

# A clinician's brief guide to children's mental health law

Sarah Huline-Dickens

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Sarah Huline-Dickens  
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## Foreword

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Interdisciplinarity has long been recognised as a vital component of the family justice system and also, one hopes, of the criminal justice system. In the family justice system, though seemingly not in the criminal justice system, interdisciplinarity has come of age, with the increasing recognition of the need to rebalance the system through a much greater use of problem-solving courts. Psychiatrists and other professionals will no longer feature just as expert witnesses, helping the judge to establish what has happened and to craft some kind of solution; they will be key parts of an interdisciplinary team, including but not limited to the judge, seeking to understand, to address and to resolve the underlying problems.

There is, however, a difficulty. Any justice system of its very nature applies the law and operates in accordance with processes devised by lawyers and expressed in legalese. And, as our author tactfully reminds us with her very apposite reference to Dickens's Mr Kenge, lawyers are not always very good at explaining to non-lawyers what the law is or how the legal system operates. That is why we need practitioners' handbooks, whether for the use, for example, of social workers or, as here, for the use of psychiatrists, written by experienced practitioners in the relevant discipline who understand better than lawyers what their fellow practitioners need and how best to present it in a way which meets those needs.

That is why this excellent handbook, written by a distinguished and forensically experienced consultant in child and adolescent psychiatry, is so important and why it will, I am sure, be so valuable. Ultimately, the judges of Dr Sarah Huline-Dickens's success in writing this handbook will be her professional colleagues. As a mere lawyer, all I can say is that it deserves every success and that it will, I expect, be of very great assistance to those in her professional community who need a reliable and accessible guide to what may be unfamiliar when their work takes them into the forensic context. I wish it well.

James Munby  
President of the Family Division  
2 September 2016

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Sir James Munby

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Dr Andy Sant

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## List of cases

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If the year of publication is essential to identifying the case it is written in square brackets [ ]. If the date is ancillary it is in rounded brackets ( ).

- A Local Authority v A (a child) & Anor* [2010] EWHC 978.  
*AM v South London & Maudsley NHS Foundation Trust* [2013] UKUT 365 (AAC).  
*An NHS Trust v A* [2015] EWCOP 71.  
*Birmingham City Council v Riaz & Ors (Rev 2)* [2014] EWHC 4247 (Fam).  
*Bolam v Friern Hospital Management Committee* [1957] WLR 582.  
*Gillick v West Norfolk and Wisbech Area Health Authority* [1985] UKHL 7 (17 October 1985).  
*GJ v The Foundation Trust & Ors* [2009] EWHC 2972 (Fam).  
*Guzzardi v Italy* 7367/76 (1980) ECHR 5.  
*Herczegfalvy v Austria* (1992) 15 EHRR 43.  
*HL v UK* (2004) 40 EHRR 761.  
*John (M)* [2003] EWCA Crim 3452.  
*Montgomery (Appellant) v Lanarkshire Health Board (Respondent) (Scotland)* [2015] UKSC 11.  
*MS v UK* (2012) 55 EHRR 23.  
*Neilsen v Denmark* (1988) 11 EHRR 175.  
*P v Cheshire West & Chester Council and another and P and Q v Surrey County Council* [2014] AC 896.  
*R (on the application of Axon) v Secretary of State for Health* [2006] EWHC 37 (Admin).  
*R (on the application of B) v Stafford Combined Court* [2006] EWHC 1645 (admin).  
*R (on the application of H) v Mental Health Review Tribunal, North & East London Region & Anor* [2001] EWCA Civ 415.  
*R (on the application of N) v M & Ors* [2002] EWCA Civ 1789.  
*R (on the application of Stevens) v Plymouth City Council & Anor* [2002] EWCA Civ 388.

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 LIST OF CASES
 

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- R (ZN) v South west London & St George's Mental Health NHS Trust* (2009) CO/9457.
- R v Delaney* (1988) 88 Crim App Rep 33.
- R v Northampton Juvenile Court, ex p Hammersmith and Fulham LBC* [1985] FLR 192.
- Rabone & Anor v Pennine Care NHS Foundation* [2012] UKSC 2.
- Re A* [2010] EWHC 978 (Fam).
- Re AB* [2015] EWCOP 31.
- Re C (A Minor) (Wardship: Medical Treatment) (No. 2)* [1990] FAM 39.
- Re C (Detention: Medical Treatment)* [1997] 2 FLR 180.
- Re C (refusal of treatment)* [1994] 1 FLR 31.
- Re D (A Child: Deprivation of liberty)* [2015] EWHC 922 (Fam).
- Re E (a minor) (medical treatment)* [1991] 7 BMLR: 117–119.
- Re K (Secure accommodation order: right to liberty)* [2001] 2 WLR 1141.
- Re MB (Medical treatment)* [1997] 2 FLR 426.
- Re R (A Minor) (Wardship: Medical Treatment)* [1991] 3 WLR 592.
- Re Roddy (a child) (identification: restriction on publication) Torbay Borough Council v News Group Newspapers* [2004] All ER (D) 150 (Feb).
- Re W (a minor) (medical treatment)* [1992] 4 All ER 627.
- Re X (Emergency Protection Orders)* [2006] EWHC 510 (Fam).
- Re X & Ors (Deprivation of Liberty)* [2014] EWCOP 25.
- RK (by her litigation friend, the Official Solicitor) v BCC & Ors* [2011] EWCA Civ 1305.
- Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL 74.
- Savage v South Essex Partnership NHS Foundation Trust* [2010] EWHC 865 (QB).
- Surrey County Council v P, Cheshire West and Chester Council v P* [2014] UKSC 19 [2014] AC 896.
- T v United Kingdom (Application 24724/94)* [2000] 2 All ER 1024, [2000] Crim LR 187.
- Winterwerp v The Netherlands* (1979) 2 EHRR 387.
- X Council v B (Emergency Protection Orders)* [2004] EWHC 2015 (Fam); [2005] 1 FLR 341.

## Common abbreviations and terms

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AC	Approved clinician
AMHP	Approved mental health professional
BMA	British Medical Association
CAMHS	Child and adolescent mental health services
CAO	Child arrangements order
COP	Court of Protection
CPS	Crown Prosecution Service
CQC	Care Quality Commission
CTO	Community treatment order
DoH	Department of Health
DoLS	Deprivation of Liberty Safeguards
EHCP	Education, health and care plan
ECHR	European Convention on Human Rights
ECT	Electroconvulsive therapy
ECtHR	European Court of Human Rights
GMC	General Medical Council
HRA	Human Rights Act
HSCIC	Health and Social Care Information Centre
LAPSO	Legal Aid Sentencing and Punishment of Offenders Act
MCA	Mental Capacity Act
MHA	Mental Health Act
MHAC	Mental Health Act Commission
MHMDS	Mental health minimum dataset
MHT	Mental health tribunal

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COMMON ABBREVIATIONS AND TERMS

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NR	Nearest relative
PACE	Police and Criminal Evidence Act
RC	Responsible clinician
RMO	Registered medical officer
SOAD	Second opinion appointed doctor
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations International Children's Emergency Fund
YOT	Youth offending team

***Law reports***

AC	Appeal cases
All ER	All England reports
BMLR	Butterworths Medical Law Reports
Crim App Rep	Criminal Appeal Reports
ECHR	European Court of Human Rights
EHRR	European Human Rights Reports
EWCA	England and Wales Court of Appeal
EWCP	England and Wales Court of Protection
EWHC	England and Wales High Court
FLR	Family Law Reports
MHLO	Mental Health Law Online
UKSC	United Kingdom Supreme Court
WLR	Weekly Law Reports