direction. [OPG summary - LPA case.]

- **Re Noel (2011) COP 31/1/11** — The donor appointed two attorneys to act jointly in some matters and jointly and severally in others. He then appointed X as replacement attorney. He directed that a decision to sell a named property “must be made jointly by all surviving attorneys including X”. On the application of the Public Guardian the words “including X” were severed, as being
incompatible with the manner in which the attorneys and replacement attorneys had been appointed. The court added that, to have achieved the desired objective, the donor should have appointed all three as attorneys (rather than two attorneys and a replacement) and directed them to act jointly in some matters and jointly and severally in others. [OPG summary - LPA case.]

- **Re Parker (2011) COP 18/2/11** — The donor of a Health and Welfare LPA appointed X and Y as attorneys to act jointly in some matters and jointly and severally in others. He then directed as follows: “I wish the prime responsibility for decisions in respect of my health to vest in X. My attorneys need only act jointly in the event of serious and/or life threatening conditions. In this case X should endeavour to contact Y but if she is, for whatever reason, unable to do so she may act on her own (severally) despite the serious and/or life threatening condition.” On the application of the Public Guardian the last sentence of this direction was severed as being incompatible with the appointment to act jointly in some matters. [OPG summary - LPA case.]

- **Re Parsonage (2011) COP 1/4/11** — The donor of an LPA inserted the following restriction: “My replacement attorneys under this lasting power shall not have authority to do any act, or take any decision, under this lasting power except in those circumstances where I lack capacity or where the replacement attorneys reasonably believe that I lack capacity or when I have signed that I wish the lasting power to come into effect by signing the lasting power again.” On the application of the Public Guardian the words “or when I have signed that I wish the lasting power to come into effect by signing the lasting power again” were severed on the ground that re-execution of the LPA by the donor after completion and registration would contravene the execution requirements for an LPA. [OPG summary - LPA case.]

- **Re Pugh (2011) COP 13/7/11** — The donor appointed three replacement attorneys to act jointly. She then completed the box on page 5 of the form (which should be completed only if the attorneys are to act jointly in some matters and jointly and severally in others) and directed as follows: “Where by this power I have appointed three replacement attorneys to act jointly on all occasions then I direct that if there is a dispute it is the majority decision of my three replacement attorneys that is to be followed and in the event that by reason of death or incapacity or other reason I only have two of my three replacement attorneys who are capable of acting then in the event of a dispute between my two continuing replacement attorneys it is the decision of the eldest that is to be followed.” On the application of the Public Guardian the court severed the restriction as being incompatible with a joint appointment. [OPG summary - LPA case.]

- **Re Putt (2011) COP 22/3/11** — (1) Two LLP partners were appointed attorneys; the certificate provider, as an associate at the same firm, was ineligible to act; (2) A direction that ‘My attorneys (or any of them) may delegate in writing any of his, her or their functions to any person and shall not be responsible for the default of that person (even if the delegation was not strictly necessary or expedient) provided that he, she or they took reasonable care in his, her or their selection and supervision’ was ‘not simply contrary but almost repugnant to the special relationship of personal obligation and faith that one might reasonably expect to exist between a donor and the attorney of an LPA’.

- **Re Salter (2011) COP 18/8/11** — The donor appointed primary attorneys to act jointly in some matters and jointly and severally in others, and also appointed replacement attorneys. She then directed as follows: “For decisions where my attorneys must act jointly, replacement attorney 1 should replace attorney 1, when he is unable to act and replacement attorney 2 should replace...
attorney 2 when he is unable to act.” On the application of the Public Guardian this provision was severed because the effect of one primary attorney ceasing to act would be that the other primary attorney could no longer act in the matters to be decided jointly, but the direction contemplated that the first replacement would act with the surviving primary attorney. [OPG summary - LPA case.]

- **Re Scott (2011) COP 11/1/11** — The donor made an LPA for property and financial affairs, appointing A and B to act jointly and severally. She then imposed the following restriction: “In the event of there being any disagreement between A and B (as the attorneys for property and financial affairs) and C (as the attorney for health and welfare) over expenditure on my health or welfare then C’s decision is to prevail.” The Public Guardian applied for this restriction to be severed on the basis that Re Reading (above) showed that a donor could not require that a person who was not an attorney under the instrument should join in the making of decisions by the attorneys. The court dismissed the Public Guardian’s application, considering that there was no reason in law why the donor of two separate LPAs should not be able to provide that, in the event of a disagreement between the attorneys for property and financial affairs and the attorney for health and welfare, the decision of the attorney for health and welfare should prevail. [OPG summary - LPA case.]

- **Re Scragg (2011) COP 1/2/11** — The donor of a property and affairs LPA (who lived abroad) gave detailed instructions to his attorney relating to all of his assets in the event of a return to England, and added that these instructions were “subject to the written consent of my daughter” (who was the replacement attorney and also the attorney under his Health and Welfare LPA). On the application of the Public Guardian the words “subject to the written consent of my daughter” were severed because the requirement that the attorney should obtain the consent of a third party before exercising his powers imposed an unjustifiable fetter on his authority. [OPG summary - LPA case.]

- **Re Steiner (2011) COP 17/10/11** — The donor appointed two attorneys to act jointly. She then gave the following guidance: “Should the need arise relating to the management of my financial affairs and my business interests, whoever at the time is acting for me personally as my accountant or solicitor shall adjudicate over my personal financial interests and whoever is acting professionally for me in respect of my business interests either my accountant or solicitor shall adjudicate over my business interests.” On the application of the Public Guardian the court severed the provision from the LPA on the ground that it could potentially oust the jurisdiction of the court. [OPG summary - LPA case.]

- **Re Stewart (2011) COP 9/11/11** — The donor included the following direction in the guidance section: “I authorise my attorneys to refuse or consent to my deprivation of liberty.” The Public Guardian applied for severance on the ground that: “The deprivation of the donor’s liberty is only lawful if ordered by the court or done in accordance with the procedures prescribed by law under the Mental Capacity Act 2005 as amended by the Mental Health Act 2007. The donor does not have power to authorise her attorneys to consent to the deprivation of her liberty in the absence of a court order or going through the Deprivation of Liberty Safeguarding procedures.” The court determined that the direction was invalid for the reasons given by the Public Guardian. [OPG summary - LPA case.]
• Re Temple (2011) COP 10/8/11 — The donor of a property and affairs LPA included the following guidance: “My attorney is authorised to grant gifts of up to £5,000 for family and also to provide interest free loans of up to £10,000 for extreme need. Where possible loans to be repaid within one year with flexibility of terms allowed at my attorney’s discretion.” On the application of the Public Guardian the guidance was severed because it contravened section 12 of the MCA 2005. [OPG summary - LPA case.]

• Re Walker (2011) COP 20/7/11 — The donor of a property and affairs LPA included the following provision in the guidance section: “To help my son X financially from my funds as and when he requires.” On the application of the Public Guardian the provision was severed on the ground that it contravened section 12 of the MCA 2005. [OPG summary - LPA case.]

• Re Warren (2010) COP 10/12/10 — The donor appointed four attorneys, A, B, C and D, to act jointly for some decisions and jointly and severally for others. She imposed the following restriction: “All decisions will be made by my first attorney A unless and until such time that he no longer has the mental capacity to do so. Should A no longer have the mental capacity to make decisions the remaining attorneys will jointly make decisions regarding the house and property and jointly and severally make decisions concerning finance.” On the application of the Public Guardian the words preceding “attorneys will jointly” were severed on the ground that, where attorneys were appointed to act jointly in some matters and jointly and severally in others, it was not open to the donor to provide that one attorney should act alone for so long as he was able to do so. The Senior Judge added that, to have achieved the desired objective, the donor should have appointed A as the sole attorney and the three others as replacement attorneys. [OPG summary - LPA case.]

• Re Weyell (2010) COP 2/12/10 — The donor appointed three attorneys, A, B and C, to act jointly for some decisions and jointly and severally for others. He then imposed the following restrictions: (1) “Two out of three of my attorneys must act jointly in relation to any transaction with a value in excess of £5,000 and my attorneys may act jointly and severally in relation to everything else.” (2) “I direct that when acting jointly and severally where possible my attorneys are to act in the following order of priority: firstly A, then B and then C.” On the application of the Public Guardian the first restriction was severed as being incompatible with the joint aspect of the appointment. In the application the Public Guardian submitted that, while a direction that attorneys appointed to act jointly and severally must act in an order of priority would normally be regarded as incompatible with a joint and several appointment, the addition of the words “where possible” made the direction in effect a statement of wishes only. The court accepted this submission and did not sever the second restriction. [OPG summary - LPA case.]

• Re Wheatley (2011) COP 31/1/11 — The donor of a property and affairs LPA included the following provision in the guidance section: “My attorneys will continue to make contributions to my grandchildren’s Child Trust Funds and any other saving/pension plans that I fund for their benefit.” On the application of the Public Guardian the provision was severed on the ground that it contravened section 12 of the MCA 2005. Although expressed as guidance, it was more in the nature of a direction. [OPG summary - LPA case.]

• Re Wheeler (2011) COP 25/7/11 — The Public Guardian applied for the severance of an invalid clause in the LPA. The Senior Judge considered that another clause was also invalid, which was severed on the court’s own initiative. The donor had provided the following guidance: “My
attorneys may act on the contents of my will.” The court’s reason for severing the guidance was as follows: “The court considers that the meaning of this guidance is unclear and that it is probably void for uncertainty. Potentially it authorises the attorneys to distribute the donor’s estate during his lifetime as if he were dead, which would be not only contrary to public policy but also contrary to the provisions of section 12 of the Mental Capacity Act 2005. A will speaks from death, and it is not a function of an attorney to act as the executor of the donor’s will.” [OPG summary - LPA case.]

- **Re Williams (2010) COP 1/12/10** — The donor appointed three attorneys to act jointly. She then added: “The attorneys are only to make decisions jointly and should any of the attorneys die within my lifetime I wish for their personal representative to take over as my attorney in their place.” On the application of the Public Guardian the court severed this provision on the ground that section 10(8)(a) of the MCA provided that an LPA instrument could not give the attorney power to appoint a substitute or successor. [Note: The provision could also be viewed as incompatible with the nature of a joint appointment.] [OPG summary - LPA case.]

- **Re Wormsley (2011) COP 24/10/11** — The donor appointed two primary attorneys and two replacement attorneys, and directed them to act jointly and severally. He further directed as follows: “If a replacement attorney is required to replace an original attorney, the two replacement attorneys shall decide which one of them shall serve as attorney.” On the application of the Public Guardian the court severed the provision as being inconsistent with the joint and several appointment of the replacement attorneys. [OPG summary - LPA case.]

Enduring Power of Attorney cases

- **Re Berg (2010) COP 31/12/10** — The donor made an EPA appointing A and B to act jointly. He then added: “so long as neither Attorney dies or is incapacitated in which eventuality the other Attorney is empowered to act on his own”. On the application of the attorneys the court severed the restriction as being incompatible with a joint appointment. [OPG summary - EPA case.]

- **Re Donegan (2011) COP 6/1/11** — The donor made an EPA including the following provision: “All the while that I am practically and financially able to remain in my own home my Attorneys should ensure that I remain there. My Attorneys do not have power to sell my home.” On the application of the Attorneys the court severed the restriction on the ground that it was ineffective as part of an EPA because it sought to confer Personal Welfare decision making powers on the Attorneys. [OPG summary - EPA case.]

- **Re Harris (2011) COP 6/1/11** — The donor made an EPA purporting to authorise the Attorneys to do the following: “Making a choice on my behalf for any nursing/residential care needed for me in the future.” On the application of the Attorneys the court severed the provision on the ground that it would be ineffective as part of an EPA, because it sought to authorise Personal Welfare decision making. [OPG summary - EPA case.]

- **Re Haworth (2010) COP 20/12/10** — The donor made an EPA appointing A and B to act jointly and severally. He then imposed the following restriction: “B shall not, while A is alive and mentally capable, without A’s consent (a) sell, mortgage, charge, lease, or otherwise dispose of any asset of mine or (b) enter into any transaction with a value of more than £2,000.” On the
attorneys’ application the court severed the restriction as being incompatible with a joint and several appointment. [OPG summary - EPA case.]

- **Re Jarman (2011) COP 8/8/11** — The donor made an EPA appointing attorneys to act jointly and severally. He included the following restriction: “While both of my Attorneys are alive and of capacity they are to act jointly and a certificate from a practising doctor will be sufficient evidence of capacity of either of my Attorneys.” On the application of the attorneys the court severed the restriction as being incompatible with a joint and several appointment. [OPG summary - EPA case.]

- **Re Lodge (2010) COP 6/8/10** — Unfortunately by mistake the donor signed Part C and the attorney signed Part B of the EPA instrument. On the attorney’s application the Court held that the donor’s failure to execute the instrument correctly was a material defect and it was not a valid EPA. The attorney applied for a reconsideration of this order. By an order of the Senior Judge made on 14/3/11 the previous order was affirmed. [OPG summary - EPA case - transcript available.]

- **Re Stevens (2011) COP 11/1/11** — The donor made an EPA including the following provision: “The word “seasonal” in section 3(5) of the Enduring Powers of Attorney Act 1985 includes the end of one tax year and the beginning of another.” On the application of the attorneys the court severed the provision as being ineffective as part of an EPA. [OPG summary - EPA case.]

**Other cases, including community care**

- **All About Rights Law Practice v LSC (2011) EWHC 964 (Admin)** — The applicant law firm failed properly to complete the online documentation for the 2010 mental health tendering exercise and unsuccessfully challenged the LSC’s decision not to award it a contract.

- **Buckinghamshire CC v RB of Kingston upon Thames (2011) EWCA Civ 457** — Where a person is accommodated under s21 NAA 1948 by authority A in area B, the person is deemed still to be ordinarily resident in area A only until he moves out of s21 accommodation (in this case, into supported housing). When assessing under s47 NHSCCA 1990, authority A owes no duty of fairness to area B and there is no duty to consult: the duty is to the person concerned; the role of authority B, as payers for the service, is essentially incidental.

