

How to read a Court of Protection judgment

Alex Ruck Keene KC (Hon)

Barrister, 39 Essex Chambers

Visiting Lecturer King's College London

Visiting Senior Lecturer, Institute of Psychiatry, Psychology and Neuroscience, King's College London

Research Affiliate, Essex Autonomy Project, University of Essex

alex.ruckkeene@39essex.com

@capacitylaw

What the judges are doing

The cases which arise for decision under Part 1 of the MCA (including the present case) tend to be acutely difficult, not admitting of any obviously right answer. **The task of the court is to apply the statutory provisions, paying close heed to the language of the statute.** Nevertheless, as judges tread their way through this treacherous terrain, it is helpful to look sideways and see how the courts have applied those statutory provisions to other factual scenarios. This has nothing to do with either the doctrine of precedent or the principles of statutory interpretation. **The purpose is simply to see how other judicial decisions have exposed the issues or attempted to reconcile the irreconcilable.**

RB v Brighton & Hove City Council [2014] EWCA Civ 561

What you are doing

- Asking whether, and how, the Mental Capacity Applies
- Thinking about s.5 Mental Capacity Act – “*pervaded by the concepts of reasonableness, practicability and appropriateness*”
Commissioner of Police for the Metropolis v ZH [2013] EWCA Civ 69
- Engaging with attorney or deputy
- Thinking about advance decisions to refuse treatment
- Applying the provisions of DoLS
- Thinking about whether to go to court

Reading a judgment

- Always ask yourself whether the case is:

(1) Telling you what the Act means or requires?

Or

(2) Applying the words of an Act to the facts of a specific case?

- The key: don't get lured into abandoning your own judgement by following a judgment on the facts

A case study

- *A Mental Health Trust v BG* [2022] EWCOP 26
- A very difficult dilemma about continued feeding under restraint for a 19 year old with anorexia
- What wider implications does it have?

More resources

- [39 Essex Chambers | Mental Capacity Law | 39 Essex Chambers | Barristers' Chambers](#)
- [Mental Health & Justice | \(mhj.org.uk\)](#)
- [Mental Capacity Law and Policy](#)
- [MCA Directory | SCIE](#)
- [Mental Health Law Online](#)
- [Open Justice Court of Protection](#)
- [Judging Values Project](#)

