

Mental Health Law Online

Monthly Update, February 2012

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Introduction

Starting in 2012 each month's legal update will be available in PDF format for printing. This update is based on the content at http://www.mentalhealthlaw.co.uk/February_2012_update. This document is a snapshot of the online page – the online page will be automatically updated when case and legislation pages are updated.

Cases

Summaries

- [R v Stead \(2012\) EWCA Crim 92, \(2012\) MHLO 9](#) — *The appellant, who had been sentenced to ten years' detention in a young offender institution together with an indefinite Sexual Offences Prevention Order, successfully argued for the imposition of a hybrid order under [MHA 1983 s45A](#).*
- [Re L; K v LBX \(2012\) EWCA Civ 79, \(2012\) MHLO 7](#) — *Article 8 does not require that maintenance of existing family life arrangements be a 'starting point' in best interests decisions.*
- [Rabone v Pennine Care NHS Foundation Trust \(2012\) UKSC 2, \(2012\) MHLO 6](#) — *(1) The operational obligation under [Article 2](#) can in principle be owed to a hospital patient who is mentally ill, but who is not detained under the MHA. (2) There was a 'real and immediate' risk to the patient's life of which the Trust knew or ought to have known and which it failed to take reasonable steps to avoid, so the obligation was breached. (3) The patient's parents were 'victims' within the meaning of [Article 34](#) of*

the Convention. (4) They had not lost their victim status by settling a negligence claim, as (although it had in substance acknowledged its breach) the Trust had not made adequate redress. (5) The one-year limitation period in s7(5) [HRA 1998](#) was extended because the extension was short, the Trust suffered no prejudice, the claimants acted reasonably in delaying, and there was a good claim. (6) The Court of Appeal's assessment of damages was upheld, and £5000 was awarded to each parent.

- [Re M \(2011\) EWHC 3590 \(COP\)](#) — Under [MCA 2005 s63](#) and schedule 3, which incorporates the Hague Convention on the International Protection of Adults 2000 into domestic law, the High Court recognised and gave effect to an order of the Southern Irish High Court which required M's transfer to and treatment at an English psychiatric hospital.
- [Wychavon District Council v EM \(HB\) \(2012\) UKUT 12 \(AAC\), \(2012\) MHLO 5](#) — The UT judge reviewed his previous decision because he had overlooked a legislative provision which could have had a material effect on the decision: in this case [MCA 2005 s7](#), which provides that 'If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, he must pay a reasonable price for them.' (1) Although the purported tenancy agreement between P and her father was void because the lack of capacity was known, under s7 P was still 'liable to make payments in respect of the dwelling which she occupies as her home' so she was entitled to benefits under the Housing Benefits Regulations 2006. (2) Even if 'services' in s7 is not wide enough to cover the provision of accommodation, the common law rules as to necessities survive and the provision of accommodation is an obvious necessary.

Transcript

- [R \(Moussaoui\) v SSHD \(2012\) EWHC 126 \(Admin\), \(2012\) MHLO 8](#) — Immigration case with a mental health element. [Summary required.]

Related news

- Permission to appeal to Supreme Court refused on 28/11/11. Court of Appeal decision: [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](#).
- Mind, 'Supreme Court ruling welcomed by Mind and leading human rights organisations' (8/2/12). See [Rabone v Pennine Care NHS Foundation Trust \(2012\) UKSC 2, \(2012\) MHLO 6](#)
- Martin Beckford, 'Autistic woman banned from having sex in latest Court of Protection case' (Daily Telegraph, 3/2/12). See [Re H; A Local Authority v H \(2012\) EWHC 49 \(COP\), \(2012\) MHLO 3](#)

- Mary Carolan, 'Voluntary mental patient not being held unlawfully' (25/1/12). This article describes what seems like a Southern Irish 'Bournewood' case. See [DOLS#Other links](#)

Other

- Martin Hickman, 'Cash crisis slows justice for the vulnerable at Court of Protection' (Independent, 4/2/12). This article includes the following statistic: 'When [the Official Solicitor] started in April 2008, he had 42 cases. That's gone up to 650 on his books currently.' See [Official Solicitor](#)
- 39 Essex Street, 'Court of Protection Newsletter' (issue 18, February 2012). The cases mentioned in this issue are: Re H; A Local Authority v H [2012] EWHC 49 (COP), [2012] MHLO 3, Re M [2011] EWHC 3590 (COP), Re JDS; Kevin Smyth v JDS (2012) COP 19334473 19/1/12, [2012] MHLO 4, Stanev v Bulgaria 36760/06 [2012] ECHR 46, [2012] MHLO 1, DM v Doncaster MBC [2011] EWHC 3652 (Admin), Re AH (Costs); AH v Hertfordshire Partnership NHS Foundation Trust [2011] EWHC 3524 (COP), SBC v PBA and Others [2011] EWHC 2580 (Fam). Also included is news that the Official Solicitor is currently unable to accept invitations to act except in (a) serious medical treatment cases, and (b) s21A appeals which are not brought by the relevant person's representative. See [39 Essex Street COP Newsletter](#)
- Val Williams et al, 'Making Best Interests Decisions: People and Processes' (Mental Health Foundation, 31/1/12). The accompanying press release is entitled 'MCA Code of Practice needs revising to enable more effective best interests decisions to be made'. See [Mental Capacity Act 2005 Code of Practice](#)
- Essex Autonomy Project, 'Deprivation of Liberty and DoLS Roundtable Digest' (26/1/12). Presentations were given on 16/1/12 by Munby LJ, Alistair Pitblado, Dr Ruth Cairns, Neil Allen, John Leighton and Lucy Series. See [DOLS#Academic articles](#)
- Mental Disability Advocacy Center, 'Venice Commission backs right to vote' (19/12/11). In December 2011 the Venice Commission amended a key document to reverse an anomaly which allowed countries to disenfranchise those with 'genuine mental disabilities'. See [Voting rights for detained patients](#)
- The Commission on Assisted Dying, 'The current legal status of assisted dying is inadequate and incoherent...' (5/1/12). See [Assisted suicide](#)
- Department of Health: Consultation on low secure services and psychiatric intensive care (19/1/12 to 19/4/12). See [Consultations](#)
- Sally Bradley, 'Court of Protection Update (January 2012)' (Family Law Week, 18/1/12). See [Court of Protection#Other links](#)

Website

- On 29/2/12 Mental Health Law Online contained [1135 categorised cases](#)
- Thanks to Alex Ruck Keene of 39 Essex Street Chambers for providing the transcript for [Re H; A Local Authority v H \(2012\) EWHC 49 \(COP\), \(2012\) MHLO 3](#)
- Anselm Eldergill, *Mental Health Review Tribunals: Law and Procedure* (Sweet and Maxwell 1997) has been submitted to Google Books, where it can be searched. See [Eldergill](#)
- Starting with the January 2012 update, each month's legal update will be available in hyperlinked PDF format for printing. Note that the content of the PDF document will not be updated, whereas the online update page will automatically change if a case or legislation summary page changes. See **February 2012 update**
- The CPD questionnaire for February's legal update is now online for subscribers. Subscribe now to receive 12 SRA-accredited CPD points online. See [CPD scheme](#) for further details
- See [February 2012 chronology](#) for this month's changes to the website in date order