

# Mental Health Law Online

## Monthly Update, March 2013

### Contents

Introduction.....	1
Cases .....	1
Solicitors Regulation Authority .....	1
Listing.....	2
Upper Tribunal .....	2
Criminal law.....	4
Capacity.....	5
Lasting Powers of Attorney.....	8
European Court of Human Rights.....	9
Miscellaneous.....	9
Legislation.....	11
Dept of Health.....	12
Legal Aid .....	12
Newsletters and articles .....	12
Website and CPD.....	13

### 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/March\\_2013\\_update](http://www.mentalhealthlaw.co.uk/March_2013_update) It is a snapshot of the online page – the online page will be automatically updated when case and legislation pages are updated.

### Cases

#### Solicitors Regulation Authority

- **SRA decision.** [SRA decision: Billy Chucks of Chris Solicitors \(2013\) MHLO 22 \(SRA\)](#) — "It is reported that whilst employed by various legal practices: Mr Chucks

failed to comply with restrictions on his attendance imposed by a number of hospital trusts, and that he prepared a “consent to disclosure” request at a hospital for a client who has confirmed that he had not instructed Mr Chucks to act on his behalf, and that he improperly removed clients’ files/documentation without authority from a former employer. Those papers have not yet been returned. ... I FIND that Mr Billy Chucks, (Date of birth: 23 August 1975) of Flat 1, 701 Fulham Road, London SW6 5UL who is or was involved in legal practice but is not a solicitor has, in the Society’s opinion occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the Society’s opinion it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in sub-section (1A) of Section 43. ... This includes being on hospital premises after he knew that a ban prohibiting his attendance had been imposed. On one occasion police were called to the hospital as a result. He had objected to the bans imposed but he did not take any action to challenge these through the appropriate legal route. ... Also, it is a matter of grave concern that client’s papers, improperly in Mr Chucks’ possession, are not held securely and client confidentiality is compromised. An assurance given that these would be returned to the firm of solicitors responsible for their safe keeping has not been honoured. ... For these reasons, I have concluded that it would be undesirable for Mr Chucks to be involved in a legal practice. The effect of this Order is that he may not be employed in legal practice without the knowledge and prior approval of the SRA. Any approval granted is likely to be subject to strict conditions in order to protect clients and the public."

## Listing

- **Cheshire West appeal.** The Supreme Court Registry has confirmed that this case will be heard from 22/10/13 to 24/10/13. See [Cheshire West and Chester Council v P \(2011\) EWCA Civ 1257](#)

## Upper Tribunal

- **Upper Tribunal case.** [JP v South London and Maudsley NHS Foundation Trust \(2012\) UKUT 486 \(AAC\), \(2012\) MHLO 172](#) — "The grounds of appeal related to the Tribunal’s finding that he suffered from a mental disorder; the insufficiency of the Tribunal’s reasons for their decision that the appellant was to continue to be detained under section 2, and to his view that there had been a breach of his right to a fair hearing under Article 6 of the European Convention on Human Rights. He made seven specific submissions on this which I shall address hereafter. At the hearing the appellant also raised a breach of Article 9 of the Convention – his right to freedom of thought, and submitted that the Mental Health Act 1983 was flawed." [Summary required.]
- **Upper Tribunal case.** [MA v SSH \(2012\) UKUT 474 \(AAC\), \(2012\) MHLO 171](#) — "Section 66 of the 1983 Act deals with applications to tribunals (“a section 66 application”). In the present case this would be to the First-tier Tribunal. Applications may be made in a wide range of circumstances. By virtue of section 66(1) (g) these include where a report has been made under section 25 of that Act (see above – this relates to the responsible clinician issuing a certificate to the effect specified in section 25). However, an application to the tribunal may only be made under this

provision in respect of a patient who has been admitted for treatment (or in certain other cases) but not in respect of a patient who has been admitted under section 2 for assessment. That exclusion is at the heart of this case." [Summary required.]

