

Mental Health Law Online

Monthly Update, October 2012

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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/September_2012_update. It is a snapshot of the online page – the online page will be automatically updated when case and legislation pages are updated.

Cases

- **Capacity case.** [CYC v PC and NC \(2012\) MHLO 103 \(COP\)](#) — (1) PC lacked capacity to litigate and lacked capacity to decide whether to resume married life with NC (upon the expiry of a 13-year sentence for his sexual offences against previous wives). (2) The resumption of married life with NC was lawful as being in her best interests.
- **ECHR/capacity case.** [RP v UK 38245/08 \(2012\) ECHR 1796, \(2012\) MHLO 102](#) — The appointment of the Official Solicitor (who decided, against RP's wishes, not to oppose the making of a care order and a placement order) did not breach RP's [Article 6](#) or [Article 8](#) rights.
- **Capacity case.** [Re Clarke \(2012\) EWHC 2947 \(COP\), \(2012\) MHLO 109](#) — (1) Michael Clarke's application that the court postpone a decision on costs (and in the interim to make orders for disclosure and for the production of further accounts by the Deputy and the Office of the Public Guardian) was refused. (2) The costs of the

other family members and the deputy would be charged from Ann Clarke's estate. (3) In the light of the one-sided publicity that Michael Clarke gives to the affairs of the family, the three judgments were placed into the public domain.

- **Capacity case.** [Re Clarke \(2012\) EWHC 2714 \(COP\), \(2012\) MHLO 108](#) — *Michael Clarke objected to the deputy selling of his elderly mother's (Ann Clarke's) house to pay for future care as he considered it to be his. (1) No party asked for an oral hearing and the judge was satisfied that there was nothing to be gained by that. (2) There was a balance to be struck between the consequences of (a) retaining the property and leaving Ann Clarke on a low income, or (b) selling the property and maintaining a higher standard of living for Ann Clarke until the funds are exhausted, with her having no familiar home and, if she lived long enough, no money either. (3) Mrs Clarke's Blackpool property shall not be sold or charged during her lifetime without an order of this Court. (4) The deputyship was therefore discharged. (5) Publication of the judgments was authorised as, given Michael Clarke's comprehensive and long-standing breaches of his mother's entitlement to privacy, the court's reasons should be made known.*
- **Capacity case.** [Re Clarke \(2012\) EWHC 2256 \(COP\), \(2012\) MHLO 107](#) — *Following an accident, Ann Clarke suffered brain injuries and was awarded damages of £775,000. This money was used to pay for care and buy a home in Blackpool which was worth £200-250,000. The deputy proposed to sell the house to pay for care when the remainder of the money ran out, but Michael Clarke (son and carer) applied to court to prevent this. (1) Ann Clarke had the mental capacity to make a will (in particular, one leaving the house to the applicant and nothing to his siblings). (2) Whether or not Ann Clarke had mental capacity to manage her state pension and benefits it was lawful and in her best interests for these to be paid to her carer(s) to be applied for her benefit. (3) Ann Clarke did not have the mental capacity to decide whether or not her Blackpool property should be sold.*
- **Lifer appeal case.** [R v Petrolini \(2012\) EWCA Crim 2055, \(2012\) MHLO 105](#) — *The appellant had unsuccessfully argued diminished responsibility at trial, but subsequently it became apparent that he had indeed been in the prodromal stage of schizophrenia at the time of the offence. The Court of Appeal (1) granted an extension of time of 16 years and 16 months, (2) quashed the conviction for murder and substituted for it a verdict of manslaughter by reason of diminished responsibility, and (3) made a restricted hospital order in place of the 16-year-tariff life sentence. The hospital order was made for admission to Broadmoor, but the intention was that the patient would remain in Carstairs hospital in Scotland.*
- **Criminal case.** [C v R \(2012\) EWCA Crim 2034, \(2012\) MHLO 104](#) — *The appellant appealed against his convictions for sexual offences on the basis that there had been no sexual relationship with the complainant (his step-daughter) before she was 16 years of age, and that thereafter the sexual relationship had been consensual. There was a substantial body of evidence which showed apparent consent to sexual activity after the complainant was 16 years old. But once the jury were satisfied that sexual activity had occurred when the complainant was a child, and that it impacted on and reflected the appellant's dominance and control over the complainant, it was open to them to conclude that the evidence of apparent consent when the complainant was no longer a child was indeed apparent, not real, and that the appellant was well aware that in reality she was not consenting.*