- **C v D (2011) EWCA Civ 646** — (1) A settlement offer which is time-limited is not capable of being a Part 36 offer; (2) in the context of the intention to comply with Part 36, the statement that the offer be ‘open for 21 days’ did not mean that it was a time-limited offer (rather, it was indicating that it could be withdrawn after 21 days); (3) on the facts, the Part 36 offer had not expired and was capable of acceptance.

- **Clift v Slough BC (2010) EWCA Civ 1484** — An email from a local authority stating that Clift was on its violent persons register was published too widely: (1) the disproportionate publication was an unjustified breach of Article 8; (2) the Article 8 breach prevented the local authority from using the qualified privilege defence to defamation.

- **De Louville De Toucy v Bonhams 1793 Ltd (2011) All ER (D) 32 (Nov)** — (1) There was no inconsistency between the Insolvency Rules (defining an ‘incapacitated person’) and the CPR (defining a ‘protected party’). (2) The registrar should not have declared the claimant bankrupt:
he ought to have (a) been aware that the claimant was incapable, (b) adjourned the case for a representative or litigation friend to be appointed, and (c) heard representations from such a person. (3) On the evidence, the financial situation was complex and, without proper investigation, it was impossible to be sure that it was appropriate to make a bankruptcy order, so the order was set aside and the matter referred to the registrar to be heard again. [Summary based on All ER (D) report.]

- **Francis v GSCC (2010) UKFTT 434 (HESC)** — The GSCC had refused to register Francis as a social worker under s58 Care Standards Act 2000 because (a) he had from 2005 to 2006 failed to register as a social worker but continued to act as such, (b) during the same period he had continued to act as an AMHP; (c) he had failed to inform his employer of his personal difficulties, (d) there was no adequate endorsement of his application. His appeal under s68 was dismissed.

- **G v MHTS (2011) CSIH 55** — This appeal relates to the circumstances in which it may be appropriate for the Mental Health Tribunal for Scotland to make no order for arrangements to be made for transfer from the State Hospital to conditions of lesser security following a finding that the patient is being detained in conditions of excessive security. The appellant unsuccessfully challenged the decision to make no order.

- **GSCC conduct committee decision: Philip Julian Davies 10/12/10** — Social worker suspended for misconduct for 12 months. Two of the proven allegations were: ‘(4) Without authority, on or around 18th July 2008, you requested service user Mrs Z to sign financial papers after she had been diagnosed by a consultant psychiatrist as having a lack of mental capacity. (5) Between 20th May 2008 and 30th October 2009, you failed to ensure that an application for a Court of Protection order in respect of a service user Mr Z, was made expeditiously, or at all.’

- **Hackett v CPS (2011) EWHC 1170 (Admin)** — Undue influence. [Summary required.]

- **Hadzic and Suljic v Bosnia Herzegovina 39446/06 (2011) ECHR 911** — The applicants had been detained for several years in a prison ‘Psychiatric Annex’ which was an inappropriate institution for the detention of mental health patients, in breach of Article 5(1); the applicants were awarded compensation of €15,000 and €25,000 respectively.

- **Haworth v Cartmel and HMRC (2011) EWHC 36 (Ch)** — Disability Discrimination Act, and lack of capacity, used to annul bankruptcy order. [Detailed summary available on case page.]

- **Hill v Fellowes Solicitors LLP (2011) EWHC 61 (QB)** — Professional negligence claim including an allegation that a solicitor’s firm negligently failed to make enquiries as to the client’s capacity to understand the sale of her house. [Detailed summary available on case page.]

- **Hossack v Legal Services Commission (2011) EWCA Civ 788** — Judicial review of rejection of tenders for community care law. [Summary required.]

- **Hossack v Legal Services Commission (2011) EWHC 2700 (Admin)** — Unsuccessful judicial review of a decision of the LSC rejecting the claimant’s tender for the provision of legal services in the field of community care following a competitive tendering exercise in 2010.

- **Jones v Kaney (2011) UKSC 13** — (1) The immunity from suit for breach of duty that expert witnesses have enjoyed in relation to their participation in legal proceedings is abolished. (2)
This does not affect the absolute privilege that all witnesses enjoy in respect of claims in defamation.

- **Lumba (WL) v SSHD (2011) UKSC 12** — (1) It was unlawful in public law for the SSHD to operate an unpublished policy on the detention of foreign national prisoners which differed from the published policy and which amounted to a near-blanket ban on release. (2) The detention of the appellants was unlawful, even though they would have been detained even on the published policy. (3) As they suffered no loss, the appellants were entitled to nominal damages of one pound (and not ‘vindicatory’ or exemplary damages).

- **M v F (2011) EWCA Civ 273** — Unsuccessful appeal by the mother against a judgment refusing her a wide ranging series of declarations, the object of which was to deny the father (who suffered from mental illness) all knowledge of the birth and subsequent development of his legitimate child.

- **Magritz v Public Prosecutors Office Bremen (2011) EWHC 1861 (Admin)** — In relation to the claimant’s extradition, where the sentence was for him to be ‘placed in a psychiatric hospital for an indefinite period of time’: (1) section 25 of the *Extradition Act 2003* (the purpose of which is to protect a requested person whose physical or mental health is so poor that the act of extradition would be oppressive or unjust) was not engaged; and (2) there would be no breach of Article 3, Article 5 or Article 8.

- **McKie v Swindon College (2011) EWHC 469 (QB)** — An email sent by Swindon College, a past employer, to the claimant’s then current employer, raising safeguarding issues, caused him to lose his job, for which Swindon were liable in negligence. (Full legal summary required.) (A forthright judgment: ‘[18] ... Even if there were any substance in that complaint at all, which as I say seems to me to be bordering on the ludicrous... [26] ... We are into the realms of hearsay upon hearsay. ... [27] ... I think when we actually look at the circumstances, we can see that the procedure adopted at Swindon College giving rise to the sending of the email, can be described as slapdash, sloppy, failing to comply with any sort of minimum standards of fairness, certainly any such standards as would be recognised by any judicial body taking decisions and disseminating information about another individual, because Mr Rowe agreed he had no personal knowledge of things at all. ... [29] So not only do I take the view that the contents of the email are not in fact supported by any evidence, I also take the view that the circumstances surrounding the sending of the email flouted elementary standards of fairness, diligence, proper enquiry, natural justice, whichever set of epithets you wish to use. ... [34] ... The idea that she should have been part of a disciplinary process as it transpired on 10 June whilst being on the governing body of Swindon College, I find staggering. It contradicts almost every rule, as it seems to me, about decision making in a quasi-judicial matter.’ etc)

- **NMC Conduct and Competence Committee decision: Josiah Foeka Amara 18/2/11** — Nurse was struck off for misconduct. The following charges were proved: ‘That you, on or around 19 December 2005, whilst working as a Staff Nurse on Vincent Ward at the Gordon Hospital, Bloomberg Street, London SW1V 2RH: (1) Purchased crack cocaine in the company of Patient A, a patient on the ward; (2) Took crack cocaine with Patient A; (3) Had sexual intercourse with an unknown female when Patient A was also present in your flat; AND in light of the above, your fitness to practise is impaired by reason of your misconduct.’
**PFZ v West London MH NHS Trust (2011) Settlement 28/11/11** — PFZ, an informal patient with a long history of mental illness, was allowed to run away from hospital in a suicidal state, then jumped from a balcony sustaining and permanent and catastrophic spinal cord injury which left him tetraplegic and wheelchair-bound. He sued the Trust for negligent failure to provide him with adequate treatment. The Trust agreed to compensate him on the basis of 40% liability, and made an advance payment of £75,000; the full amount was yet to be assessed but to meet PFZ’s care needs for the remainder of his life was estimated to require millions of pounds.

**Pitt v Holt (2011) EWCA Civ 197** — Successful appeal by HMRC. [Detailed summary available on case page.]

**Public Interest Lawyers v LSC (2010) EWHC 3277 (Admin)** — (1) The verification process following the LSC’s public law and mental health tendering process fell short of what was required by the Public Contract Regulations 2006. No objection was taken, nor could it be, to self-certification. But the self-certification supervisor forms did not require supervisors to confirm specifically the nature of the employment arrangements between them and the organisation or whether they had complied with the supervision standards set out in the contract, in particular the supervision experience or training course requirement (clause 2.28) and the 1:6 supervisor ratio requirement (clause 2.35). There may therefore be a number of firms with contracts who did not meet the supervision criteria, for example who have an external non-employed supervisor, or a part-time supervisor who is not employed for sufficient hours. The LSC must ensure, within a limited period, that all firms currently comply with the supervision standards; those who do not must have their contracts removed and the matter starts redistributed pro rata. (2) The disability equality duty challenge to the HSH contract under s49A Disability Discrimination Act 1995, as originally raised, was essentially a challenge to the consultation and the formulation of the tender proposals; as it was brought eight months after the proposals were available, it was out of time. However, the outcome of the of the tender exercise was only recently known: in particular, senior psychiatrists had given evidence of the distress changing solicitors would cause to a considerable number of patients in the light of the reduction in number of solicitors with contracts (of 98 existing providers, 43 did not bid; of those who bid, six firms were successful at Ashworth, and five at each of Broadmoor and Rampton). The outcome engaged the s49A duty so the LSC must gather information, consult with interested stakeholders, and have due regard to whether they need to take steps to ameliorate the result of the contracting exercise. (3) The public law tender, and the reduction in matter starts, met the LSC’s legal obligations under s4 Access to Justice Act 1999. [Detailed summary available on case page.]

**R (AC) v Berkshire West PCT (2011) EWCA Civ 247** — The claimant, who suffered from gender identity disorder, unsuccessfully challenged the decisions to refuse funding for breast augmentation surgery and the underlying policies.

**R (AK) v SSHD (2011) EWHC 3188 (Admin)** — Immigration case with mental health element. [Summary required.]


**R (Faulkner) v SSJ (2011) EWCA Civ 349** — The claimant’s Parole Board hearing should have been in March 2008 but was delayed in breach of Article 5(4) until January 2009 when he was
released; he had shown on balance that he would have been released in March 2008. Having considered the case law on quantum, the court concluded that: ‘a figure of £10,000 is appropriate and necessary to reflect the loss of some 10 months’ conditional liberty by reason of the state’s breach of the claimant’s right not to continue to be detained in the absence of a speedy decision by a judicial body. We have not arrived at it by applying a multiplier to a monthly sum, although it can no doubt be disaggregated in that way.’

- **R (FB) v SSHD (2011) EWHC 2044 (Admin)** — Unlawful detention case involving mentally-ill immigrant. [Summary required.]

- **R (Guntrip) v SSJ (2010) EWHC 3188 (Admin)** — Parole Board Article 5(4) delay case. [Summary required.]

- **R (KM) v Cambridgeshire CC (2011) EWCA Civ 682** — (1) The assessment of needs was adequate. (2) There has to be a rational link between the needs and the assessed direct payments, but there does not need to be a finite absolute mathematical link, so the use of the Resource Allocation System (RAS) was lawful. (3) The explanation of the personal budget figure was rational.

- **R (McDonald) v Royal Borough of Kensington and Chelsea (2011) UKSC 33** — ‘This appeal concerns the question of whether the Respondent Royal Borough acted unlawfully in seeking to amend the Appellant’s care package by substituting her nighttime carer with provision of incontinence pads or absorbent sheets when the Appellant is not in fact incontinent.’ (from Supreme Court press summary)

- **R (Monday) v SSHD (2010) EWHC 3079 (Admin)** — There was no prospect (for psychiatric reasons) of deportation of the claimant within a reasonable period, so ongoing detention would be unlawful.

- **R (Nassery) v LB Brent (2011) EWCA Civ 539** — The judge was not in error in refusing to set aside the decision of the respondent local authority that the appellant was not entitled to support under section 21(1) of the National Assistance Act 1948.

- **R (O) v LB Hammersmith and Fulham (2011) EWCA Civ 925** — Dispute over accommodation for child in need. [Detailed summary available on case page.]

- **R (PA) v Governor of Lewes Prison (2011) EWHC 704 (Admin)** — The claimant’s social phobia did not make him ‘infirm by nature of disability’ (within the meaning of PSI 31/2006) for the purpose of deciding whether or not to release on Home Detention Curfew.

- **R (S) v SSHD (2011) EWHC 2120 (Admin)** — Detention of mentally-ill immigrant was unlawful under common law and Article 5, and breached Articles 3 and 8.

- **R (Sturnham) v SSJ (2011) EWHC 938 (Admin)** — Damages of £300 were awarded under Article 5 for anxiety and distress caused by six-month delay in Parole Board hearing.

- **R (W) v Birmingham City Council (2011) EWHC 1147 (Admin)** — Of the four bands (low, moderate, severe, critical), the council decided to cease adult social care funding for needs which were assessed to be severe; the decision only to fund critical needs was unlawful.
• **R (W) v LB Croydon (2011) EWHC 696 (Admin)** — The local authority decided, in order to reduce costs and promote independence, to transfer W from his residential placement to supported living. (1) In principle, the council would be entitled to terminate W’s residential placement on grounds of costs, or needs, subject to consultation. (2) On the facts, the consultation with W’s parents and the professional carers (as required by **MCA 2005 s4** had been inadequate, so the decision was quashed.

• **R (WG) v Leicester City Council (2011) EWHC 189 (Admin)** — This JR claim had been issued to challenge a failure to carry out an assessment under **s47 NHSCCA 1990**, but an assessment had subsequently been carried out and not identified any community care needs: (1) permission was therefore refused; (2) it was ordered that unless the claimant was prepared to identify herself she would not be able to bring any further legal actions.

