

Mental Health Law Online

Monthly Update, June 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/June_2013_update It is a snapshot of the online page – the online page will be automatically updated when case and legislation pages are updated.

Caselaw

- 06/06/13 (4): **Capacity case (DOL)**. [Y County Council v ZZ \(2012\) MHLO 179 \(COP\)](#) — "This is an application made by Y County Council in the Court of Protection in relation to Mr ZZ, a man of young middle age. I am invited to make a number of declarations in relation to Mr ZZ. First, I am asked to find that he lacks litigation capacity on the issues in this case. Second, I am invited to declare that he lacks capacity to decide upon the restrictions relevant to supporting his residence and care. Finally, I am asked to declare that he is being deprived of his liberty, but that it is lawful as in his best interests pursuant to schedule A1 of the Mental Capacity Act 2005. Mr ZZ is represented by the Official Solicitor. He has been present throughout the hearing and has conducted himself with dignity throughout. Indeed, he gave unsworn, oral evidence before me in an entirely courteous and helpful way."
[Summary required.]
- 03/06/13 (3): **Capacity case (abortion)**. [Re SB \(A Patient: Capacity To Consent To Termination\) \(2013\) EWHC 1417 \(COP\), \(2013\) MHLO 48](#) — *SB's desire for an abortion coincided with her stopping her medication for bipolar affective disorder, which led to the Trust seeking decisions on capacity and best interests. (1) Even if aspects of her decision-making were influenced by paranoid thoughts in relation to lack of support from her husband and her mother, SB also had a range of rational reasons, and had capacity to make the decision. (2) Interesting aspects to the case include: (a) the judge disagreed with the two psychiatrists who believed SB lacked*

capacity; (b) he appeared to consider the question of being 'unable' to make a decision separately in relation to its ordinary meaning (whether SB had in fact made a decision, para 38) and its legal meaning by reference to [MCA 2005 s3\(1\)](#) (whether she could understand the relevant information etc, para 39); (c) the Official Solicitor asked for his appointment as litigation friend to be ended, and this request was granted (para 30); (d) the judge granted this request having accepted psychiatric evidence that this was a case 'where P ceases to be a person who lacks capacity to conduct proceedings himself but continues to lack capacity in relation to the matter or matters to which the application relates' (para 28, rule 147); (e) in relation to the threshold for capacity, the judge held that SB's decision to have an abortion 'is of course a profound and grave decision, but it does not necessarily involve complex issues' (para 44).

Newsletters

- 03/06/13 (2): **Alex Ruck Keene, 'Statutory Wills Update' (May 2013)**. See [39 Essex Street COP Newsletter#June 2013](#)
- 03/06/13 (1): **39 Essex Street, 'Court of Protection Newsletter' (issue 34, June 2013)**. The cases mentioned in this issue are: Re SB [2013] EWHC 1417 (COP) — RC v CC and X Local Authority [2013] EWHC 1424 (COP) — Pitt v Holt (2013) UKSC 26, (2013) MHLO 46 — Coles v Perfect (unreported, 13.5.13) — Coombs v North Dorset NHS PCT (2013) EWCA Civ 471, (2013) MHLO 35 — R (T) v LSC (2013) EWHC 960 (Admin), (2013) MHLO 41. There is also information under the following headings: (a) Response to consultation upon power of entry; (b) Review of COP3; (c) House of Lords Select Committee on the Mental Capacity Act 2005; (d) MIND call for evidence. See [39 Essex Street COP Newsletter#June 2013](#)

Website and CPD

- **MHLO books.** The Mental Health Law Online [Annual Review 2012](#) has been published in [paperback](#) and [Kindle](#) format, and is now available on Amazon. The Annual Review 2012 contains all news items, arranged thematically, which were added to the website during 2012. The [Annual Review 2011](#) is also now available in [paperback](#) and [Kindle](#) formats. See [Books](#)
- **CPD scheme.** The CPD questionnaire for March 2013 has been uploaded. Subscribe to obtain 12 accredited CPD points online for £60. See [CPD scheme](#)
- **Cases.** On 30/6/13 Mental Health Law Online contained [1370 categorised cases](#)
- **Chronology.** See [June 2013 chronology](#) for this month's changes to the website in date order