- **Upper Tribunal case.** [Bernard v SW London and St George's MH NHS Trust \(2013\) UKUT 58 \(AAC\), \(2013\) MHLO 26](#) — "This is an appeal against a decision of the First-tier Tribunal (FTT) of the Health, Education and Social Care (HESC) Chamber in the mental health jurisdiction. The appeal is brought on the ground of an alleged breach of natural justice. It is argued that certain comments of the FTT's psychiatrist member in the course of the hearing demonstrated bias. This is said to be on the basis either that the panel doctor had a preconceived and concluded view (actual bias) on a live issue in the appeal or that he had expressed himself in such a way as to give rise to a reasonable apprehension that he had (apparent bias)." [Summary required.]
- **Upper Tribunal case.** [MM v Nottinghamshire Healthcare NHS Trust \(2013\) UKUT 107 \(AAC\), \(2013\) MHLO 25](#) — "The issues arose from the skeleton argument of counsel for the hospital (not Mr Kovats). Unpacking her argument, it came to this: (i) Dr G had visited Mr M; (ii) he had been instructed to prepare an independent report; (iii) Mr M was not relying on that report; (iv) the tribunal should infer that the report was not favourable to Mr M; and (v) that Dr G had concurred with the clinical team's diagnosis and conclusions. Counsel also invited the tribunal to consider ordering disclosure of Dr G's report. ... Mr Pezzani argued that the panel should have recused themselves. ... because Mr M would not receive a fair hearing in view these factors: (a) the way in which the case had been presented to them, (b) the fact that Mr M and his legal team could not respond to the argument, (c) the manner in which the panel engaged with the argument in their decision and (d) their failure to rule out the argument as a matter of principle." [Summary required.]
- **Upper Tribunal case.** [MS v North East London Foundation Trust \(2013\) UKUT 92 \(AAC\), \(2013\) MHLO 24](#) — "Ms S applied for permission to appeal on two grounds: (i) the tribunal had applied the test appropriate to detention under section 2 rather than, as it should have, detention under section 3; and (ii) the tribunal had failed to explain, as it had said it would, why it did not make a recommendation." [Summary required.]
- **Upper Tribunal case.** [R \(S\) v Mental Health Tribunal \(2012\) MHLO 164 \(UT\)](#) — S unsuccessfully challenged by judicial review (a) the decision of the FTT setting aside its own decision that she be discharged and (b) her continued detention by the hospital. [Summary required.]
- **Upper Tribunal case.** [SSJ v MP \(2013\) UKUT 25 \(AAC\), \(2013\) MHLO 8](#) — "The Secretary of State had two grounds of appeal. One related to the tribunal's finding on diagnosis; the other related to the decision not impose any conditions. ... I can only decide that, despite the errors of law, the tribunal's decision should not be set aside. The result is that this decision provides in effect a declaration of the errors made in the tribunal's decision." [Summary required.]

## Criminal law

- **Sentence appeal case.** [R v Ahmed \(2012\) EWCA Crim 99, \(2012\) MHLO 178](#) — (1) *The appellant sought a [s37/41](#) restricted hospital order in place of an IPP sentence.* (2) *The Responsible Clinician argued for a [s45A](#) hybrid order, for reasons summarised by the court as follows: 'The appellant is an illegal immigrant. In order to be discharged from hospital he would have to undergo a period of controlled supervision. This would be in appropriate accommodation. Dr Swinton tells us that this is not an option open to an illegal immigrant like the appellant. Thus he cannot be discharged into the community because he cannot undertake the necessary conditioning which would satisfy the hospital that he was safe to be left in the community on his own. As a consequence he has to remain in hospital and he will take up a bed, apparently permanently. This is damaging to the wider public interest. If a section 45A order were made, then although the appellant would receive precisely the same treatment under a section 47 transfer as he currently does, a discharge can be effected by sending the appellant back to prison where the relevant supervision can be provided.'* (3) *The Court of Appeal admitted fresh evidence and, considering the appellant to be an ill man needing treatment rather than a criminal needing punishment, imposed a restricted hospital order.*
  - **Mental Health Cop Blog, 'Mentally Ill Migrant Criminals' (21/2/13).** See [R v Ahmed \(2012\) EWCA Crim 99, \(2012\) MHLO 178](#)
  - **Wesley Johnson, 'Hospital beds blocked by mentally ill migrant criminals' (20/2/13).** See [R v Ahmed \(2012\) EWCA Crim 99, \(2012\) MHLO 178](#)
- **Sentence appeal case.** [R v Caress \(2013\) EWCA Crim 218, \(2013\) MHLO 27](#) — "In the circumstances, there is no reason to believe that the diagnosis at the time of sentence was wrong or that sentence was passed on a wrong factual basis. If, as appears to be the case, the diagnosis has now changed that is a matter that should be dealt with by the Mental Health Tribunal, rather than by late appeal against sentence." [Summary required.]
- **Criminal appeal case.** [R v Coley \(2013\) EWCA Crim 223, \(2013\) MHLO 23](#) — "We have heard these three cases in succession because they have some features in common. Each raises a (different) question connected with the interplay between the law relating to voluntary intoxication and the law relating to insanity or (non-insane) automatism. Each calls, however, for consideration of its very particular facts. Neither individually nor collectively do they provide an occasion for any wide-ranging general statement of the law of insanity, still less of loss of capacity generally. We know that this area of the law is under active consideration by the Law Commission, which work will, we think, be of value. Although there have historically been very few cases which raise insanity, that has been because the statutory provisions governing the disposal orders which must be made if there is a verdict of insanity have historically inhibited attempts to rely on it. More recent changes in those disposal provisions may well lead to an increase in numbers. Any review must, critically, address both the law of loss of capacity and the means of disposal in such cases, so as to pay proper regard both to the interests of the individual defendant and to the public risk which he represents." [Summary required.]

