

# Foreword

The gestation period of this issue of the Journal has been the longest in its 12 year history, and for that, as Editor, obviously I must – and do – take responsibility and apologise.

Regular readers will be all too aware that regrettably in recent years, I have struggled to maintain the twice yearly publication to which we have been committed. There have been a number of reasons for this, not least an insufficient quantity of publishable material. It being a refereed journal, I have been determined to maintain the Journal's high standards, even though too frequently that has meant a delay in publication. In May 2010 I was delighted to co-edit with Professor Genevra Richardson what we called a Special Issue, entitled 'A model law fusing incapacity and mental health legislation – is it viable?; is it advisable?'. No issue has been published since then. This is clearly unacceptable, and, as subscribers know, both I and Northumbria Law Press, the publishers, have therefore decided to call it a day. Sadly this is the last issue of the JMHL in its present format. Since the announcement of the Journal's demise, a number of individuals have expressed the hope that a similar publication will emerge in due course. Members of the Editorial Board and I share that wish, and we are committed to doing what we can to seeing it come to fruition.

But what of this issue? The Contents page speaks for itself. As usual, the contributions cover a wide range of issues of interest and relevance to all those with an interest in, and knowledge of, mental health law and mental capacity law. We start off by subjecting to scrutiny certain features of practice and procedure within the *First-tier Tribunal (Mental Health)*. This is followed by an interesting exploration of *indefinite and preventive detention* permitted by both mental health law and criminal law. *Community Treatment Orders* and the *Nearest Relative* then come in for further and illuminating reflections, as does the concept of *objection* under the recently-introduced complex *Deprivation of Liberty Safeguards* regime. An overdue consideration of the significant *Convention on the Rights of Persons with Disabilities*, followed by a comprehensive analysis of case-law of relevance to a re-visiting of *section 117 Mental Health Act 1983*, are the subjects of our final two substantive articles.

Interesting and important judicial pronouncements have emerged from various quarters since the Winter 2009 issue, the last published issue of the JMHL in its 'normal' format. The Court of Protection and the Upper Tribunal (Administrative Appeals Chamber) have been particularly busy. The JMHL has never attempted to provide a comprehensive round-up of all relevant case-law, however much many readers would no doubt have welcomed that. Other publications and websites do provide such a service. What we have done is subject certain decisions to expert detailed analysis. On this occasion we are pleased to publish thoughtful accounts and considerations of two cases – one from the European Court of Human Rights and the other from the Irish High Court.

The Winter 2009 issue concluded with a summary of 'Some Recent Publications'. I ended that article about various books published in the preceding two years, with the comment that those of us interested in mental health/capacity law are "very fortunate" to be able to access so many sources of information, advice and opinion. Our good fortune continues. In the last year, not only have new editions of Richard Jones's two invaluable Manuals – '*Mental Health Manual*'<sup>1</sup> and '*Mental Capacity Manual*'<sup>2</sup> – been published, but also the following:<sup>3</sup>

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1 13th ed. Sweet & Maxwell (2010)

2 4th ed. Sweet & Maxwell (2010)

3 It is perhaps unwise to attempt such a list as omission of a relevant publication might so easily cause offence. It needs to be stressed that any such omission is inadvertent, and that no conclusions should be drawn from any failure to list any particular publication.

- The long-awaited 5th edition of *'Mental Health Law'*, by Brenda Hale<sup>4</sup>;
- *'Principles of Mental Health Law and Policy'*, a weighty tome of 1000 pages, edited by Lawrence Gostin, Peter Bartlett, Phil Fennell, Jean McHale and Ronnie Mackay<sup>5</sup>;
- *'Rethinking Rights-based Mental Health Laws'*, edited by Australia-based Bernadette McSherry and Penelope Weller<sup>6</sup>;
- *'Essential Mental Health Law – a Guide to the new Mental Health Act'*, by Tony Maden and Tim Spencer-Lane<sup>7</sup>;
- *'Mental Health – Law and Practice'*, by Phil Fennell<sup>8</sup>;
- *'Mental Health and Crime'*, by Jill Peay<sup>9</sup>;
- *'Liberty and Other Misunderstandings – Some more notes on health care law'*, by David Hewitt<sup>10</sup>;
- *'The Court of Protection Practice 2011'*, under the general editorship of Gordon Ashton<sup>11</sup>.

It had been intended that reviews of at least some of these books would be included in this issue. However for various reasons this has not in fact proved to be possible, and for that a further apology is due. What we *have* included is a review of the *Care Quality Commission's* first report on the exercise of its functions in keeping under review the operation of the *Mental Health Act 1983*. Given the vital role the CQC has in relation to the application of mental health law in England, it is fitting that this final issue of the JMHL concludes with this review, written by a former (and the first) Chief Executive of its predecessor, the *Mental Health Act Commission*.

It only remains for me to thank not only the contributors to this issue (not least for their patience as they have awaited publication of their efforts), but also all those many others who have been willing to share their knowledge and expertise within the covers of the twenty one issues which have been published since February 1999. The Editorial Board have played a critical role in maintaining the JMHL's standards, and a considerable debt of gratitude is owed to them, particularly to (a) Charlotte Emmett who had the vision and the energy to launch the JMHL and to guide it so skilfully as editor for the first half of its life, and (b) the two Assistant Editors of recent years, David Hewitt and Mat Kinton. The conscientious commitment of Ann Conway of Northumbria Law Press, and others involved in the production of each issue, must also be expressly acknowledged.

It is of course with considerable sadness that I observe that this Foreword must also act as the Endnote of the JMHL, at least in its present format. The final expression of gratitude must go of course to the many readers and subscribers who throughout the life of the JMHL have shown considerable appreciation, encouragement and forbearance. Without that essential support, the JMHL would not have reached the not unimpressive figure of 21 issues. Many thanks indeed.

## John Horne

Editor

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4 5th ed. Sweet & Maxwell (2010)

5 Oxford University Press (2010)

6 Hart Publishing (2010)

7 Hammersmith Press Limited (2010)

8 2<sup>nd</sup> ed. Jordans (2011)

9 Routledge (2010)

10 Northumbria Law Press (2011)

11 Jordans (2011)