- **Legal Aid case.** [R \(Hossacks\) v Legal Services Commission \(2012\) EWCA Civ 1203, \(2012\) MHLO 106](#) — *This appeal followed an unsuccessful judicial review of the LSC's rejection of the appellant's tender in relation to community care law in 2010. (1) The issues were set out by the court as follows: (a) Were any of the Appellant's applications acceptable without clarification or amendment? (b) Leaving aside the evidence of the Commission's communications with other applicants, should the Commission have sought clarification or suggested amendment of any of the applications, and if so should the Commission have accepted the resulting application(s)? (c) Do the Commission's communications with other applicants show that by rejecting the Appellant's applications, it acted in breach of its duty to treat all applicants equally? (2) The appeal had no real prospects of success and therefore permission was refused. (3) The LSC were awarded its costs: (a) the appellant's impecuniosity and the fact that her activity both as a solicitor and as a proposed foster parent may be or indeed are in the public interest does not justify depriving the Commission of the normal order; (b) the Appellant was clearly warned of the costs risks of pursuing her application for permission to appeal and her application for disclosure, which was liable to be very expensive indeed; and (c) the court directed a rolled up hearing for her benefit, so that her claim could be determined as soon as possible, as she sought.*

Newsletter

- **Mind Legal Newsletter.** Mind, 'Legal Newsletter' (Issue 12, October 2012). This newsletter contains: (1) Articles: (a) 358 days by Mark Neary; (b) Legal capacity and the UN Convention On The Rights Of Persons With Disabilities by Lucy Series. (2) Case reports: (a) GP v Derby City Council [2012] EWHC 1451 (Admin), [2012] MHLO 58; (b) X Primary Care Trust v XB [2012] EWHC 1390 (Fam), [2012] MHLO 54; (c) Munjaz v UK 2913/06 [2012] MHLO 79 (ECHR); (d) MS v UK 24527/08 [2012] ECHR 804, [2012] MHLO 46; (e) X v Finland [2012] ECHR 34806/04; (f) Discrimination case report. (3) Mental health and human rights update. (4) Legal Aid update. (5) News: (a) Care And Support Bill 2012; (b) Eligibility for IMHA support in Wales; (c) SOAD opinions for consenting patients on supervised CTOs; (d) Safeguarding vulnerable groups: changes to vetting and barring; (e) Mental Health (Discrimination) Bill; (f) Department Of Health Suicide Prevention Strategy; (g) Replacement of Equality and Human Rights Commission helplines. See [Mind \(Charity\)](#)

Articles

- **Jimmy Savile and Broadmoor.** (1) Soundcloud: clips from Jerry Sadowitz's 1987 Gobshite album and 2011 Leeds gig (it will be interesting to see which allegations make the news: '... a gangster, a villain, a murderer, a rapist, a ... paedophile, a necrophiliac, a gerontophiliac, into ... bestiality, hung round with his pals in Broadmoor ...'); (2) Esther Addley, 'Jimmy Savile's Broadmoor role came with a bedroom and keys' (Guardian, 12/10/12); (3) Esther Addley, 'Jimmy Savile police investigate Broadmoor rape claims' (Guardian, 15/10/12); (4) Esther Addley et al, 'Jimmy Savile: nurse's Broadmoor claim adds to 'cascade' of abuse allegations' (Guardian, 11/10/12); (5) Richard Alleyne, 'Sir Jimmy Savile organised all-girl "therapeutic" parties at Broadmoor' (Telegraph, 16/10/12); (6) Larisa Brown, 'Jimmy

Savile's older brother sacked from hospital after being accused of raping psychiatric patient' (Daily Mail, 14/10/12). See [High secure hospital](#)