- **Sentence appeal case.** [R v Smith \(Mark John\) \(2012\) EWCA Crim 2566, \(2012\) MHLO 170](#) — "This is a most unusual case. It is an appeal against a restraining order made by His Honour Judge McGregor-Johnson at Isleworth Crown Court on 8 May 2012 under s5A of the Protection from Harassment Act 1997. The order prohibited Mr Smith from travelling on any domestic or international commercial airline for a period of 3 years. The order was made at the end of a trial at which Mr Smith was acquitted, by reason of insanity, of offences of criminal damage and interfering with the performance of the crew of an aircraft in flight. The appeal raises questions about the scope of s5A of the 1997 Act." [Summary required; detailed external summary available.]
- **Criminal appeal.** [B v R \(2013\) EWCA Crim 3, \(2013\) MHLO 7](#) — "This appellant was convicted of counts of rape and common assault upon his partner and of a minor offence of criminal damage to her house. There was clear evidence that at the time of the offences he had been mentally ill, affected by paranoid schizophrenia and harbouring a number of delusional beliefs. His appeal certainly raises the question what if any impact his mental illness had on the issues before the jury. It is said more generally to raise the question whether, when considering the issue of a defendant's reasonable belief in the complainant's consent to sexual intercourse, account can or cannot be taken of the mental condition of the defendant." [Summary required; detailed external summary available.]
- **Criminal case.** [R v Nightingale \(2012\) EWCA Crim 2734, \(2012\) MHLO 167](#) — *The appellant, having pleaded guilty to possession of (a) a Glock 9mm pistol and (b) the following live ammunition: 122 x 9mm, 40 x 7.62mm, 50 x 9mm (frangible), 50 x .338 (armour piercing), 2 x .308, 74 x 5.56mm, had been sentenced to 18 months for the Glock and 6 months concurrently for the ammunition. On appeal against sentence, as 'these offences were committed in exceptional circumstances by an exemplary soldier', this was reduced to 12 months, suspended for 12 months.*

## Capacity

- **Best interests case (medical).** [Aintree University Hospitals NHS Foundation Trust v David James \(2013\) EWCA Civ 65, \(2013\) MHLO 17](#) — "On 6th December 2012 Mr Justice Peter Jackson ... declined to make the declarations sought by the appellant, the hospital treating DJ, that subject to the agreement of his clinical team, it would be lawful, being in his best interests, for the following treatment to be withheld in the event of a clinical deterioration: cardiopulmonary resuscitation; invasive support for circulatory problems; renal replacement therapy in the event of deterioration in renal function." The Court of Appeal allowed the Trust's appeal. [Summary required.]
  - **Solicitors Journal, 'Appeal judge redefines "futile treatment"' (8/3/13).** See [Aintree University Hospitals NHS Foundation Trust v David James \(2013\) EWCA Civ 65, \(2013\) MHLO 17](#)
- **Capacity case (best interests).** [A County Council v E \(2012\) EWHC 4161 \(COP\), \(2012\) MHLO 176](#) — "This case involves the personal welfare of two young women, E and K. E is 26 years old and K is 24. Both have a diagnosis of Fragile X syndrome and associated learning disabilities, as confirmed by a consultant psychiatrist in a

report of 7 August 2010. E is selectively mute. K also has a diagnosis of Attention Deficit Hyperactivity Disorder ('ADHD')." [Summary required.]

