

Mental Health Law Online

Monthly Update, February 2013

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Introduction

In addition to being available on the Mental Health Law Online website, each month's legal update is available in PDF format for printing, and in Kindle format for e-book reading. This update is based on the content at http://www.mentalhealthlaw.co.uk/February_2013_update It is a snapshot of the online page – the online page will be automatically updated when case and legislation pages are updated.

Case law

- **Capacity case (LPA).** The OPG has published a summary of A, B and C v X, Y and Z [2012] EWHC 2400 (COP), [2012] MHLO 112 insofar as it relates to lasting powers of attorneys: *The court was asked to make declarations as to whether X had capacity to do various things, including entering into marriage, litigating, making a will, managing his affairs, and making or revoking an enduring or lasting power of attorney. Paragraph 38 is of interest on the question of fluctuating or qualified capacity: "Let me then turn to the question of revocation or creation of enduring or lasting powers of attorney. First, I am not satisfied that it has been established that X lacked capacity to revoke the power of attorney in favour of the Applicants, even indeed if that was still a live issue given that the revocation has been accepted and the registration has been cancelled. I found the issue of power to create a new enduring* power of attorney very much more difficult for all the reasons that apply in relation to testamentary capacity. In the end, I have reached exactly the same conclusion. I am unwilling to make, on the evidence, a general declaration that he lacks capacity, but qualify that immediately by saying that the exercise of such a power, unless accompanied by contemporary medical evidence of capacity, would give rise to a serious risk of challenge or of refusal to register. It seems to me, for exactly the same reasons as I endeavoured to set out in relation to testamentary capacity, that X's capacity is likely to diminish in the future and there will be times when undoubtedly he lacks capacity, just as there will be times when he retains it." [*The judge must have intended to refer to a new lasting power of attorney, as new enduring powers of*

attorney may not now be made.] A more detailed summary is available here: [A, B and C v X, Y and Z \(2012\) EWHC 2400 \(COP\)](#), [\(2012\) MHLO 112](#)

- **Capacity case (fair trial).** [Re P \(fair trial\); Knowsley MBC v P \(2013\) MHLO 5 \(COP\)](#) — *The press has reported this case as follows: (1) A patient was detained in a psychiatric hospital, then transferred to a psychiatric home; when the six-month section was due to expire, the council obtained a Court of Protection order to prolong detention, without consultation with the patient, her family or her advocate. (2) Peter Jackson J approved a consent order in which the council (a) admitted, in relation to the two months of further detention, violating the patient's [Article 5](#) (liberty), [Article 6](#) (fair trial) and [Article 8](#) (family life) rights, and (b) agreed to pay £6,000 compensation. (3) The patient was allowed home following legal intervention and an occupational therapy assessment. (4) The patient was quoted as saying 'I was held prisoner, it's as simple as that. Even though it's been months since I was able to come home, I still can't sleep. I feel like I just can't trust anyone. I'm constantly worried that they're going to turn up and take me away again.'*

Newsletter/articles

- **39 Essex Street, 'Court of Protection Newsletter' (issue 30, February 2013).** The cases mentioned in this issue are: WCC v AB and SB (unreported, 26 October 2012) — Re Buckley (unreported, 22 January 2013) — A Local Health Board v J (2012) MHLO 158 (COP) — Re AW (Permanent Vegetative State); The NHS Trust v AW (2013) EWHC 78 (COP), (2013) MHLO 3 — Durham County Council v Dunn [2012] EWCA Civ 1654 — Lashin v Russia [2013] ECHR 63 (Application No 33117/02) — Mihailovs v Latvia [2013] ECHR 65 (Application no. 35939/10). There is also information under the following headings: (a) OPG Consultation Response; (b) CQC Report: Monitoring the Mental Health Act in 2011/2. See [39 Essex Street COP Newsletter](#)
- **39 Essex Street, 'Consolidated version of newsletters from 2010 to January 2013 inclusive' (February 2013)** See [39 Essex Street COP Newsletter](#)
- **Terri Judd, 'Pensioner "held prisoner" by local council wins legal victory' (Independent, 8/2/13); Fentons Solicitors, 'Court victory for woman "held prisoner and denied fair trial" by council' (8/2/13).** See [Re P \(fair trial\); Knowsley MBC v P \(2013\) MHLO 5 \(COP\)](#)

Website

- **New MHLO books.** The Mental Health Law Online [Annual Review 2012](#) has been published in [paperback](#) and [Kindle](#) format, and is now available on Amazon. The Annual Review 2012 contains all news items, arranged thematically, which were added to the website during 2012. The [Annual Review 2011](#) is also now available in [paperback](#) and [Kindle](#) formats. See [Books](#)
- **CPD scheme.** The questionnaire for December 2012 has been uploaded, and the January 2013 questionnaire will follow shortly. Obtain 12 accredited CPD points online for £60 by subscribing today. See [CPD scheme](#)

- **Cases.** On 28/2/13 Mental Health Law Online contained [1310 categorised cases](#)
- **Chronology.** See [February 2013 chronology](#) for this month's changes to the website in date order