• **Re Hunt (2008) (Preston county court, 12/6/08)** — Mr Hunt suffered from Huntington’s disease and had shut himself off from the world, in his home; he had ignored demands for payment of council tax; the court (not knowing his condition) made a bankruptcy order, then an order that he be arrested and brought before the court for failure to attend for public examination. (1) Under rules 7.43-7.44 **Insolvency Rules 1986** (since amended to reflect the **MCA**) an ‘incapacitated person’ was one who is incapable of managing and administering his property and affairs either (a) by reason of mental disorder within the meaning of the Mental Health Act 1983, or (b) due to physical affliction or disability; the court may appoint a representative for such a person. (2) A bankruptcy order may be annulled if the order ‘ought not to have been made’ at the time. (3) The onus cannot lie on the debtor to establish lack of capacity because lack of capacity would itself render the debtor unable to do so: courts should investigate capacity where there is reason to suspect it may be absent. (4) On the facts, Mr Hunt was incapable of engaging in the proceedings by reason not only of mental disorder but also physical affliction or disability. (5) If there had been a representative the outcome could have been different, and one was required. (6) There is no point in an annulment if there is no prospect of a bankruptcy order being refused on a re-hearing; however, in this case the outcome could have been different, particularly given the potential DDA and HRA issues, and the order was annulled.

• **Re T (A child: murdered parent) (2011) EWHC B4 (Fam)** — B killed his girlfriend, then spent four years as a restricted hospital order patient and a year as a conditionally-discharged patient (with exclusion-zone and no-contact conditions); he now applied for a contact order in respect of their daughter T. (1) There is no presumption that a parent who has murdered the other parent should have no contact with their child; however, having regard to the welfare checklist and other factors, there should be no contact of any kind between B and T. (2) An order under **s91(14) Children Act 1989** (preventing further applications by B without leave) was made until T reaches 16 years of age. (3) The family court has no power to vary the conditions of a conditional discharge; however, the court is not constrained by the conditions when making orders; if the order would put the patient in breach of conditions then it should invite the Secretary of State to indicate to what extent he is prepared to vary them. (4) Since the only sanction for breach of conditions is recall to hospital (which is discretionary and dependent upon further medical evidence) the protection provided by the two conditions was illusory; orders of the court were required to enable the matter to be brought before the court in the event of breach: (a) the no-contact condition was made the subject of a non-molestation order pursuant to **s42 Family Law Act 1996**; (b) the exclusion-zone condition could amount to an occupation order (for which MS did not qualify); however, applying a broad meaning of ‘molestation’ it could also be a non-
molestation order; if that were wrong then there is power to make the order under the High Court’s inherent jurisdiction for the protection of children and/or under s37 Senior Courts Act 1981. (5) The LSC had discharged B’s public funding certificate mid-proceedings following pressure from the special guardian; in the circumstances of this case it should not have done so.

- **S v Estonia 17779/08 (2011) ECHR 1511** — Under domestic law S should have been heard ‘promptly’ after the county court ruled on her compulsory admission to hospital, but was not heard for 15 days; no adequate justification was given; this was a considerable portion of the three-month admission period; the domestic supreme court noted the procedural violation but offered no redress; overall, there had been a breach of Article 5(1), in that she was not detained in accordance with a procedure prescribed by law. Compensation of €5000 was awarded.

- **Salisu v SSH (2011) UKFTT 1 (HESC)** — The Applicant was guilty of misconduct within the meaning of Section 86(7)(a) Care Standards Act 2000 (convicted of ill-treatment under s127 MHA 1983) but was not unsuitable to work with vulnerable adults and children under s86(7)(b).

- **Selwood v Durham CC (2011) Newcastle-upon-Tyne county court 25/2/11** — The claimant social worker was not informed of a patient’s threats to kill her and was subsequently stabbed by him; she sued the local authority and relevant NHS Trusts in negligence or breach of statutory duty and alternatively alleged a breach of Article 2. The Trusts’ application for strike out was successful. [Note: permission to appeal this decision was later given.]

- **SL v Westminster City Council (2011) EWCA Civ 954** — On the true meaning of section 21(1)(a) of the National Assistance Act 1948, as amended, an asylum seeker suffering from depression and mental health difficulties who had been granted indefinite leave to remain was entitled to residential accommodation if the local authority had provided a programme of assistance and support to him through a care co-ordinator, since such provision of assistance would be otiose without the additional provision of housing. [Summary from WLR (D).] [Detailed summary available on case page.]

- **SSWP v Slavin (2011) EWCA Civ 1515** — ‘The respondent is resident in a specialist care home for people with autistic spectrum disorders and similar conditions. The cost of his accommodation is paid for by the National Health Service. The home is registered as a care home, not a nursing home. Its staff are trained to meet the needs of residents but do not have any medical or nursing qualifications. The specific issue in the appeal is whether the respondent is “maintained free of charge while undergoing medical or other treatment as an in-patient … in a hospital or similar institution under [the National Health Service Act 2006]”, within the meaning of reg. 12A of the Social Security (Disability Living Allowance) Regulations 1991, so as to be disentitled to receipt of the mobility component of disability living allowance for which he was a claimant.’ [Summary required.]

- **TW v A City Council (2011) EWCA Civ 17** — The Court of Appeal issued a reminder of the following: (a) that the bundle of authorities should be agreed; (b) that it should be filed at least seven days before the hearing; (c) that it should not contain more than ten authorities unless the scale of the appeal warrants more extensive citation; (d) that the relevant authorities should be copied from the official law reports, and only if not should reports from the All England Law Reports (All ER) or a specialist law report series be included. In addition, if a case is reported in volume 1 of the Weekly Law Reports that report should be used in preference to the report in the
All ER, BAILII judgments (with neutral citation numbers) should only be used if no other recognised reports were available and the case really needs to be cited; and (e) that the passages in the authorities which were relevant and on which counsel sought to rely must be marked.

Scotland and Northern Ireland

- **AB v MHTS (2011) ScotSC B694/11** — Unsuccessful challenge to MHTS decision. [Summary required.]

- **Black v MHTS (2011) CSIH 83** — ‘What remedy, if any, is available to a curator ad litem appointed to represent the interests of a patient in proceedings before the Mental Health Tribunal for Scotland, in the event that the Tribunal acts unlawfully or unfairly or exercises its discretion in an unreasonable manner? That is the question which lies at the heart of the present appeal, which was remitted to this court by the Sheriff Principal of Grampian, Highlands and Islands.’ [Summary required.]

- **JG v MHTS (2011) ScotSC 17/6/11** — Unsuccessful appeal against Tribunal decision. [Summary required.]

- **LA v MHTS (2011) ScotSC 20/7/11** — Unsuccessful appeal against Mental Health Tribunal for Scotland. [Summary required.]

- **LBN v Borland (Mental Health Officer) (2011) ScotSC 9/5/11** — The failure to submit the required medical evidence within the time limit did not vitiate the application.

- **Re DC (Judicial Review) (2011) CSOH 193** — Various questions of Scots law arose in this judicial review claim for damages for unlawful detention. [Summary required.]

- **Re JM (Variation and renewal of orders for guardianship made under provisions with minute to vary) (2011) ScotSC 8/6/11** — Judgment including guidance on Scots guardianship orders. [Summary required.]

- **Re JR49 (Application for Judicial Review) (2011) NIQB 41** — The order authorising removal from a hospital in NI to a hospital in England pursuant to MHA 1983 s82 was quashed.

- **Scottish Ministers v MHTS (2011) CSIH 76** — The Scottish Ministers challenged revocation by a Mental Health Tribunal of a restriction order affecting a patient suffering from paranoid schizophrenia and living in the community, and successfully argued that the compulsion order and restriction order should remain in force until the final hearing.
Legislation

The following legislation is listed in alphabetical order.

**England and UK**

- **Access to Justice Act 1999 (Destination of Appeals) Order 2000** — This Order sets out the general rule that appeals from the county courts other than in family proceedings will lie to the Court rather than to the Court of Appeal, and sets out the exceptions. In force 2/5/00.

- **Care Quality Commission (Additional Functions) Regulations 2011** — In force 1/8/11. [Summary required.]

- **Civil Proceedings Fees (Amendment) Order 2011/586** — This Order increases certain fees in the Court of Appeal, High Court and county courts. For convenience, the full schedule of fees (whether increased or unchanged) is set out in the Order. In force 4/4/11.

- **Community Legal Service (Funding) (Amendment No.2) Order 2011** — This order, amongst other things, reduces the Legal Aid rates for mental health law (and other civil work) by 10%: the old and new fees are set out in Legal Aid#Payments. It also introduces maximum payments for experts: for instance, psychiatrists (£90 London, £135 non-London) and psychologists (£90 London, £117 non-London). In force 3/10/11 (for cases started on or after that date).

- **Court of Protection (Amendment) Rules 2011** — These Rules add rule 7A to the Court of Protection Rules 2007 to enable the Senior Judge or the President to authorise a court officer to exercise the jurisdiction of the court in such circumstances as set out in the relevant practice direction. Such a court officer: (a) must refer to a judge any application, proceedings or any question arising in any application or proceedings which ought, in the officer’s opinion, to be considered by a judge; (b) may not deal with any application or proceedings or any question arising in any application or proceedings by way of a hearing; and (c) may not deal with an application for the reconsideration of an order made by that court officer or another court officer. In force 12/12/11.


- **Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010/813** — This Order makes amendments to primary legislation, including the MHA 1983, consequential on the replacement, for England, of the registration of health and social care providers under Part 2 of the Care Standards Act 2000 with the new registration system under Part 1 of the Health and Social Care Act 2008. Amends s24, s34, s119 and s145. In force 1/10/10.

- **Health and Social Care Bill 2010-11** — Summary from Parliament website: ‘To establish and make provision about a National Health Service Commissioning Board and commissioning consortia and to make other provision about the National Health Service in England; to make provision about public health in the United Kingdom; to make provision about regulating health and adult social care services; to make provision about public involvement in health and social
care matters, scrutiny of health matters by local authorities and co-operation between local authorities and commissioners of health care services; to make provision about regulating health and social care workers; to establish and make provision about a National Institute for Health and Care Excellence; to establish and make provision about a Health and Social Care Information Centre and to make other provision about information relating to health or social care matters; to abolish certain public bodies involved in health or social care; to make other provision about health care; and for connected purposes.’

- **High Security Psychiatric Services (Arrangements for Safety and Security at Ashworth, Broadmoor and Rampton Hospitals) Directions 2011** — In force 1/8/11. A guidance document has also been published. [Summary required.]

- **Legal Aid, Sentencing and Punishment of Offenders Bill 2011** — Summary of the Bill: ‘To make provision about legal aid; to make further provision about funding legal services; to make provision about costs and other amounts awarded in civil and criminal proceedings; to make provision about sentencing offenders, including provision about release on licence or otherwise; to make provision about bail and about remand otherwise than on bail; to make provision about the employment, payment and transfer of persons detained in prisons and other institutions; to make provision about penalty notices for disorderly behaviour and cautions; and to create new offences of threatening with a weapon in public or on school premises.’

- **Legal Services Act 2007 (Consequential Amendments) Order 2009/3348** — This Order amends the [Court of Protection Rules 2007](#) by amending the definition of ‘legal representative’ in rule 6. In force 1/1/10.

- **Mental Capacity Act 2005 (Appropriate Body) (England) Amendment Regulations 2011** — These Regulations amend the definition of ‘appropriate body’ (i.e. a body which can approve certain research) in the [Mental Capacity Act 2005 (Appropriate Body) (England) Regulations 2006](#) to clarify that, in the definition of an appropriate body, a committee recognised by the Secretary of State means a committee recognised by the Secretary of State in exercise of his powers in section 2 of the [National Health Service Act 2006](#). See Explanatory Memorandum for background. In force 1/12/11.

- **Mental Health (Discrimination) Bill 2010** — This Private Member’s Bill, introduced by Lord Stevenson, received its first reading on 6/4/11. If enacted it would: (1) Repeal s141 MHA 1983 so that the seat of an MP is no longer vacated upon long-term detention under the Act; (2) amend the Juries Act 1974 so that (in addition to the existing category of those lacking capacity) only those liable to be detained under the MHA are excluded from jury service (see [jury service](#) page for current provisions); (3) amend the Companies (Model Articles) Regulations 2008 so that a person no longer ceases to be a director when ’by reason of that person’s mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have’; (4) amend the School Governance (Constitution) (England) Regulations 2007 so it is no longer the case that ‘[a] person is disqualified from holding or from continuing to hold office as a governor of a school at any time when he is detained under the Mental Health Act 1983’.

- **Postal Services Act 2011** — ‘An Act to make provision for the restructuring of the Royal Mail group and about the Royal Mail Pension Plan; to make new provision about the regulation of
postal services, including provision for a special administration regime; and for connected purposes.’ (preamble) Amends MHA 1983 s134.

- **Public Guardian (Fees, etc.) (Amendment) Regulations 2011** — These regulations, amongst other changes, increase the LPA/EPA registration fee from £120 to £130. See Explanatory Notes for details. In force 1/10/11.

- **Public Health (Control of Disease) Act 1984** — Preamble: ‘An Act to consolidate certain enactments relating to the control of disease and to the establishment and functions of port health authorities, including enactments relating to burial and cremation and to the regulation of common lodging–houses and canal boats, with amendments to give effect to recommendations of the Law Commission.’ Its Part 2A was inserted by Part 3 of the Health and Social Care Act 2008, and includes s45G (‘Power to order health measures in relation to persons’) which provides, among other things, in specified circumstances for the detention and quarantining of an infected person in a hospital or other suitable establishment.

- **Tribunal Procedure (Amendment) Rules 2011/651** — These Rules amend the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 so that Tribunal applications can be made by email with a typed signature rather than requiring a handwritten signature. In force 1/4/11.

### Other jurisdictions

- **Convention on the Rights of Persons with Disabilities** — The purpose of this convention is set out in Article 1 as: ‘The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’

- **Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011** — ‘These Regulations contain provisions about mental health assessments for former users of secondary mental health services’ (extract from Explanatory Note). Made 18/10/11; in force 6/6/12.