- **Capacity case (best interests).** [HT v CK \(2012\) EWHC 4160 \(COP\), \(2012\) MHLO 175](#) — "This decision deals with residence, contact and financial arrangements for CK ('C' or 'Ms K'). In particular, the court must decide whether it is in her best interests to remain where she is living and the appropriate contact arrangements" [Summary required.]
- **Capacity case (fact finding).** [PB v RB \(2012\) EWHC 4159 \(COP\), \(2012\) MHLO 174](#) — "This decision deals with a fact-finding hearing held on 10-12 September 2012. ... The local authority sought to prove 13 alleged facts ... " [Summary required.]
- **Capacity case (litigation capacity).** [Re RGS \(2012\) EWHC 4162 \(COP\), \(2012\) MHLO 173](#) — "RGS is the person concerned in these proceedings ('P'). The decision for the court is whether one of the parties, his son RBS, has litigation capacity. RBS insists he has, others are less sure." [Summary required.]
- **Statutory will case.** [NT v FS \(2013\) EWHC 684 \(COP\), \(2013\) MHLO 18](#) — "This is an application by NT ("the Deputy") for authority to execute a statutory will on behalf of FS ("F"). There is no dispute that F lacks the capacity to make such a will. There is equally no dispute that it is in his best interests that such a will be made. There are a large number of Respondents to the application each of whom are potential beneficiaries under such a will. There are, however significant disputes between them as to the provisions of such a will." [Summary required.]
- **Capacity case (litigation friend).** [WCC v AB \(2012\) MHLO 168 \(COP\)](#) — Whether AB's aunt should be appointed as litigation friend. [Summary required; detailed external summary available.]
- **Capacity case (ASBO).** [Pender v DPP \(2013\) MHLO 12 \(QBD\)](#) — *An ASBO was imposed with a 'no begging' condition. An appeal, based on uncontradicted medical evidence (that the appellant suffered learning difficulties, schizophrenia and severe nicotine addiction, and that begging was the manifestation of nicotine addiction), was unsuccessful. The Court of Appeal allowed an appeal by way of case stated, because the judge had failed to set out the factual basis for her factual conclusion (which was contrary to the medical evidence) that the appellant had been capable of complying with the ASBO.*
- **Capacity case (marriage).** [A Local Authority v AK \(2012\) EWHC B29 \(COP\), \(2012\) MHLO 166](#) — "This is an application by a Local Authority for the determination of an issue as to whether a severely brain damaged man ("AK") had the capacity to enter into a marriage in November 2010." [Summary required; detailed external summary available.]
- **Capacity case (sterilisation).** [A Local Authority v K \(2013\) EWHC 242 \(COP\), \(2013\) MHLO 11](#) — "K is the First Respondent to proceedings brought by A Local Authority (the authority responsible for K's social welfare) for a best interests' determination in relation to issues of contraception for, and sterilisation of, K. The application was issued in July 2012. By that application, A Local Authority sought

declarations in relation to sterilisation and contraception and (given the perceived immediate risk that Mr and Mrs K may wish to remove K abroad for the purposes of sterilisation) an injunction to restrain the removal of K from this jurisdiction for that purpose. The application was appropriately brought to this Court under the provisions of the Mental Capacity Act 2005; the application in my view engages important considerations under article 8 (right to respect for private and family life) and article 12 (right to found a family)." [Summary required; detailed external summary available.]