- **MHA convictions.** BBC, 'Winterbourne View: Care workers jailed for abuse' (26/10/12). Eleven staff were jailed for offences under s127 Mental Health Act 1983. The article sets out the sentences as follows: (1) Wayne Rogers, 32, of Kingswood, jailed for two years after admitting nine charges of ill-treatment; (2) Alison Dove, 25, of Kingswood, was jailed for 20 months for seven counts of abuse; (3) Graham Doyle, 26, of Patchway, was jailed for 20 months for seven counts of abuse; (4) Nurse Sookalingum Appoo, 59, of Downend jailed for six months for wilfully neglecting patients; (5) Nurse Kelvin Fore, 33, from Middlesbrough, also jailed for six months for wilfully neglecting patients; (6) Holly Laura Draper, 24, of Mangotsfield, pleaded guilty to two charges of abuse and was jailed for 12 months; (7) Daniel Brake, 27, of Downend, pleaded guilty to two charges of abuse and was given a six month jail sentence suspended for two years and ordered to carry out 200 hours of unpaid work; (8) Charlotte Justine Cotterell, 22, from Yate, pleaded guilty to one charge of abuse and was given a four-month jail term suspended for two years. Cotterell was ordered to do 150 hours of unpaid work and complete 12 months supervision; (9) Michael Ezenagu, 29, from Shepherds Bush, west London, admitted two counts of abuse and was given a six month jail sentence suspended for two years and ordered to carry out 200 hours of unpaid work; (10) Neil Ferguson, 28, of Emerson Green, admitted one count of abuse and was given a six month jail term was suspended for two years and ordered to carry out 200 hours of unpaid work; (11) Jason Gardiner, 43, of Hartcliffe, who admitted two charges of abuse, was given a four month jail term was suspended for two years and ordered to carry out 200 hours of unpaid work. See [MHA 1983 s127](#)
- **MHA convictions.** Avon and Somerset Police, 'Freedom of Information: Investigations at Winterbourne View Care Home (Investigations/Operations): Question' (17/8/12). This page gives some details of the investigation and prosecution. See [MHA 1983 s127](#)
- **Lucy Series, 'Strategic litigation by the EHRC' (The Small Places Blog, 26/5/11).** This article sets out the EHRC's written submissions in the *RP v UK* case. See [RP v UK 38245/08 \(2012\) ECHR 1796, \(2012\) MHLO 102](#)

Statistics

- **Statistics.** NHSIC, 'Inpatients formally detained in hospitals under the Mental Health Act 1983, and patients subject to supervised community treatment, Annual figures, England, 2011/12' (24/10/12). Key facts: (1) On the 31st March, 22,267 people were subject to detention or CTO restrictions under The Act in NHS and independent sector hospitals. This represents a 6 per cent increase since the previous year and includes 17,503 people were detained in hospital and 4,764 people subject to a CTO. (2) There were a total of 48,631 detentions in NHS and independent hospitals during 2011/12. This number was 5 per cent (2,283) greater than during the 2010/11 reporting period. Total detentions in independent sector hospitals increased by 21 per cent; a large proportion of this increase was attributable to a 45 per cent increase in uses of Section 2. (3) There were 4,220 CTOs made during 2011/12, an increase of 386 (10 per cent) since 2010/11. The number of CTO recalls increased by 30 per cent and it is estimated that around 70 per cent ended in a revocation (an increase of

approximately 10 percentage points since last year). The rise in CTO recalls and revocations may be linked to the 6 per cent reduction (473) in uses of Part II Section 3 of The Act. (4) There were 15,240 uses of place of safety orders (Sections 135 and 136) in hospitals during 2011/12; this figure was 6 per cent (841) greater than during 2010/11. New experimental figures estimate that 8,667 orders were made in hospitals, accounting for at least 37 per cent of all place of safety orders. (5) This report also includes some new experimental analysis on The Act using data from the MHMDS quarterly data submission files as the data source. See [Statistics](#)

Legal Aid

- **Legal Aid update.** [Non-means-tested non-tribunal matters](#) — *If the reasoning given in a Costs Appeal Committee decision on a proposed Point of Principle on 17/10/12 were to be followed, it appears that means-testing would not apply to any matters where 'advice about the Tribunal and possible applications and timing of such' is provided to the client.*

Book

- **New book published.** Richard Jones, *Mental Health Act Manual* (15th edn, Sweet & Maxwell 2012). See [Books](#)

Website/CPD

- **The CPD questionnaire for September 2012 is now online.** Obtain 12 SRA-accredited CPD points online for £60. See [CPD scheme](#)
- **Discussion list.** Please subscribe to Mental Health Law Online's new discussion list. This is separate from the email updates list, which remains unchanged. The discussion list covers all aspects of mental health law in England and Wales, from the Mental Health Act 1983 and the Mental Health Tribunal, to the Mental Capacity Act 2005 and the Court of Protection. See [Discussion](#)
- **Cases.** On 31/10/12 Mental Health Law Online contained [1245 categorised cases](#)
- See [October 2012 chronology](#) for this month's changes to the website in date order