- **Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011** — ‘These Regulations contain provisions about arrangements for the appointment of Independent Mental Health Advocates. They contain provisions about who may be appointed to act as an IMHA, and persons who may be visited and interviewed by an IMHA for the purpose of providing help to a Welsh qualifying patient who has been admitted under section 4 (admission for assessment in cases of emergency) of the Mental Health Act 1983’ (extract from Explanatory Note). Made 18/10/11; in force on 2/4/12 in relation to Welsh qualifying informal patients, and otherwise on 3/1/12.

- **Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010/976** — ‘This Order amends certain statutory provisions and makes other provision in consequence of, or for giving full effect to, the Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010.'
That Order amends Schedule 3 to the Northern Ireland Act 1998 so that certain policing and justice matters (as defined in section 4(6) of the 1998 Act) cease to be reserved matters and become transferred matters.’ (extract from explanatory note) Amends MHA 1983 s82, s82A, s86 and s139.

- Supervision and Treatment Orders (Maximum Period) Order (Northern Ireland) 2011/115 — Following the McDermott case it was felt that the maximum period for supervision and treatment orders of 2 years was insufficient: this Order increases it to 3 years. In force 30/6/11.

Further information

- A Bill is currently being drafted to reduce the burden on the SOAD service by altering the certificate requirement for CTO patients: where the RC certifies that the patient has capacity there would be no need for a SOAD second opinion. See MHA 1983 s64C

- On 2/2/11 Nick Clegg MP announced that s141 (Members of Parliament suffering from mental illness) would be abolished. See MHA 1983 s141

- Second reading of Mental Health (Discrimination) Bill, Hansard HL Deb, 25 November 2011, col 1283. Mental Health (Discrimination) Bill 2010 — This Private Member’s Bill, introduced by Lord Stevenson, received its first reading on 6/4/11. If enacted it would: (1) Repeal s141 MHA 1983 so that the seat of an MP is no longer vacated upon long-term detention under the Act; (2) amend the Juries Act 1974 so that (in addition to the existing category of those lacking capacity) only those liable to be detained under the MHA are excluded from jury service (see jury service page for current provisions); (3) amend the Companies (Model Articles) Regulations 2008 so that a person no longer ceases to be a director when ‘by reason of that person’s mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have’; (4) amend the School Governance (Constitution) (England) Regulations 2007 so it is no longer the case that ‘[a] person is disqualified from holding or from continuing to hold office as a governor of a school at any time when he is detained under the Mental Health Act 1983’.

- Second Reading of LAPSO Bill, Hansard HL Deb, 21 November 2011, col 820. See Legal Aid, Sentencing and Punishment of Offenders Bill 2011

- Hansard HL Deb, 26 October 2011, col 831. This is the transcript of a debate in the House of Lords on a motion to annul the Community Legal Service (Funding) (Amendment No.2) Order 2011 (the order which reduces civil fee rates by 10%); following the debate the motion was withdrawn. See Legal Aid News

- Mind, ‘Health and Social Care Bill: Amendment 236B’ (November 2011). Mind’s proposal: ‘Our amendment would still allow for the wording “Primary Care Trusts” to be replaced with “clinical commissioning groups” in the Mental Health Act, and for consequential amendments resulting from the abolition of PCTs. However, our amendment would: (1) Retain the joint duty on CCGs and social services authorities, (2) ensure that CCGs continue to arrange for provision of services under s117 in co-operation with relevant voluntary agencies, (3) ensure that the arrangement of services by CCGs under s117 are not limited to services arranged under section 3 or section 3A of the NHS Act (by deleting proposed subsection (2E)), (4) ensure that the duty on CCGs will not be
regarded as a duty under section 3 NHS Act. This means it remains a freestanding duty under section 117 MHA, and the possibility of charging for aftercare is removed (by deleting proposed subsection (2F)).’ See Mind (Charity)

- The text of the Mental Health Act 1983 on this website has been updated: (1) the Postal Services Act 2011 amends s134, with effect from 1/10/11; (2) the Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010/813 amends s24, s34, s119 and s145, wef 1/10/10; (3) the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010/976 amends s82, s82A, s86 and s139, wef 12/4/10. See Mental Health Act 1983
Guidance and forms

- **Court of Protection Guidance: Applications to the Court of Protection in relation to tenancy agreements (June 2011)** — This document provides guidance on how to make applications in relation to signing or terminating tenancy agreements on behalf of adults who lack the mental capacity to understand or sign the agreement themselves. Published 22/6/11.

- **Guidance in cases involving protected parties in which the Official Solicitor is being invited to act as guardian ad litem or litigation friend** — In relation to Court of Protection welfare (including medical) cases, the guidance states that: (1) consideration should be given to excusing the OS from attendance at directions hearings, particularly where there is a written position statement; (2) unnecessary expert assessments must be avoided; and (3) focussed brevity in report writing is to be preferred over discussion. There is separate guidance for public and private law children’s cases.

- **Practice Direction (Upper Tribunal: Judicial Review Jurisdiction) (2009) 1 WLR 327** — This Practice Direction sets out the JR jurisdiction of the Upper Tribunal.

- **Practice Statement: Composition of Tribunals in relation to matters that fall to be decided by the Health, Education and Social Care Chamber on or after 18/1/10** — This Practice Statement sets out the composition of Tribunals required for the taking of various decisions.

- **Practice Note: Role of the Independent Mental Health Advocate in First-tier Tribunal (Mental Health) Hearings** — This guidance, issued in May 2011, clarifies the role that IMHAs should play in tribunal hearings. It contains the following main headings: (1) Introduction; (2) What Problems have Arisen?; (3) What is the Role of the IMHA?; (4) Attendance at the Hearing; (5) Relationship with the Legal Representative; (6) Giving Evidence; and (7) Access to the Tribunal’s Decision.

- **Mental Health Tribunal, ‘CMR1: Case Management Request form’**. This voluntary form, introduced in March 2011, is intended to ensure that applicants provide the necessary information under the Rules when applying for directions, postponement, prohibition or disclosure of information, wasted costs, permission to withdraw an application, or other interlocutory matters (such as appointment of a representative). The form provides guidance and explains where it should be sent. See Tribunal forms.

- **COP Practice Direction: Preparation of Bundles** — This draft Practice Direction will be useful for anyone preparing bundles for the Court of Protection. (draft)
Resources

The publications are mostly categorised according to author or publisher, rather than topic.

Administrative Justice & Tribunals Council

- AJTC and CQC, ‘Patients’ experiences of the First-tier Tribunal (Mental Health)’ (30/3/11). The report contains recommendations under the following headings: (1) Referral to lawyers by hospitals; (2) Accreditation of lawyers; (3) Quality checking of lawyers by tribunal panels; (4) Information regarding delays; (5) Management information; (6) Cycle of delay; (7) Care plans and conditions; (8) Training for medical members; (9) Explanations of the purpose of the pre-hearing interview; (10) Timing of the medical examination; (11) Information regarding the hearing; (12) Access to reports; (13) Venue; (14) Opportunity for patients to speak; (15) Order of proceedings; (16) Treating patients appropriately; (17) Written copies of the decision; (18) Further explanations of the decision; (19) Right to appeal; (20) Tribunal decisions; (21) Tribunal’s power to recommend; (22) Information on patients’ care; (23) Training in relation to patients with multiple or unusual conditions; (24) Facilities and experts for patient’s multiple or unusual conditions; (25) Future research. See Administrative Justice and Tribunals Council

Care Quality Commission

- Care Quality Commission, ‘Monitoring the Mental Health Act in 2010/11’ (8/12/11). The detailed findings in this report are set out under the following chapter headings: (1) Patients’ involvement and protection of their rights; (2) Consent to treatment; (3) Patients’ experience of care and treatment; (4) Promoting patient safety; (5) Deaths of detained patients. See CQC

- Care Quality Commission, ‘The operation of the Deprivation of Liberty Safeguards in England 2009/10’ (March 2011). The ‘Issues Raised’ are listed as: (1) the DH should consider developing clear, concise and practical briefings on what may constitute a ‘deprivation of liberty’ and when the Safeguards should be used; (2) staff should be trained effectively on the types of practice that may lead to deprivation of liberty, and should seek advice from their supervisory body in cases of doubt; (3) the move to regulation under the Health and Social Care Act 2008 will allow a monitoring role which is consistent across health and adult social care; (4) the DH should consider reducing the amount of paperwork required. See CQC


- Community mental health services survey 2011 (results published August 2011). See Care Quality Commission

- Link added - ‘National Archives: CQC website’. Some documents are not available on the current CQC website, but many of these can be located in these archives
Court of Protection

- Judiciary of England and Wales, ‘Court of Protection Report 2010’ (July 2011). The report contains the following chapters: (1) Judiciary; (2) Court administration; (3) Work of the court; (4) Review of performance; (5) Case law; and (6) Volume of business. The case law chapter summarises 28 decisions made during the year. See Court of Protection

- Three Court of Protection Practice Directions were amended on 25/11/11: (1) Practice Direction 10AA (Deprivation of liberty applications) has been amended to reflect fact that the Court of Protection has moved. The DOLS Application Branch’s new contact details are: Court of Protection, Royal Courts of Justice, Thomas More Building, Strand, London WC2A 2LL, DX 44450 Strand, tel 0300 456 4600. The PD also contains a new internet address for the relevant court forms. (2) Practice Direction 14B (Depositions) has similarly been updated to reflect the new address. (3) Practice Direction 19A (Costs in the Court of Protection) has been amended to replace ‘Supreme Court Costs Office’ with ‘Senior Court Costs Office’. See Court of Protection Practice Directions

- Wolanski and Wilson, ‘The Family Courts: Media Access & Reporting’ (July 2011). This document (a joint publication of The President of the Family Division, the Judicial College and the Society of Editors) contains information on cases in the Court of Protection and under the High Court’s inherent jurisdiction. See also Lucy Series, ‘Access, reporting and judgments in the Court of Protection’ (Small Places blog, 29/7/11). See Court of Protection

- Link added to Guardian newspaper’s list of Court of Protection articles. Selected articles: Amelia Hill, ‘Court of protection should be open to public scrutiny, says leading judge’ (Guardian, 6/11/11); Amelia Hill, ‘The court of protection: defender of the vulnerable or shadowy and unjust?’ (Guardian, 6/11/11); Martin Terrell, ‘Court of protection must balance needs of vulnerable with rights of family’ (Guardian, 7/11/11). See Court of Protection

Department of Health

- Dept of Health, ‘Section 67 of the Mental Health Act’ (v3, 13/4/11). This document, setting out the procedure for requesting a reference under s67(1), has been updated with links to the MOJ website. See MHA 1983 s67

- Dept of Health, ‘Ordinary residence: guidance on the identification of the ordinary residence of people in need of community care services, England’ (15/4/11). ‘The Ordinary Residence Guidance has been updated on 15/4/11, to provide revised guidance on people receiving NHS continuing health care immediately before 19/4/10, when certain changes to the legislation came into effect, and also on people from overseas.’ (DH). See Ordinary residence

- Dept of Health, ‘Pandemic Influenza and the Mental Health Act 1983: Response to Consultation on Proposed Changes to the Mental Health Act 1983 and its Associated Secondary Legislation’ (29/7/11). The Government have concluded that all of the proposed temporary amendments (and further amendments to s5) would be an appropriate part of a package of contingency measures. The proposals requiring legislative changes are: (1) Allowing just one medical recommendation on an application by an AMHP for someone to be detained under sections 2 or 3 of the 1983 Act. (2) To facilitate C1 above, preparing special forms A2A and A6A for use by a doctor making a
single medical recommendation. (3) Changing the number of doctors involved in decisions to transfer people from prison to hospital under Part 3 of the 1983 Act. (4) Suspending the obligation to obtain SOAD opinions on medication. (5) Suspending time limits... See Consultations#Department of Health for further details

- Dept of Health, ‘Good Practice Procedure Guide: The transfer and remission of adult prisoners under s47 and s48 of the Mental Health Act’ (1/4/11). See Transfer direction


- Dept of Health, ‘Cross-border transfers of patients under the Mental Health Act’ (gateway ref 14651, 2/9/10). Guidance and forms in relation to the transfer of patients to Scotland, Northern Ireland, the Channel Islands and the Isle of Man. See New cross-border arrangements for leave and transfer

- Department of Health, ‘Summary of two cases on the meaning of deprivation of liberty: the “MIG and MEG” case and the “A and C” case’ (gateway ref 15723, 7/3/11). See DH

- DH, ‘Response to the offender personality disorder consultation’ (gateway ref 16313, 21/10/11). See Consultations#Department of Health

- Department of Health, ‘Reporting the death of a person subject to an authorisation under the Mental Capacity Act Deprivation of Liberty Safeguards’ (Gateway ref 15453, 19/1/11). See DOLS

- On 15/12/10 the Dept of Health published ‘Liberating the NHS: Legislative framework and next steps’ (Cm 7993, 2010). Para 2.53 states: ‘Responsibility for commissioning independent mental health advocacy under the Mental Health Act will also move from PCTs to local authorities, together with the role of the supervisory body in respect of hospitals under the Mental Capacity Act deprivation of liberty safeguards. However, owing to its highly specialised nature, mental health advocacy will not be a part of the NHS complaints advocacy services that local authorities will be able to commission from HealthWatch.’ See Independent Mental Health Advocate service

- Guidance on the completion of the Deprivation of Liberty Safeguards data collation sheet. The current version is 1.6 (16/12/10), superseding version 1.5 (28/6/10). See DOLS

- The DOLS standard forms were last updated in March 2011. See Deprivation of Liberty Safeguards Standard Forms

- Department of Health, ‘No health without mental health: a cross-Government mental health outcomes strategy for people of all ages’. The government announced this strategy, which alongside various supporting documents is available on the DH website, on 2/2/11. See DH

• Dept of Health, ‘Environmental Design Guide: adult medium secure services’ (15/4/11). See DH

• Consultation on allocation options for funding for Local Healthwatch: PCT Deprivation of Liberty Safeguards (27/7/11 to 18/10/11). ‘Subject to the passage of the Health and Social Care Bill, the Department (DH) will allocate funding for local HealthWatch and, potentially, PCT Deprivation of Liberty Safeguards from October 2012. This new funding will be added to the current DH Learning Disabilities and Health Reform grant. This consultation is asking for your views on options for distributing the new funding for local HealthWatch and PCT Deprivation of Liberty Safeguards (DOLS).’ (quotation from DH website). See DH

• Dept of Health ‘Consultation on preventing suicide in England: a cross-government outcomes strategy to save lives’ runs from 19/7/11 to 11/10/11. See Consultations#Department of Health

Law Society

• Updated Law Society practice note on representation before Mental Health Tribunals. This practice note, dated 19/5/11, advises on providing legal advice to clients appearing before the First Tier Tribunal (Mental Health) in England and the Mental Health Review Tribunal for Wales. It has information under the following headings: (1) Introduction; (2) The right to legal advice and representation before the tribunal; (3) Communication with the client; (4) Taking instructions; (5) Your duties towards your client; (6) Good tribunal practice; (7) Representing children and young people before the tribunal; (8) More information. The previous version of 13/8/09 was criticised in AA v Cheshire and Wirral Partnership NHS Foundation Trust (2009) UKUT 195 (AAC) - this version criticises that case. See Law Society practice note on representation before Mental Health Tribunals

• Law Society, ‘Lasting powers of attorney: Practice note’ (updated 8/12/11). ‘The Law Society has produced a practice note to assist solicitors in advising clients wishing to draw up an LPA, as well as solicitors who are acting as an attorney under an LPA. The practice note also covers ongoing arrangements for Enduring Powers of Attorney.’