- **Testamentary capacity case.** [Turner v Phythian \(2013\) EWHC 499 \(Ch\), \(2013\) MHLO 10](#) — "Mrs Turner, with the support of several members of the Jolly family, asserts that the will is invalid on three grounds. The first ground is lack of proper execution. It is alleged that the will was not signed by Iris in the joint presence of the witnesses. ... The second ground is that Iris lacked mental capacity to make the will. ... The third ground is that Iris did not know or approve of the contents of the will. ... I find therefore that the contested will is invalid on two grounds; that Iris did not have mental capacity to make the will in August 2010 and that she did not know or approve the contents of the will." [Summary required.]
- **Capacity case.** [ZH v Commissioner of Police for the Metropolis \(2013\) EWCA Civ 69, \(2013\) MHLO 9](#) — *ZH, a severely autistic, epileptic 19-year-old man, became fixated with the water during a school visit to a swimming pool and would not move from the water's edge: the police were called; when an officer touched him on his back he jumped into the water, fully clothed; the police had him taken out of the pool and restrained him. The police unsuccessfully appealed against the judge's findings on liability (assault, battery and false imprisonment, DDA 1995, ECHR Articles 3, 5, and 8).* [Detailed external summary available.]
- **Capacity case.** [DO v LBH \(2012\) EWHC 4044 \(Admin\), \(2012\) MHLO 165](#) — "I have before me listed two applications for permission to bring judicial review proceedings and/or for directions against a local authority (LBH) and another interested party, ostensibly in the name of DO, by his sister (EC), the applicant as his Litigation Friend in one of the applications and by both as claimants in respect of the other. ... EC may not agree with the order being made in the Court of Protection proceedings but that does not justify, in my judgment, proceeding by way of judicial review rather than by application or appeal in the Court of Protection proceedings." [Summary required.]
- **Capacity case.** [A PCT v LDV \(2013\) EWHC 272 \(Fam\), \(2013\) MHLO 6](#) — "The two questions considered at the hearing, which form the subject of this judgment, are (1) Do L's current circumstances amount objectively to a deprivation of liberty? (2) When assessing whether L has capacity to consent to her accommodation at WH, in circumstances which amount to a deprivation of liberty, what information is relevant to that decision?" [Summary required; detailed external summary available.]
- **Capacity case.** [LB Waltham Forest v WD \(2010\) MHLO 195](#) — "The issues which I have to consider are four fold: first, WD's future accommodation and residence; secondly, his contact arrangements with other members of his family; thirdly, the application by the Local Authority for the appointment of a deputy under the Mental Capacity Act 2005; and fourthly, whether or not these proceedings should now come

to an end. Other matters of the care plan are fully agreed between the parties. As I have said, the plan put before me is comprehensive and this court is happy to endorse it." [Summary required.]

## Lasting Powers of Attorney

- **LPA case.** [Re Martin \(2013\) MHLO 21 \(LPA\)](#) — *The donor appointed two primary attorneys, A and B, to act jointly and severally, and three replacement attorneys, C, D and E. He included a valid provision to the effect that the D should replace B if B was unable to act, and then directed as follows: "In the event of my first attorney being unable to continue, E should act as Assistant to C (1st Replacement Attorney), and in the event of C being unable to continue, he should assume the power of Attorney." On the application of the Public Guardian this provision was severed because (applying Re Baldwin, above) the MCA does not permit a replacement attorney to be replaced, nor is it possible to direct an attorney or replacement attorney to act as assistant to another attorney or replacement attorney.* [OPG summary - LPA case.]
- **LPA case.** [Re Black \(2013\) MHLO 20 \(LPA\)](#) — *The donor, a solicitor, appointed A and B as attorneys, to act jointly and severally. She imposed the following restriction: "A has been appointed solely to manage ABC Solicitors to enable continuing management of the Practice. B has been appointed to deal with all other financial matters both personal and business related, which do not specifically require a Solicitor of the Supreme Court." On the application of the Public Guardian the restriction was severed because it was incompatible with a joint and several appointment.* [OPG summary - LPA case.]
- **LPA case.** [Re Hart \(2013\) MHLO 19 \(LPA\)](#) — *The donor made an LPA for property and financial affairs. He was also the sole attorney under an EPA made by his wife and registered. In his LPA he authorised his attorneys to have access to his will and medical records, and then continued as follows: "This also applies to acting as Attorneys for my wife, whose EPA has been registered." On the application of the Public Guardian this provision was severed because an LPA may not be used to add anything to someone else's EPA. (The donor appears to have wrongly assumed that his own attorneys could take over his role as attorney for his wife.)* [OPG summary - LPA case.]
- **LPA case.** [Re Buckley \(2013\) MHLO 13 \(LPA\)](#) — *"This is an application by the Public Guardian for the court to revoke a Lasting Power of Attorney ('LPA') and to direct him to cancel the registration of the LPA. ... Having regard to all the circumstances, therefore, I am satisfied that: (a) the attorney has contravened her authority and acted in a way that is not in Miss Buckley's best interests; (b) Miss Buckley is incapable of revoking the LPA herself; (c) the revocation of the LPA in order to facilitate the appointment of a deputy is both a necessary and proportionate response for the protection of Miss Buckley's right to have her financial affairs managed competently, honestly and for her benefit, and for the prevention of crime; and (d) it is in Miss Buckley's best interests that the court should revoke the LPA."* [Summary required; detailed external summary available.]

