RadcliffesLeBrasseur

Mental Health Law Briefing

Solicitors

Number 105

Challenging treatment under the Mental Health Act

Since the Human Rights Act has been in force there have been several challenges in the Courts by patients complaining that the Mental Health Act did not properly protect their Human Rights.

In the latest case[1] a patient challenged a decision to provide treatment within the provisions of Section 58(3).

The Facts

The patient was detained under Section 37/41 having initially been classified as suffering from a psychopathic disorder. His RMO came to the view that he was also suffering from mental illness (a delusional disorder) and that medication would alleviate this. As the patient did not consent and the RMO was not satisfied that he was capable of consent, the RMO obtained Certificates from two SOADs authorising the treatment pursuant to Section 58(3) (b). Treatment by way of intra-muscular depot injections was commenced.

The patient sought Judicial Review challenging the lawfulness of the treatment and also applied to the MHRT for discharge. The RMO applied to the MHRT at the same time to re-classify the patient as suffering from mental illness as well as psychopathic disorder.

The MHRT rejected both applications, taking the view that it was not satisfied that the patient suffered from a mental illness. However it took the view that he did suffer from a psychopathic disorder and that continued detention for treatment was necessary and appropriate.

The Court Proceedings

The issue for the Court was whether the Court (complying with Article 6 of the Human Rights Act) could only uphold forcible treatment of a detained patient where it was satisfied both as to the precise mental disorder and that the treatment was medically necessary for that disorder. In particular it was contended that the Court had to be satisfied regarding each of the matters relevant to the test of medical necessity [2] and that the decision of the MHRT should be taken into account as far as this was concerned, the question also arose as to how the Court should review issues of this sort, given the previous decision of the Court confirming that it would look into such challenges in some detail [3].

Court Decision

The Court held that the decision of the European Court of Human Rights in Herczegsalvy did not require a multiple stage approach to the treatment for mental disorder. The Court simply had to consider a single question of medical or therapeutic necessity if and when forcible treatment was challenged.

[1] R (on the application of B) v Haddock and Others [2006] EWCA Civ 961

[2] As enunciated in the case of Herczesalvy v Austria (1992) 15 EHRR 437

[3] See R (on the application of Wilkinson) v RMO Broadmoor Hospital [2001] All ER (D)294

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As far as the MHR was concerned, the jurisdiction of the Tribunal related to detention for treatment, not with issues of diagnosis going to the propriety of treatment under Section 58 (3). Nor was it necessary for treatment under Section 58 to classify the precise mental disorder in respect of which treatment was proposed[4]. However, where it was alleged that proposed treatment infringed the patient's Human Rights, the Court had to conduct a "full merits review" as to the proposed treatment. This could include (as in this case) a consideration of the evidence on paper or, in some cases, the attendance of witnesses at Court to give evidence and to be cross examined.

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September 2006

[4] Applying therefore the decision in R(on the application of B) v Ashworth Hospital Authorities [2005] 2All ER 289 which confirmed that Section 63 applied to treatment for any mental disorder not simply the patients *classified* mental disorder

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