Legal Aid

• Updated guidance. Peer review — The Legal Services Commission uses peer review to assess the quality of legal advice given to clients. A sample of files is taken from a firm, and reviewed by an independent peer reviewer who is a lawyer experienced in the relevant area of law. Version 3 of the mental health guidance, dated April 2011 and published in May 2011, contains four new sentences (in chapter 4, ‘Has the Tribunal been informed of the attendance of an interpreter?’ and ‘Confirm that the Tribunal is aware of the role of an interpreter and, if necessary, has allowed more time for the case’; in chapter 16, ‘Subsequent to the implementation of Rule 11(4)(a) of the Tribunal Procedure Rules 2008, Tribunal decisions are not sent to the client’ and ‘Do final outcome letters to clients... [h]ave the Tribunal’s written decision enclosed?’) and an appendix entitled ‘Differences between Welsh and English Law’.

• LSC, ‘Community Legal Services: Keycard No 47’ (April 2011). This document is helpful if working out financial eligibility for Legal Help. The changes in this edition are that: (1) references to LSC Manual 2F are changed to 2E; (2) dependents’ allowances are increased. In force 11/4/11. See Legal Aid#Other resources

- LSC, ‘Revised cost limitations on civil legal aid certificates’ (12/12/11). These changes have been made as a result of the 10% fee reduction. See Legal Aid News


- On 22/12/10 the LSC published revised Key Performance Indicators which are enforceable under the 2010 Civil Contract. The three KPI aims are (1) quality, (2) access, and (3) cost. The following KPIs apply to mental health: KPI 2A: ‘Assessment reductions to be no more than 10% (exceptional cases)’, KPI 2B: ‘Assessment reductions to be no more than 15% (licensed work)’, KPI 2D: ‘Fixed Fee Margin 20%’, KPI 3: ‘NMS usage - providers must use either the minimum contract allocation or at least 85% of their current allocation’ (whichever is the greater). The following KPIs do not apply to mental health: KPI 1A: ‘Substantive Benefit: Legal Help’, KPI 1B: ‘Substantive Benefit: CLR and Licensed Work’, KPI 1C: ‘Post-investigation of proceedings’, KPI 1D: ‘ADR to be proposed/accepted in no less than 10% of a providers civil representation cases where appropriate’, KPI 2C: ‘Damages vs. Costs: Damages to be 2:1 the level of costs (net of any costs recovered)’. See the CLS news item, the guidance document and the summary chart. See Legal Aid News

- Ministry of Justice, ‘Reform of Legal Aid in England and Wales: the Government Response’ (Cm 8072, June 2011). Some points particularly relevant to mental health law are: (1) There will be a 10% cut in all civil fees, including mental health law (para 34). (2) Advice and representation under the MHA 1983 or MCA 2005 will remain in scope (para 86). However claims involving tort or other general damages claims will be excluded except where these meet the criteria for ‘claims against public authorities’ or ‘claims arising out of allegations of the abuse of a child or vulnerable adult, or allegations of sexual assault’ (para 87). The ‘claims against public authorities’ criteria allow legal advice and representation for claims (typically claims for damages) against public authorities concerning ‘abuse of position or power’ or ‘significant breach of human rights’ (no longer for ‘serious wrong-doing’) (para 10ff). (3) Legal aid will remain available for judicial review and habeas corpus (subject to immaterial exceptions) (para 88ff). See Consultations#Ministry of Justice

- CLS News, ‘Legal aid reform: consultation response and Bill published’ (21/6/11). This news item contains links to the consultation response and Bill, and notes that the Bill, in addition to reducing scope, eligibility and fees, will close the LSC and replace it with an executive agency of the MOJ. See Legal Aid News

- LSC, ‘Summary of changes to be implemented on 3 Oct 2011’ (21/6/11). The 10% reduction, and other fee changes, will be implemented on 3/10/11. See Legal Aid News

- Between May 2010 and May 2011, the LSC spent £7,196,813 on redundancies: a total of 94 people have so far been made redundant. The figures do not include those who left through other means, such as early retirement, the end of a secondment from another organisation, mutual terminations or compromise agreements. See Legal Aid News
On 28/3/11, the LSC emailed mental health firms with a questionnaire to comply with the judgment in *Public Interest Lawyers v LSC (2010) EWHC 3277 (Admin)*. The questions are worded in the hope of avoiding having to make any changes; nonetheless, responses are encouraged and should be emailed to the LSC by 8/4/11. The LSC will then publish a disability impact assessment by 30/4/11. At the same time it will publish the mitigating steps it plans to make (if any), consult on them until 15/6/11, and implement them on 1/7/11. See Legal Aid News.

Law Society, ‘Society criticises mental health consultation delays’ (press release, 23/3/11). Because of the LSC’s plan to dilly-dally over the disability impact assessment and consultation on contract changes following *Public Interest Lawyers v LSC (2010) EWHC 3277 (Admin)*, ‘clients will be forced into the very situation that the impact assessment is meant to be considering and potentially preventing’; if the provisions for urgent amendments were used then changes could be implemented by early April instead of the end of June as planned. See Legal Aid News.

On 20/2/11 the LSC published an updated tender outcome document for the SHA procurement areas. See Legal Aid News.


LSC, ‘Bank statements needed for funding applications’ (CLS News, 3/2/11). All MEANS1 forms dated on or after 15/12/10 must be accompanied by bank statements covering the last three months for each account held by the client or his partner. From 14/3/11 the LSC will reject all non-emergency applications in breach of this requirement. See Legal Aid News.

The LSC’s ‘Where work is processed’ document was updated in February 2011. See Legal Aid#Where work is processed.

LSC, ‘Community Legal Advice and LSC websites – latest news’ (CLS News, 23/3/11). The CLA (Community Legal Advice) and LSRC (Legal Services Research Centre, the independent research division of the LSC) websites will be closed and their content moved to the justice.gov.uk and direct.gov.uk websites on 6/4/11. The LSC website will be incorporated into the justice.gov.uk website later in 2011. See Legal Aid News.

LSC, ‘Forms preview May 2011’ (8/4/11). The following will change: CLASAPP3, CLSPP5, CLSCLAIM1, CLSCLAIM1A, CLSCLAIM1A Guidance, CLSCLAIM2, CLSCLAIM5A, CLSCLAIM5A Guidance, CW1 Public Law. They are mandatory from 9/5/11 and must not be used before then. Old forms (signed before 9/5/11) will be accepted until 3/6/11. See Legal Aid News.

The reduced hourly rates and fixed fees are scheduled to be introduced on 3/10/11. See Legal Aid#Hourly rates and Legal Aid#Fixed fees for details.

Legal Services Commission, ‘Devolved powers in judicial review cases under the 2010 contract’ (dated 31/7/11, published 27/7/11). The interim position has been extended to 31/1/12: devolved powers in JR cases may be exercised if a provider (a) has a contract in public law or the relevant...
category of law and (b) had such devolved powers under the previous contract. See Legal Aid News

- LSC, ‘CLS News: Emergency certificates now run for eight weeks – but check eligibility evidence and scope’ (21/7/11). Emergency certificates granted from 1/5/11 will remain in force for eight weeks. See Legal Aid News

- LSC, ‘CLS News: Mental health legal services: your views on equality impact assessment’ (21/7/11). This is a reminder that the deadline for submitting views on the options for next steps following the equality impact assessment on the high secure hospital contracts is 29/7/11. See Legal Aid News

- LSC, ‘CLS News: Mental health legal services: equality impact assessment published’ (4/7/11), relating to LSC, ‘Equality Impact Assessment of exclusive mental health legal services contracts in High Security Hospitals’ (4/7/11). The LSC have concluded that there is no need for immediate change but have set out possible options for the future: (1) no change (the recommended option); (2) Exceptional circumstances to allow clients to retain their provider; (3) Individual arrangements at each hospital; (4) Wider choice of provider (e.g. 10) at each hospital through additional tender or extending number of 2010 contracts; (5) Wider choice of provider (e.g. 10) at each hospital through additional tender or extending number of 2010 contracts. Views on the decision and options are sought by 29/7/11. See Legal Aid News

- LSC’s refusal, in response to FOI request, to publish peer review decisions (5/7/11). See Peer review

- On 24/2/11 the LSC published a ‘forms preview’ for the April 2011 changes to their forms. There are very minor changes to Checklist (CK3), and changes to the following forms which do not relate to mental health law: CW2 (IMM), CW3A, CW3B, CW3C. See Legal Aid News

- From 3/10/11 the following Legal Aid forms change (not all are directly related to mental health law): Means1; Means1 ‘The guide’ and CLSCK3; Means7; CLAIM1, 1A, 2, 5, 5A; CLAIM1 & CLAIM2 checklists; CW1; ECClaim 1 (IMM) and (MH); TFF. See Legal Aid News

**Mental Health Tribunal**

- The Tribunal Procedure Committee is consulting on changes to the rules so that the Tribunal may (1) make a decision on a reference under s68 (duty of managers to refer cases to tribunal) without a hearing if the patient is a community patient and has consented to this; and (2) strike out a party’s case without a hearing. The purpose is to save money. The rationale given for the first proposal is that community patients are often content with their position and do not want to attend the hearing or medical examination; that if the patient does not attend then full reports often mean there is little point having a hearing; and that hearings place an unnecessary burden on community patients, who are likely to be quite capable of making the necessary decisions and are entitled to IMHAs and Legal Aid. It is anticipated that all community patients would be posted a form inviting them to consent to their case being decided without a hearing. In relation to the second proposal, it is intended that the power would be used when it is obvious that the tribunal lacks jurisdiction. Consultation runs from 1/6/11 to 23/8/11. See Consultations#Mental Health Tribunal
Public Mental Health Tribunal hearing. HMCTS, ‘Judicial direction: An application by Mr Albert Haines’ (9/8/11, published 18/8/11). The text is as follows: An application by Mr Albert Haines for discharge from liability to detention in hospital will be heard in public by the First-tier Tribunal (Mental Health) on 27th and 28th September 2011 at 10.30am at Field House 15 - 25 Breams Buildings, London EC4A 1DZ. See Mental Health Tribunal

The First-tier Tribunal decision in Albert Haines’s case has been published, together with the directions in relation to the publication of that decision. See AH v West London MH NHS Trust (2011) UKUT 74 (AAC)#Tribunal documents

HMCTS, ‘First-tier Tribunal Mental Health Stakeholder Bulletin July 2011’ (29/7/11). The following are the headings: (1) Contacting the Tribunal; (2) Use of Secure Email; (3) Applications; (4) Forms used in the Applications Process; (5) Secretary of State Supplementary Statements; (6) Reports Processing Team; (7) Decisions; (8) Feedback. See Mental Health Tribunal

Jonathan Gammon, ‘Criminal Justice Secure Email (CJSM)’ (letter to solicitors, 31/1/11). This letter provides details of the CJSM system and encourages solicitors to sign up for a free account. See Mental Health Tribunal#External links

On 2/3/11 the Legal Services Commission issued a statement entitled ‘Tribunals Service asks mental health providers to use secure email service’. See Mental Health Tribunal#External links

The Law Society have published a statement encouraging solicitors to use the CJSM secure email system. See Mental Health Tribunal

Tribunals Service customer notice: ‘The First–tier Tribunal (Mental Health) office will be closed for Easter on Friday 22nd April and Monday 25th April. In addition the office will be closed on 29th April on the occasion of the Royal Wedding.’ See MHT

On 1/4/11 the Tribunals Service and Her Majesty’s Courts Service merged to form Her Majesty’s Courts and Tribunals Service. The ‘mhrt.org.uk’ website is no longer operational, and the content has been transferred to the MOJ website. See Mental Health Tribunal#External links

Ministry of Justice

Ministry of Justice, ‘Office of the Public Guardian - fees 2011/2012: Consultation paper’ (CP 16/10, 28/2/11). The consultation runs to 21/5/11. The stated aim is ‘to ensure that the OPG fee policy remains fair, equitable and proportionate to the services being provided whilst at the same time reflecting the current economic climate’. The fee changes are summarised on the OPG website. See Consultations#Ministry of Justice