## European Court of Human Rights

- **ECHR case.** [Mihailovs v Latvia 35939/10 \(2013\) ECHR 65, \(2013\) MHLO 15](#) — "The applicant alleged, among other things, that he had been held against his will in a State social care institution for more than ten years, that he could not obtain release, and that he had been fully dependent on his wife, who had been his guardian, had not represented his interests, and had opposed all attempts by him to defend his rights." [Summary required; detailed external summary available.]
- **ECHR case.** [Lashin v Russia 33117/02 \(2013\) ECHR 63, \(2013\) MHLO 14](#) — "The applicant complained, in particular, about his status as a legally incapacitated person, his non-voluntary commitment to a psychiatric hospital and his inability to marry." [Summary required; detailed external summary available.]

## Miscellaneous

- **Miscellaneous case (AMHPs).** [DD v Durham County Council \(2013\) EWCA Civ 96, \(2013\) MHLO 31](#) — "DD appeals against the decision refusing leave and that part of the order relating to the payment of Middlesbrough City Council's costs. There is no appeal against the decision that Durham would be the body liable for any breach of duty or infringement of the Human Rights Act by the second AMHP. ... It was contended by Ms Lieven QC, on behalf of DD, that the two AMHPs owed a duty to DD; that by making the application for admission to the Hutton Unit, each was in breach of duty and that the County Council was responsible vicariously for that breach of duty. It was Ms Lieven QC's primary case that under the statutory scheme the AMHP had the legal responsibility not only for assessing whether the patient should be detained, but also for the suitability of the hospital at which the patient was to be detained and the regime under which he would be held. Although not precisely delineated, the responsibility gave rise to an obligation under the Human Rights Act 1998 to take reasonable steps to ensure that the patient's Article 3 and 8 rights were not infringed. This obligation did not extend to preventing some casual act committed by those at the hospital which might violate the Convention rights of DD. In the alternative, there was a duty of care to like effect to be derived from the scheme of the 1983 Act. ... It is clear, therefore, that the only point we could determine was whether the judge was correct in refusing leave. The threshold under s.139 is a low one: see *Winch v Jones* [1986] QB 296 and *Johnston v Chief Constable of Merseyside Police* [2009] EWHC 2969 (QB). I have no doubt that the argument advanced by Ms Lieven QC meets this threshold. ... I would, therefore allow this appeal on the application under s.139(2). ... In my judgment, DD should not have been made responsible for the costs of Middlesbrough City Council." [Summary required.]
- **Miscellaneous case.** [R \(Copson\) v Dorset Healthcare University NHS Foundation Trust \(2013\) EWHC 732 \(Admin\), \(2013\) MHLO 30](#) — "This is a claim by the claimant, Rosalind Copson, for an order quashing the decision of the defendant, Dorset Healthcare University NHS Foundation Trust, on 14 June 2012 to implement its Mental Health Urgent Care Services Project for the reconfiguration of mental health services in the west of Dorset. ... The claim is put on two grounds. First, it is said that the defendant failed, before reaching its decision, to carry out an adequate consultation with users of its mental health services, chiefly in that it failed to provide to those users sufficient information to enable them to engage meaningfully with the

proposals. Second, it is said that the defendant failed to comply with its duty under section 149 of the Equality Act 2010 to have due regard, in the exercise of its functions, to the need to advance equality of opportunity. ... The claimant is a user of mental health facilities in Bridport, Dorset. The facilities that she uses include the in-patient facility at the Hughes Unit in Bridport. The defendant's proposed reconfiguration of mental health services in the area will involve the loss of that facility. ... For the reasons given, this claim is dismissed." [Summary required.]

- **Community care/capacity case.** [R \(Chatting\) v Viridian Housing \(2012\) EWHC 3595 \(Admin\), \(2012\) MHLO 177](#) — "This litigation arises out of what may be loosely called the reorganisation by Viridian Housing, the charity which owns the premises, of the arrangements for the provision of care to residents of the building in which Miss Chatting lives. ... On behalf of Viridian Housing, Mr Christopher Baker urged upon me that the relief sought against his client – namely, declarations that in transferring responsibility for Miss Chatting's care to another organisation Viridian were in breach of a compromise agreement made in earlier litigation and had infringed article 8 of the European Convention on Human Rights – was academic and should not in any event be granted. On behalf of Miss Chatting Mr Stephen Cragg pursued claims for those declarations, as well as a declaration that Wandsworth Borough Council had acted unlawfully in its management of the transfer of Miss Chatting's care, in that it had failed to ensure that care was provided to her in a way that meets her assessed needs and takes into account her best interests. At the hearing Mr Cragg focussed his case against Wandsworth as being that it had failed to act in Miss Chatting's best interests as required by the Mental Capacity Act 2005. For the Borough Council, Ms Elisabeth Laing QC resisted Mr Cragg's claim and also sought a ruling on two further issues of interpretation of the compromise agreement." [Summary required; detailed external summary available.]
- **Miscellaneous case.** [R \(Zhang\) v Whittington Hospital \(2013\) EWHC 358 \(Admin\), \(2013\) MHLO 29](#) — "The claimant, Mrs Zhang, who very ably represented herself, was sectioned under the Mental Health Act shortly after giving birth to her first baby after a prolonged and very difficult labour. ... Miss Zhang says that looking at the reasons that were given at the time, which are recorded in a document signed by both doctors (Form A3, that is the formal sectioning document) the reasons that are there recorded are insufficient reasons to warrant her detention under the Mental Health Act." [Summary required.]
- **Immigration case.** [R \(Das\) v SSHD \(2013\) EWHC 682 \(Admin\), \(2013\) MHLO 28](#) — "The Claimant's submission in these proceedings is that at the time of the second period of detention she suffered from a mental illness, in the form of depression and post traumatic stress disorder ("PTSD"), and that in detaining her the Secretary of State acted contrary to, or without having proper regard to, his own policy regarding detention of persons suffering from mental illness. This means that her detention was unlawful, as being in breach of the Claimant's legitimate expectation that the Secretary of State would take into account and abide by his policy in this regard. ... The Claimant is entitled to a declaration that the entire second period of detention was unlawful. However, she is only entitled to nominal damages for false imprisonment in relation to that detention." [Summary required.]

- **Miscellaneous case.** [R \(Children's Rights Alliance for England\) v SSJ \(2013\) EWCA Civ 34, \(2013\) MHLO 16](#) — "This is an appeal, with permission granted by Maurice Kay LJ on 3 April 2012, against the judgment of Foskett J given in the Administrative Court on 11 January 2012 ([2012] EWHC Admin 8), by which he dismissed the appellant's application for judicial review seeking an order that the defendant Secretary of State provide or facilitate the provision of information to stated categories of children as to the illegal use of restraint techniques on them when they were detained in Secure Training Centres (STCs) in the United Kingdom." [Summary required; detailed external summary available.]
- **Miscellaneous case (disclosure).** [Durham County Council v Dunn \(2012\) EWCA Civ 1654, \(2012\) MHLO 169](#) — "On 17 December 2007, the claimant's solicitors wrote to the Council intimating a claim for damages in respect of assaults alleged to have been committed by staff at the Centre when he was there in the early 1980s. The letter included a request for the disclosure of certain documents. Some documents were disclosed in redacted form. On 25 March 2011, the claimant issued these proceedings. This appeal is concerned with the ambit of the Council's duty of disclosure. ... In particular, confusion can arise as to whether the duty of disclosure is primarily one that arises under the Data Protection Act 1998 (DPA) or one arising pursuant to the Civil Procedure Rules (CPR)." [Summary required; detailed external summary available.]

## Legislation

- **Legislation.** [Mental Health \(Discrimination\) Act 2013](#) — This Act: (1) repeals, from 28/4/13, [s141 MHA 1983](#) so that the seat of an MP is no longer vacated upon long-term detention under the Act; (2) amends, on a date to be appointed, 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) amends, from 28/4/13, 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'.
  - **Mind, 'A great victory against discrimination!' (March 2013).** See [Mental Health \(Discrimination\) Act 2013](#)
- **LPA legislation.** [Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian \(Amendment\) Regulations 2013/506](#) — These regulations amend [Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007](#). (1) Regulation 3 substitutes a period of 4 weeks for the existing 6 week period that must elapse between the date of the latest notice by which the Public Guardian notifies the donor or donees (as appropriate) of a lasting power of attorney that an application to register has been received, and the date on which the LPA is registered. (2) Regulations 4 and 5 substitute a 3 week period for a 5 week period during which a donee or donor of the power, or a named person, must give notice of objection to registration to the Public Guardian. (3) Regulation 6 substitutes a period of 3 weeks for the current 5 week period in which a person who wishes to make an application to the court objecting to registration must do so. (4) Regulation 8

introduces a new basis on which a security given by a deputy to the Public Guardian in respect of the discharge of his or her functions can be discharged. (5) Regulations 9-12 amend forms (Forms LPA 001, LPA 003A and LPA 003B will be available online from 1/4/13). (6) Regulation 13 makes transitional provision. In force 1/4/13