Ministry of Justice consultation: Fees in the High Court and Court of Appeal (15/11/11 to 7/2/12). ‘A consultation proposing changes to fees in the High Court and Court of Appeal Civil Division. It is aimed at users of the High Court and Court of Appeal Civil Division, the legal profession, the
judiciary, the advice sector and all with an interest in this area in England and Wales. The aim of these proposals is to charge users of these two jurisdictions more proportionally for the resource their cases consume, while protecting access to justice for the most vulnerable. This will reduce the taxpayer subsidy of the courts service.’ (introductory text)

- The MoJ website has a new ‘mentally disordered offenders’ area, including a new contact list for the MH Casework Section. See Ministry of Justice
- MoJ discussion paper on a proposed European Regulation on mutual recognition of protection measures in civil matters (consultation ended on 8/7/11). See Consultations#Ministry of Justice
- Ministry of Justice, ‘Appointments and Diversity: A Public Consultation’ (Consultation paper CP19/2011, 21/11/11). Of relevance to mental health law are the following proposals: (1) Amending s63 Constitutional Reform Act 2005, which currently requires judicial appointment to be ‘solely on merit’, to allow the Equality Act 2010’s protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) to be taken into account: where a ‘selection assessment on a range of criteria rates them as equally capable of doing the job’ then the presumption will be that protected characteristics will tip the balance in favour of those possessing them. (2) To provide more opportunity for appointments based on diversity, changing the tenure of fee-paid appointments so that they no longer last until retirement, but instead for a maximum of three five-year terms save in exceptional cases where there is a clear business need. Consultation runs from 21/11/11 to 13/2/12. See Consultations

Newsletters

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 16, December 2011). The cases mentioned in this issue are: Re RK; RK v BCC [2011] EWCA Civ 1305, Cheshire West and Chester Council v P [2011] EWCA Civ 1333, Re RB (Adult); A London Borough v RB (Adult) (No 4) [2011] EWHC 3017 (Fam), Re FL; HN v FL and Hampshire CC [2011] EWHC 2894 (COP), R v Heaney [2011] EWCA Crim 2682, Re HM; SM v HM (2011) COP 11875043 4/11/11, De Louville De Toucy v Bonhams 1793 Ltd [2011] All ER (D) 32 (Nov). Also included are: (1) the Court of Protection (Amendment) Rules 2011 (authorised court officers); (2) minor amendments to Practice Directions 10A, 14B and 19A (contact details); (3) Statistics on permission applications; (4) comment on the Cheshire judgment by a BIA. See 39 Essex Street COP Newsletter

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 15, November 2011). The case mentioned in this special issue is Cheshire West and Chester Council v P (2011) EWCA Civ 1257. See 39 Essex Street COP Newsletter

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 14, October-November 2011). The cases referred to are: Re S; D v R (the deputy of S) [2010] EWHC 3748 (COP), Sharma v Hunters [2011] EWHC 2546 (COP), Re GM; FP v GM and A Health Board [2011] EWHC 2778 (COP),

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 12, August 2011). The cases referred to are: Manchester City Council v G [2011] EWCA Civ 939, P v Independent Print Ltd [2011] EWCA Civ 756, and WCC v GS [2011] EWHC 2244 (COP). It also mentions several forthcoming cases: (1) W v M (minimally conscious state); (2) Cheshire v P (application of Article 5(1) to those in care homes who are subject to restraint for their own protection: to be heard by Court of Appeal); (3) Re RK (application of Article 5(1) ECHR to those between 16 and 18: being appealed to Court of Appeal); (4) MIG and MEG (Article 5: possibly to be considered by Supreme Court); (5) Re P (circumstances under which bodily samples including DNA may be taken from P for purposes of determining the parentage of any person); (6) Re P (circumstances in which, and the powers under which, hospitals may detain those without the relevant capacity pending the making of applications for their admission under the Mental Health Act 1983). See 39 Essex Street COP Newsletter

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 11, July 2011). The cases referred to are: Re PH; PH v A Local Authority (2011) EWHC 1704 (Fam), R (McDonald) v Royal Borough of Kensington and Chelsea (2011) UKSC 33. It also contains information under the following headings: (1) Deprivation of Liberty: Statistics and a Map; (2) Appointment of QB judges to hear CoP cases in an emergency; and (3) Court of Protection User Survey. See 39 Essex Street COP Newsletter

- Letter from COP Court Manager (July 2011) and associated COP Questionnaire (July 2011). See Court of Protection

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 9, May 2011). The cases referred to are: R v Dunn [2010] EWCA Crim 2935, Hackett v CPS [2011] EWHC 1170 (Admin), Re M; W v M [2011] EWHC 1197 (COP), Wychavon District Council v EM (HB) [2011] UKUT 144 (AAC). Reference is also made to the President’s direction that ‘Deprivation of Liberty Safeguarding cases in the Court of Protection should continue for the time being and until further notice to be heard in the High Court’. See Court of Protection

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 8, April 2011). The cases referred to are: LBB v JM (2010) COP 5/2/10 and A Local Authority v DL (2011) EWHC 1022 (Fam) (transcripts to follow). Also reproduced is a draft COP Practice Direction: Preparation of Bundles. See Court of Protection

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 7, March 2011). See Court of Protection

- Essex Street, ‘Court of Protection Newsletter’ (issue 6, February 2011) added. The cases referred to are: Re AB; D Borough Council v AB (2011) EWHC 101 (COP), Hill v Fellowes Solicitors LLP (2011) EWHC 61 (QB), Haworth v Cartmel and HMRC (2011) EWHC 36 (Ch), GSCC conduct committee decision: Philip Julian Davies 10/12/10. See Court of Protection

- 39 Essex Street, ‘Court of Protection Newsletter’ (issue 5, January 2011). See Court of Protection
• Mind, ‘Legal E-newsletter’ (issue 10, November 2011). The edition contains the following articles and case reports: (1) Section 117 of the Mental Health Act 1983 and the Health and Social Care Bill 2011; (2) Reasonable adjustments – how the law is developing; (3) Enhanced Criminal Record Checks (ECRC): Disclosure of Mental Health History; (4) Accommodation provided by social services under s21 of the National Assistance Act 1948; (5) Legal representation in mental health cases (feature by Richard Charlton, MHLA chairman); (6) AH v West London MH NHS Trust (2011) UKUT 74 (AAC) (public hearing); (7) DN v Northumberland Tyne and Wear NHS Foundation Trust (2011) UKUT 327 (AAC) (MHA/MCA interface); (8) CX v A Local Authority (2011) EWHC 1918 (Admin) (NR consultation); (9) Jackson v Liverpool City Council (2011) EWCA Civ 1068 (employer references); (10) Rabone v Pennine Care NHS Trust (2010) EWCA Civ 698 (Article 2: recently heard by the Supreme Court). See Mind (Charity)

• Mind, ‘Legal E-newsletter’ (issue 9, July 2011). The newsletter contains the following articles and news items: (1) Time for change – true non-discrimination in mental health law; (2) The Law Commission Proposals for Adult Social Care Law; (3) Independent Mental Health Advocates; (4) Supervised Community Treatment Orders; (5) Case reports on Re Steven Neary; LB Hillingdon v Steven Neary (2011) EWHC 1377 (COP) and McKie v Swindon College (2011) EWHC 469 (QB); (5) MHA 1983 s64C; (6) Ministry of Justice Court of Protection Consultation; (7) Adult Social Care Funding: Dilnot Commission Report; (8) Ministry of Justice: Draft Charter for the Current Coroner Service; (9) McKenzie Friends Practice Guidance (Civil and Family Courts); (10) Law Society practice note on representation before Mental Health Tribunals; (11) Legal Aid Update; (12) Local Government Ombudsman update; (13) Tribunal Procedure Rules Consultation; and (14) Equality Act Update. See Mind (Charity)

• Mind, ‘Legal enewsletter’ (Issue 8, March 2011). The newsletter covers the following subjects: (1) Patients’ experiences of the First-tier Tribunal (Mental Health); (2) Legal Aid cuts - Mind’s response; (3) Equality Act 2010 - answering an employer’s question about health; (4) Media Publicity and the Court of Protection; (5) Mental capacity and debt; and (6) Public Equality Duty. See Mind (Charity)

• Sally Bradley, ‘Court of Protection Update (January 2011)’ (Family Law Week, 7/1/11). See Court of Protection

**Office of the Public Guardian**

• Hansard HL, 18 October 2011, col WS14. Since the implementation of the MCA 2005, the Office of the Public Guardian carried out insolvency checks on potential LPA donees; to save money, this practice has ceased. See Lasting Power of Attorney

• The Office of the Public Guardian has published revised forms for applying to register an enduring or lasting power of attorney to reflect recent fee changes and website updates. The LPA guidance has also been amended to clarify who can act as a certificate provider. (Source: Law Society update email 6/10/11). See LPA

• Office of the Public Guardian, ‘Call for evidence: Not for profit delivery of deputyship services’ (4/8/11). Consultation runs from 4/8/11 to 27/10/11. The consultation document cites the ‘Big Society’ concept. The introduction states that ‘Not for profit delivery of deputyship services has three purposes: (1) to understand the reasons behind the low take up amongst not-for-profit
organisations of deputyship work; (2) to benchmark the costs of providing deputyship services within the sector; (3) to test interest in such organisations providing personal welfare deputyships in the future.’ The questions show that the hope is to get the same service for approximately half the price a solicitor deputy. See Consultations#Ministry of Justice

- OPG’s MCA Update emails of 28/2/11 and 3/3/11: both relate to a consultation on fee changes which runs until 21/5/11, the changes to take effect from 1/7/11. See MCA Update emails

- Text of ‘MCA Update’ 21/4/11 email added. This email sets out the detail of the fees consultation and a reminder that the consultation will close on 21/5/11. See MCA Update emails

- The OPG website will close on 4/4/11; its content will be moved to the MOJ and ‘Direct Gov’ websites. See MCA Update emails

- Text of MCA Update 1/7/11 email added. The 51 responses to the OPG fees consultation are being considered. See MCA Update emails

- Text of MCA Update email of 7/9/11 added. This relates to the new OPG fees. See MCA Update emails

Press/articles

- Adam James, ‘Landmark Broadmoor patient loses appeal to be released from detention’ (Psychminded, 18/10/11). See AH v West London MH NHS Trust (2011) UKUT 74 (AAC)

- Ajit Shah et al, ‘Deprivation of Liberty Safeguards in England: implementation costs’ (2011) 199 BJP 232 (subscription only). ‘Results: The estimated average cost of a single DoLS assessment was £1277. Conclusions: The estimated average cost of a single DoLS assessment was significantly higher than the £600 estimated by the government. However, the allocated budget, based on 20 000 estimated DoLS assessments in the first year of its implementation, is likely to be adequate because a significantly lower number of assessments (only 5200) were conducted in the first 9 months after its implementation.’ Related press article: Mithran Samuels, ‘Deprivation of liberty safeguard cases cost double government’s estimates’ (Community Care, 30/9/11). See DOLS#External links

- Amelia Hill, ‘Court of Protection case to be reported in real time after landmark legal ruling’ (Guardian, 8/8/11). Deprivation of liberty case. See Settled cases and forthcoming judgments

- BBC Radio 4: The Report: Deprivation of Liberty Safeguards. This programme, broadcast at 2000hrs on Thursday 24/11/11, discusses whether the DOLS are adequate, whether they are understood by care workers, and why they are so unevenly applied across the country. See DOLS#Other links

- BBC, ‘Care workers use glove puppet to bully elderly women’, 6/1/11. This article involves a prosecution under MCA 2005 s44. See Mental health law in the media

- BBC, ‘TB treatment man Gary Clayden at Blackpool hospital’ (19/7/11). In this case a s45G order was made but not used because the infected person attended hospital voluntarily
• Daily Mail, ‘Judge gives go-ahead for medics to sedate and restrain woman with hospital phobia who needs cancer treatment’ (8/7/11). ‘A High Court judge has given medics permission to sedate and restrain a mentally-ill woman who has a phobia about hospitals but needs treatment for bladder cancer.’ (quotation from article). See Settled cases and forthcoming judgments

• Daily Mail, ‘Mother withdraws bid to sterilise 21-year-old daughter with significant learning difficulties’ (21/4/11); Jerome Taylor, ‘Court to rule on sterilisation of pregnant woman’ (Independent, 14/2/11); Tim Ross, ‘Woman with learning difficulties could be forcibly sterilised’ (Telegraph 14/2/11). These articles relate to an application by a mother for the sterilisation of her daughter during a caesarian section operation: according to the articles, at a preliminary hearing in February 2011 the case was adjourned for expert evidence, but by April 2011 the daughter had given birth and the mother had withdrawn her application. See Mental health law in the media

• Daily Telegraph, ‘Serial killers entitled to benefits, minister admits’ (19/7/11). This tabloid-style article complains about the ability of hospital order patients to receive welfare benefits. See Welfare benefits

• Guardian, ‘Smokers win right to challenge hospital ban’ (6/5/11). Silber J gave permission to seek judicial review of Chadwick Lodge’s policy of prohibiting smoking on hospital grounds (indoors or outdoors) or on escorted community leave. See Mental health law in the media

• Jaspreet Phull, ‘The Deprivation of Liberty Safeguards: observations and limitations’ (2011) 51 Med Sci Law 187 (subscription only). Abstract: ‘The recently introduced Deprivation of Liberty Safeguards (DoLS), which came into force in April 2009, was created to protect the liberty of people lacking capacity admitted to care homes and hospitals in England and Wales. This paper discusses observations and some limitations of the DoLS for protecting the liberty of residents within institutional settings. The regulation, safeguards and recent relevant case law are examined critically. The author suggests that their effectiveness may be limited by the under-recognition of cases, ambiguity and limited safeguards within the statute. The paper concludes that the DoLS legislation has been a positive step towards protecting the liberty of those lacking capacity but that limitations present could undermine the purpose of the legislation.’ See DOLS

• Jerome Taylor, ‘High Court to decide if autistic man was illegally detained’ (Independent, 28/5/11). Peter Jackson J has reserved judgment on the unlawful detention aspect of this case. See Re Steven Neary; LB Hillingdon v Steven Neary (2011) EWHC 413 (COP)

• Jerome Taylor, ‘Judge scrutinises ill man’s removal from foster home’ (Independent, 21/10/11). See Settled cases and forthcoming judgments#Re GR (deprivation of liberty, Hedley J)

• John Leighton, ‘Deprivation of liberty safeguards guide for care homes’ (Community Care, 7/11/11) and Mithran Samuel, ‘Helping care home managers navigate the deprivation of liberty process’ (Community Care, 10/11/11). See DOLS#Other links

• Julian Hendy, ‘Scandal of mentally ill man who killed his father, was then released…and killed his mother’ (Mail on Sunday, 10/4/11). This article is critical of mental health services, including mental health tribunals (for being in private), internal homicide inquiries (for being unreliable) and independent inquiries (for being repeatedly ignored). See Mental health law in the media
• Kirsten Sjvoll, ‘Case Preview: Rabone & Anor v Pennine Care NHS Trust’ (UKSC Blog, 10/11/11). See Rabone v Pennine Care NHS Trust (2010) EWCA Civ 698

• Leicester Mercury, ‘Woman who abused patients has jail term cut’ (5/11/11). See MCA 2005 s44

• Links to articles added. (1) Tim Ross, ‘Dementia doctors may face jail for using chemical cosh’ (Daily Telegraph, 2/11/11). (2) Pulse, ‘Minister warns GPs could require PCT permission to prescribe antipsychotics - or face jail’ (3/11/11). Health Minister Paul Burstow claims that ‘Antipsychotic drugs prescribed against the evidence, without clear clinical justification, amount to a deprivation of liberty’. (3) Mithran Samuel, ‘Burstow bid to use Dols to curb antipsychotics use “draconian”’ (Community Care, 10/10/11). See DOLS#Chemical cosh

• Links to various articles about Albert Haines’s public Mental Health Tribunal hearing added. See AH v West London MH NHS Trust (2011) UKUT 74 (AAC)

• Mark Gould, ‘Mental health patients complain of “zombification”’ (Guardian, 15/3/11). This article discusses the increasing use of detention and CTOs. See Mental health law in the media

• Martin Beckford, ‘Man kept in hospital for three months over infection fears’ (Telegraph, 24/10/11). See Public Health (Control of Disease) Act 1984

• Martin Beckford, ‘Mother seeks to let daughter with brain damage die’ (Daily Telegraph, 15/4/11). This article relates to a preliminary Court of Protection hearing on 14/4/11 before Baker J, involving a patient M who is in a minimally conscious state (rather than a persistent vegetative state): M’s mother wants artificial nutrition and hydration to be removed, whereas the Official Solicitor argues that it is M’s best interests to be kept alive. See Mental health law in the media

• Martin Beckford, ‘Secrecy fears after court bans contact with 65 people’ (Telegraph, 19/4/11). Hedley J permitted the press to attend hearings in this case (see previous article); this article complains about the press being ordered not to communicate with witnesses or healthcare professionals (except via the applicant’s solicitor) and not to enter within 50 metres of their addresses. See Mental health law in the media

• Peter Bartlett, ““The necessity must be convincingly shown to exist”: standards for compulsory treatment for mental disorder under the Mental Health Act 1983’ [2011] Med L Rev 1. See Compulsory treatment


• Press articles about Re M, an application to Court of Protection for cessation of artificial nutrition and hydration of patient in minimally conscious state (as opposed to persistent vegetative state). Daily Telegraph, ‘High Court judge gives brain-damaged sister right to die’ (20/7/11) (inaccurate headline); Andy McSmith, ‘Man pleads with court for right to end his partner’s life’ (Independent, 20/7/11). See Settled cases and forthcoming judgments

• Press articles added for various unreported COP judgments: Re SJ (Deprivation of liberty, Ryder J); Re M (Minimally-conscious state, Baker J); Re P (Cancer treatment, Baron J); Re P (Persistent
vegetative state, Charles J); Re L (Palliative care, Peter Jackson J). See Settled cases and forthcoming judgments

- Private Eye, ‘Mental Health: Catch 22’ (Eye 1277, 10-23 December 2010). This article refers to the situation where Article 5 prevented patients from being discharged from hospital to conditions which amounted to a deprivation of liberty (which is no longer the case following SSJ v RB (2010) UKUT 454 (AAC)). See Mental health law in the media

- RCPsych, ‘Being sectioned (in England and Wales)’ (November 2011). See Royal College of Psychiatrists

- Ruth Cairns et al, ‘Judgements about deprivation of liberty made by various professionals: comparison study’ (2011) 35 Psychiatrist 344 (subscription only). ‘Aims and method: A group of lawyers, psychiatrists, best interest assessors and independent mental capacity advocates were asked to make binary judgements about whether real-life situations in 12 vignettes amounted to deprivation of liberty. Kappa coefficients were calculated to describe the level of agreement within each professional group and for the total group of professionals. Results: There was total agreement between all professionals about deprivation of liberty in only 1 of the 12 cases. The overall level of agreement for judgements made by all professionals was ‘slight’ (κ=0.16, P<0.01). Clinical implications: There are practical difficulties involved in making reliable deprivation of liberty judgements within the Deprivation of Liberty Safeguards (DoLS) legislation. A clear interpretation of deprivation of liberty is necessary to facilitate professionals’ decision-making in this area.’ Related press article: Laura Donnelly, ‘Dementia patients let down despite promises’ (Telegraph, 1/10/11). See DOLS#External links

- Ruth Cairns et al, ‘Mired in confusion: making sense of the Deprivation of Liberty Safeguards’ (2011) 51 Med Sci Law 228 (subscription only). Extract from abstract: ‘Participants and setting Six eminent barristers and solicitors with expertise in mental health law attended a consensus meeting after making individual judgements about vignettes describing the situations of 28 incapacitated patients who had been admitted informally to a range of psychiatric inpatient units in South East London. Results Lawyers attributed key importance to a patient’s ‘freedom to leave’ and suggested that patients’ subjective experiences should be considered when identifying deprivation of liberty. Conclusions Clarification of deprivation of liberty and its safeguards will develop with future case law. Based on current available case law, the lawyers’ expert views represented a divergence from Code of Practice guidance. We suggest that clinicians give consideration to this.’ See DOLS

- Stephen Lewis, ‘Autistic teenager Liam Brunskill in adult care wrangle’ (York Press, 10/8/11) and Stephen Lewis, ‘Liam Brunskill’s family ready to move to fund court hearing’ (York Press, 17/8/11). Residence dispute due to be heard in Court of Protection. See Settled cases and forthcoming judgments

- The Small Places Blog, ‘Mental Capacity Act and Tenancy: An open question’ (7/10/11). This article, which appeared originally on the Nearly Legal housing law blog, argues that Wychavon was wrongly decided because ‘a contract with someone lacking capacity to enter such a contract is voidable (not void) by the person lacking capacity if the other party was aware of their lack of capacity’. See Wychavon District Council v EM (HB) (2011) UKUT 144 (AAC) — (1) The tenant lacked capacity so the tenancy contract was not valid, which meant that there was no
liability to pay rent and therefore no entitlement to Housing Benefit. (2) The contract was void, not voidable, because the landlord knew the tenant lacked sufficient mental capacity to reach such an agreement. [Caution.]

- UKPA, ‘Brain-damage woman ruling challenge’ (26/10/11). Applicant seeks leave to appeal to Court of Appeal. See Re M; W v M (2011) EWHC 2443 (COP)

Statistics

- NHS Information Centre, ‘Inpatients formally detained in hospitals under the Mental Health Act 1983 and patients subject to supervised community treatment, Annual figures, England 2010/11’ (11/10/11). Extract from summary: ‘The latest figures for 2010/11 suggest that the number of people subject to restrictions under the Mental Health Act continues to rise. Whilst the number of formal admissions for treatment and new Community Treatment Orders (CTOs) has decreased since the previous reporting period, the overall number of people remaining in detention or subject to a CTO is higher than before. The number of uses of Place of Safety Orders has also increased. The figures also show major changes in the number of formal detentions, uses of Place of Safety Orders and CTOs.’

- NHS Information Centre, ‘Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England) - Second report on annual data, 2010/11’ (20/7/11). The key facts (abbreviated) are: (1) The total number of applications made was still much lower than expected for the second year; (2) The number of successful applications resulting in an authorisation to deprive a person of their liberty was about the expected number, though a much higher percentage of applications than expected were successful; (3) About 2 per cent of applications that were not authorised involved situations where the person was nevertheless judged as being in a situation that amounted to a deprivation of liberty; (4) Of those authorisations that were granted, more than half (55 per cent) were for a person who lacked capacity because of dementia; (5) 57 per cent of those applications made to a Local Authority were granted when applying for a deprivation of liberty compared to 50 per cent in Primary Care Trusts. See Statistics


- NHS Information Centre, ‘Mental Health Bulletin - Fourth report from Mental Health Minimum Dataset (MHMDS) annual returns, 2010’ (11/1/11). Two of the key facts are that (1) ‘The number of people who spent time in a mental health hospital rose by 5.1 per cent - the first increase in five years’; and (2) ‘This rise was due to a 30.1 per cent rise in the number of people being compulsorily detained in hospital under the Mental Health Act, from 32,649 in 2008/9 to 42,479 in 2009/10. Some part of this increase was due to improved recording between 2008/09 and 2009/10, because a small number of trusts failed to provide MHA information in 2008/09. On a like for like basis, excluding the data for trusts that failed to return information in 2008/09, there was an estimated increase of about 17.5 per cent in the number of people being detained under the MHA - from 32,649 to 38,369.’ See Statistics

- NHS Information Centre, ‘Quarterly analysis of Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England) Quarter 2 2010/11’, 22/12/10. The summary states that these statistics provide the first official information about authorisations using the legislation.
Key facts listed are: (1) the number of authorisations completed was 2,333 in quarter 2; (2) of the total assessments completed in this quarter, a higher proportion were for females than for males; (3) in quarter 2, 76 per cent of assessments were made by local authorities while the rest were made by primary care trusts; (4) the percentage of authorisations granted which led to someone being deprived of their liberty was 54 per cent in quarter 2; (5) at 30 September 2010 1,436 people were subject to such authorisations. See Statistics

- NHS Information Centre, ‘Quarterly analysis of Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England) Quarter 3 2010/11’ (30/3/11). The publication strategy is for biennial reports in 2011/12 and an annual report in 2012/13. The key facts listed are: (1) The number of authorisations completed was 2,267 in quarter 3; (2) Of the total assessments completed in this quarter, a higher proportion were for females than for males; (3) In quarter 3, 74 per cent of assessments were made by local authorities while the rest were made by primary care trusts; (4) The percentage of authorisations granted which led to someone being deprived of their liberty was 54 per cent in quarter 3; (5) At 31 December 2010 1,450 people were subject to such authorisations. See Statistics

- NHS Information Centre, ‘Quarterly analysis of Mental Capacity Act 2005, Deprivation of Liberty Safeguards (DoLS) Assessments (England)’ (22/6/11). The ‘key facts’ listed are: (1) The number of authorisations completed was 2,308 in quarter 4; (2) Of the total assessments completed in this quarter, a higher proportion were for females than for males; (3) In quarter 4, 74 per cent of assessments were made by local authorities while the rest were made by primary care trusts; (4) The percentage of authorisations granted which led to someone being deprived of their liberty was 58 per cent in quarter 4; (5) At 31 March 2011 1,512 people were subject to such authorisations. See Statistics

- NHS Information Centre, ‘Social Care and Mental Health Indicators from the National Indicator Set - 2009-10 Final release’ (various documents, 20/4/11). See Statistics

- NHSIC, ‘Bi-annual analysis of Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England): April-September 2011’ (2/12/11). The key facts are stated as follows: ‘The figures show that between 1 April and 30 September 2011: (1) 5,472 authorisation requests were completed. 3,963 (72.4 per cent) were received by LAs and 1,509 (27.6 per cent) were received by PCTs. (2) 3,079 (56.3 per cent) of the completed assessments resulted in an authorisation. Of the total assessments completed, a slightly higher proportion was for females 2,857 (52.2 per cent) than males 2,615 (47.8 per cent). (4) At the end of the reporting period, 30 September 2011, 1,697 people were subject to a current standard authorisation. 1,484 (87.4 per cent) followed a granted LA authorisation and 213 (12.6 per cent) followed a granted PCT authorisation.’

- NHSIC, ‘Guardianship under the Mental Health Act 1983 - England 2011’ (8/9/11). Key facts: (1) The number of new Guardianship cases fell by 22 per cent between 2009/10 and 2010/11 from 435 to 339 cases, which is the largest reduction in new cases since 2001/02, the first year analysed in this report; (2) For the fifth consecutive year there was a decrease in the number of continuing Guardianship cases open at the end of the year; (3) There are large regional variations in the rates of Guardianship usage; (4) Variations in the rate of Guardianship usage are also noticeable across different types of authorities; (5) These variations in Guardianship usage are also very apparent at Local Authority level. See Statistics
• They Work For You website: The number of complaints per mental health Trust per year from 2005-6 to 2009-10. See Statistics

Miscellaneous publications

• Book uploaded. Eldergill — Anselm Eldergill, Mental Health Review Tribunals: Law and Procedure (Sweet and Maxwell, London 1997). Professor Anselm Eldergill has kindly given permission for his book to be reproduced on Mental Health Law Online. The copyright remains with the author. Given its publication date, the book is being reproduced here for historical and academic interest only.