- **Legal Aid legislation.** [Civil Legal Aid \(Remuneration\) Regulations 2013/422](#) — Payment rates for legal fees and independent experts. No change to MH legal fees. Some changes to independent expert maximum hourly rates, including: (a) psychiatrist is £135 in any area (previously £90 in London); (b) psychologist is £117 in any area (previously £90 in London). The previous rates continue to apply to cases started after 3/10/11 but before 1/4/13. In force 1/4/13.

## Dept of Health

- **Consultation.** Dept of Health, 'Review of NHS complaints system' (press release, 15/3/13). The review will be encouraged to make recommendations about: (a) any aspect of the NHS complaints arrangements and other means by which patients make concerns known; (b) the way that organisations receive and act on concerns and complaints; (c) how Boards and managers carry out their functions; (d) the process by which individual organisations are held to account for the way that they handle concerns and complaints. Contact details are provided for anyone wishing to submit evidence. Review begins 15/3/13 and is due to report by 30/7/13. See [Consultations#Department of Health](#)
- **Rosa Silverman, 'NHS complaints system review launched' (Telegraph, 15/3/13).** See [Consultations#Department of Health](#)

## Legal Aid

- **Legal Aid.** Legal Aid Agency, 'Applications for emergency funding in judicial review cases: processes and procedures from 1 April 2013' (March 2013). See [Legal Aid](#)
- **Legal Aid.** New Legal Aid forms must be used from 1/4/13: see Civil forms preview on MOJ website. See [Legal Aid forms](#)

## Newsletters and articles

- **39 Essex Street, 'Court of Protection Newsletter' (issue 31, March 2013).** The cases mentioned in this issue are: [Aintree University Hospitals NHS Foundation Trust v David James \(2013\) EWCA Civ 65, \(2013\) MHLO 17](#) — [A Local Authority v K \(2013\) EWHC 242 \(COP\), \(2013\) MHLO 11](#) — [A PCT v LDV \(2013\) EWHC 272 \(Fam\), \(2013\) MHLO 6](#) — [ZH v Commissioner of Police for the Metropolis \(2013\) EWCA Civ 69, \(2013\) MHLO 9](#) — [A Local Authority v K \(2013\) EWHC 242 \(COP\), \(2013\) MHLO 11](#) — [R \(Children's Rights Alliance for England\) v SSJ \(2013\) EWCA Civ 34, \(2013\) MHLO 16](#). There is also information under the following headings: (a) Recent practice points from the Family Division; (b) Guidance upon Civil Legal Aid subsequent to 1/4/13; (c) DoH Fifth Annual Report on IMCA services; (d) Third Annual Report on the UK's National Preventative Mechanism; (e) Disabled persons

and sexual surrogates; (f) The CoP for litigants in person; (g) The CoP's work over the past four years. See [39 Essex Street COP Newsletter#March 2013](#)

- **Official Solicitor, 'Note on accepting instructions in health and welfare proceedings'** (25/2/13). See [39 Essex Street COP Newsletter#March 2013](#)
- **Richard English, 'Mental Health and the Criminal Law 2012 Review'** (January 2013). See [Miscellaneous external links](#)

## Website and CPD

- **MHLO books.** The Mental Health Law Online [Annual Review 2012](#) has been published in [paperback](#) and [Kindle](#) format, and is now available on Amazon. The Annual Review 2012 contains all news items, arranged thematically, which were added to the website during 2012. The [Annual Review 2011](#) is also now available in [paperback](#) and [Kindle](#) formats. See [Books](#)
- **CPD scheme.** The questionnaire for January 2013 has been uploaded. Obtain 12 accredited CPD points online for £60 by subscribing today. See [CPD scheme](#)
- **Donations.** Mental Health Law Online is free to use and maintained on a voluntary basis. If you or your organisation find this website useful, please consider making a donation to contribute to its upkeep. See [Donations](#)
- **Cases.** On 28/2/13 Mental Health Law Online contained [1352 categorised cases](#)
- **Chronology.** See [March 2013 chronology](#) for this month's changes to the website in date order