• Bruce Calderwood, Director of Mental Health and Disability, ‘Mental Health Act 1983 - proposed amendments in the Health and Social Care Bill 2011’ (Dept of Health Dear Colleague Letter, gateway ref 15451, 19/1/11). This sets out changes resulting from: (1) the proposed abolition of PCTs and SHAs; (2) the proposed transfer of the regulation of social workers in England from the General Social Care Council (GSCC) to the Health Professions Council (which is to be renamed the Health and Care Professions Council); (3) the proposed removal of the SOAD requirement for consenting capacitous community patients. See Dept of Health

• European Union Agency for Fundamental Rights, ‘The legal protection of persons with mental health problems under non-discrimination law: Understanding disability as defined by law and the duty to provide reasonable accommodation in European Union Member States’ (25/10/11). See FRA

• Law Commission, ‘Adult Social Care: Consultation Analysis’ (31/3/11). This document summaries the responses to the Adult Social Care consultation. See Consultations

• Mark Neary, ‘Get Steven Home: The Book’ (blog): ‘The story of a year long battle to enable a young autistic man to live at home’ (quotation from blog). See Re Steven Neary; LB Hillingdon v Steven Neary (2011) EWHC 1377 (COP)

• Mental Health Alliance, ‘The Deprivation of Liberty Safeguards’ (pre-publication draft of chapter of forthcoming report, 25/11/11). The key issues are stated to be: ‘(1) The DoLS scheme is not fit for purpose in its present form – implementation has been extremely uneven, with the result that the protections the scheme is supposed to afford to vulnerable people are effectively unavailable in large parts of the country; (2) Its review and appeals processes do not comply with the requirements of ECHR Article 5(4), largely negating its intended purpose; (3) The scheme is incredibly bureaucratic and wasteful of scarce professional resources, and the burdensome paperwork itself discourages use; (4) Nevertheless, where agencies have managed, with a great deal of effort, to make it work reasonably well, DoLS does perform a valuable protective function and has achieved at least some of the objectives set out for it, demonstrating that there is a need for a measure of this kind.’

• MHLA, ‘Destroying Representation for the Mental Unwell for £3 million?’ (9/8/11). This document is the Mental Health Lawyers Association’s response to the Legal Aid, Sentencing and Punishment of Offenders Bill 2010-11. See MHLA
Office of Fair Trading, ‘Mental capacity - OFT guidance for creditors’ (September 2011, ref OFT1373). The guidance contains the following chapters: (1) Introduction; (2) Mental capacity and its relevance to a borrowing/lending decision; (3) Indicators that borrowers have, or may have, mental capacity limitations; (4) Practices and procedures; (5) Regulatory compliance and enforcement. The annexes are: (A) Useful contacts; (B) Powers of Attorney and Deputyship; (C) Other relevant guidance and legislation. See Office of Fair Trading.

On 23/12/10 the SCIE published the following document: David Thompson, ‘Good practice guidance for the commissioning and monitoring of Independent Mental Capacity Advocate services’, Social Care Institute for Excellence, October 2009 (updated December 2010). This good practice guide contains: (1) issues to consider when reviewing IMCA contracts; (2) a revised example service specification; (3) suggestions for assessing quality; (4) an example engagement protocol; and (5) suggested tender requirements. See Independent Mental Capacity Advocate service.

Oral ministerial statement, ‘Statement on sex offenders’ register’ (16/2/11) added. In response to the Supreme Court decision in F and Thompson, the police will be given the power to remove a sex offender from the register; there will be no right of appeal. See R (F and Thompson) v SSHD (2010) UKSC 17.

Patient information leaflets are available in the following languages: Arabic, Albanian, Bengali, Farsi (Persian), French, Gujarati, Hindi, Italian, Korean, Lithuanian, Mandarin, Pashto, Polish, Portuguese, Punjabi, Russian, Somali, Spanish, Swahili, Sylheti, Tamil, Turkish, Urdu, and Vietnamese. The leaflets below were produced for a consortium of NHS Trusts and are available copyright-free. The leaflets cover: s2, s3, s5(2), s5(4), s136, s37, s37/41, s48, Guardianship, SCT, ECT, and IMHAs. See Foreign-language information leaflets.


South West SHA and East Midlands SHA, ‘Independent Investigation into the Care and Treatment Provided to Mr. X by the Lincolnshire Partnership NHS Foundation Trust and the Avon and Wiltshire Mental Health Partnership NHS Trust’ (22/11/11) (X is Timothy Crook); South West Strategic Health Authority, ‘Report of the Independent Investigation into the care and treatment of Mr MH’ (22/11/11) (MH is Michael Harris). See Independent inquiries.

The Supreme Court will hear an appeal in the Rabone case on 7/11/11. Rabone v Pennine Care NHS Trust (2010) EWCA Civ 698 — Health trusts do not have the Article 2 operational obligation to voluntary patients in hospital, who are suffering from physical or mental illness, even where there is a “real and immediate” risk of death. [Caution.] [Detailed summary available on case page.]

Wales

Consultation on Mental Health (Regional Provision) (Wales) Regulations 2012 (26/9/11 to 16/12/11). ‘This consultation seeks your views on regulations which would enable Local Health...
Boards (LHBs) and local authorities in Wales to enter into regional working arrangements.’ See Consultations#Wales

- Consultation on the draft code of practice to parts 2 and 3 of the Mental Health (Wales) Measure 2010 (18/10/11 to 16/01/12). ‘This consultation seeks views on a draft Code of Practice for care and treatment planning. It also covers reassessment for secondary mental health services under the Mental Health (Wales) Measure 2010. Part 2 of the Measure is concerned with: (1) the appointment of care coordinators as part of the process of planning and coordinating care; and (2) care and treatment plans for people receiving secondary mental health services. Part 3 of the Measure is concerned with: (1) former users of secondary mental health services; and (2) providing a right for them to refer themselves back to secondary services for assessment directly. The draft code sets out guiding principles and practice guidance for the operation of the Measure.’ See Consultations#National Assembly for Wales

- Consultation: Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011 (21/2/11 to 16/5/11). ‘Part 3 of the Mental Health (Wales) Measure 2010 is concerned with mental health assessments for former users of secondary mental health services. The Welsh Assembly Government is proposing to make Regulations under this part of the Measure which will set out certain eligibility criteria for such assessments. For example, the length of time a person will be eligible for such an assessment following their discharge from services. This consultation seeks your views on these draft regulations.’ See Consultations

- Consultation: Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011 (21/2/11 to 16/5/11). ‘[This consultation] is concerned with the coordination of secondary mental health services, and care and treatment planning for secondary mental health service users. The Welsh Assembly Government is proposing to make Regulations connected to Part 2 of the Measure. This relates to the appointment of care coordinators and the making, reviewing and revising of care and treatment plans. This consultation seeks your views on these draft regulations.’ See Consultations

- Consultation: Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011 (21/2/11 to 16/5/11). ‘Part 4 of the Mental Health (Wales) Measure 2010 expands the statutory independent mental health advocacy scheme established by the 1983 Act. Patients subject to certain “short term” sections of the 1983 Act, and those in hospital informally (i.e. not under compulsion) are able to access the service. The Welsh Assembly Government is proposing to make Regulations connected to the expanded independent mental health advocacy scheme. This will relate to the provision, appointment and approval of advocates. It will also say which people advocates can talk to in undertaking their role of supporting patients. This consultation seeks your views on these draft Regulations.’ See Consultations


- On 15/3/11 both the Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales published documents entitled ‘Mental Capacity Act 2005 Deprivation of Liberty Safeguards: Annual Monitoring Report for Health 1 April 2009 to 31 March 2010’ together with various jointly-published documents. See DOLS
• Text of various circular emails about new Welsh legislation added. See Mental Health (Wales) Measure 2010

• Text of Welsh update email added. ‘On Tuesday 8 November 2011 the Minister for Health and Social Services laid before the National Assembly for Wales the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011 along with an accompanying Explanatory Memorandum. These Regulations are being introduced under Part 2 of the Mental Health (Wales) Measure 2010.’ (extract). See Mental Health (Wales) Measure 2010

• Welsh legislation consultation. ‘On 7 November 2011 the Welsh Government began a formal consultation on the draft Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012. These Regulations propose arrangements which will enable GPs to refer individuals to local primary mental health support services (including individuals who are not registered with them). The Regulations also set out eligibility requirements for those who may undertake primary mental health assessments. The consultation period begins on 7 November 2011 and all responses must be submitted to the Welsh Government’s Mental Health Legislation Team no later than 27 January 2012.’ (Text of circular email 8/11/11.) See Mental Health (Wales) Measure 2010

• Welsh legislation. The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011, the Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011, and accompanying Explanatory Memoranda and Regulatory Impact Assessments, have been approved. See Mental Health (Wales) Measure 2010 (text of 26/10/11 circular email)

Scotland

• Consultation from 21/3/11 to 16/5/11. Scottish Government, ‘Scottish Government Consultation: Amendment to Rule 58 of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005: Rule 58: Power to Decide Case Without a Hearing’. The Scottish Government is consulting on plans to increase the availability of rule 58 which allows the Tribunal, if all parties agree in writing, to dispose of a case without an oral hearing. The three proposed options, all dispensing with the need for agreement and presumably with the intention of cutting costs, are: (1) any party wanting a hearing must show cause why a hearing is necessary, or (2) as option 1 except the patient has the automatic right to hearing if requested, or (3) as option 1 except the hearing will take place unless the patient positively elects not to have one. It is envisaged that the rule would be used ‘where there is no real dispute between the parties’. See Consultations#Scotland

• Mental Welfare Commission for Scotland, ‘Not Properly Authorised: Unannounced visits to people receiving treatment under the safeguards of part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003’ (July 2011). See also Mithran Samuel, ‘Detained mental health patients treated without authorisation’ (Community Care, 11/8/11). See Mental Welfare Commission for Scotland

• Scottish ‘Consultation on Certification of Incapacity for Medical Treatment under Part 5 Section 47 Adults with Incapacity (Scotland) Act 2000’ runs from 18/7/11 to 10/10/11. ‘This consultation seeks views on four issues on Adults with Incapacity (Scotland) Act 2000 Part 5 in relation to
medical treatment. The issues are: widening the range of institutions which can offer training, whether dentists should be required to undertake training for this purpose; whether multiple section 47 medical treatment certificates should be required in some circumstances; and whether other medical practitioners not specified should be enabled to certify incapacity for medical treatment’ (quotation from consultation). See Consultations#Scotland


- The Scottish Government consulted on plans to increase the availability of rule 58 which allows the Tribunal, if all parties agree in writing, to dispose of a case without an oral hearing. All consultation responses were published on 15/6/11. See Consultations#Scotland
Thanks

Thanks are due to the following people, mostly for contributing case transcripts which were not available elsewhere. If you have anything which is not yet on the internet (e.g. court results or transcripts) then please send it in.

- Tim Baldwin, Garden Court Chambers

- James Batey, Court of Protection
  - Re FL; HN v FL and Hampshire CC (2011) EWHC 2894 (COP) - transcript
  - Re HM; SM v HM (2011) COP 11875043 4/11/11 - transcript

- Claire Fife, Mental Health Legislation Manager, Welsh Assembly Government
  - Mental Health (Wales) Measure 2010 - update emails etc

- James Gatenby, Chavasse Chambers
  - Re GM; FP v GM and A Health Board (2011) EWHC 2778 (COP) - transcript

- Richard Jones, Morgan Cole LLP
  - Selwood v Durham CC (2011) Newcastle-upon-Tyne county court 25/2/11 - transcript

- Penny Letts, Elder Law Journal editor
  - Re JP; DP v JCP (2010) COP 11692737 - transcript

- Roger Pezzani, Garden Court Chambers
  - PS v Camden and Islington NHS Foundation Trust (2011) UKUT 143 (AAC) - transcript

- Alex Ruck-Keene, 39 Essex Street
  - Re S; D v R (the deputy of S) (2010) EWHC 3748 (COP) - transcript
  - LG v DK (2011) EWHC 2453 (COP) - transcript
  - Re DU; A NHS Trust v DU (2009) EWHC 3504 (Fam) - transcript
  - R v Hopkins; R v Priest (2011) EWCA Crim 1513 - transcript
  - Re CM; LBB v JM (2010) COP 5/2/10 - transcript and summary
  - A Local Authority v DL (2011) EWHC 1022 (Fam) - transcript and summary
  - Re Hunt (2008) (Preston county court, 12/6/08) - transcript
  - Re P; A Local Authority v PB (2011) EWHC 502 (COP) - transcript
  - Re AH; AH v Hertfordshire Partnership NHS Foundation Trust (2011) EWHC 276 (COP) - transcript
  - Re AVS; AVS v A NHS Foundation Trust (2011) EWCA Civ 7 - transcript
  - TTM v LB Hackney (2011) EWCA Civ 4 - transcript
- Re HM; PM v KH (2010) EWHC 3279 (Fam) - transcript
- Cardiff Council v Peggy Ross (2011) COP 28/10/11 12063905 - transcript

Matthew Seligman, Scott-Moncrieff Solicitors
- R (Sessay) v South London and Maudsley NHS Foundation Trust (2011) EWHC 2617 (QB) - detailed summary
- TTM v LB Hackney (2011) EWCA Civ 4 - summary and transcript

Amy Street, 3 Serjeants’ Inn
- Manchester City Council v G (2011) EWCA Civ 939 - transcript

Paul Thorpe, Rochdale MBC
- R (Woods) v Rochdale MBC (2009) EWHC 323 (Admin) - transcript

Ben Troke, Browne Jacobson Solicitors
- Cheshire West and Chester Council v P (2011) EWCA Civ 1257 - summary and commentary

Karen Wolton, Wolton & Co Solicitors
- RN v Curo Care (2011) UKUT 263 (AAC) - transcript

Publication information

Published 3 March 2012.

See http://www.mentalhealthlaw.co.uk/Copyrights and http://www.mentalhealthlaw.co.uk/Disclaimer