

Mental Health Law Briefing

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Hospital managers: can they order “conditional discharge”?

The Code of Practice provides guidance on the exercise of Hospital Managers’ powers but there is no express guidance as to whether the Managers have the power to make an order for deferred discharge or “conditional” discharge (in the sense of discharge subject to a condition being met).

The Mental Health Act Commission in their tenth biennial report makes it plain that Hospital Managers exercise options similar to an MHRT and therefore either make unenforceable recommendations or may order:

1. Adjournment
2. Discharge subject to the achievement of a condition (e.g. obtaining hostel accommodation) (i.e. a conditional discharge)
3. Discharge on a future specified date (within the detention period) to permit discharge arrangements to be made.

However, some commentators (including Jones) have suggested that the Managers may not make an order for discharge subject to the achievement of a condition.

The latest edition of Jones’ Mental Health Act Manual (tenth edition) suggests that Hospital Managers do not have power to order conditional discharge. Reference in support of this proposition is made to the dicta of Jackson

J in *R (SR) v. Huntercombe Maidenhead Hospital*¹ and in particular his comment that:

“The Claimant’s discharge was not made conditional upon the preparation of an aftercare package. Indeed the Managers would have had no power to make such a conditional order”.

While at first glance this seems to support a suggestion that Hospital Managers may not make an order for conditional discharge, it misunderstands the context in which Mr Justice Jackson made those comments.²

In the *SR* case the Hospital Managers had met to review the patient’s detention following receipt of a barring order under S.25 from her RMO issued as a result of the application by her nearest relative to discharge her from detention. The Managers had considered the dangerousness test set out in section 25 and as explained in the *Huzzey* case,³ and concluded that the evidence before them did not support this. They therefore ordered discharge.

This discharge decision was challenged, inter alia, on the basis that “the Managers failed properly to particularise the details of the aftercare package upon which the

¹ [2005] EWHC 2361

² RadcliffesLeBrasseur acted for the Hospital Managers

³ *R(Huzzey) v Riverside Mental Health NHS Trust* [1998] 43 BLMR 167. RadcliffesLeBrasseur acted for the Trust.

Claimant's discharge was conditional" (sic). Although the challenge to the Managers' decision to discharge was successful on alternative grounds, Jackson J was able to give this particular ground short shrift: the Managers had no power to particularise the aftercare. They could therefore not have made an order for conditional discharge in the sense of an Order which was conditional on an aftercare package specified by the Managers being put in place. Aftercare is the responsibility of the local authority and PCT pursuant to Section 117. The Managers have no jurisdiction to specify this and it therefore follows that they have no power to make an order requiring a particular aftercare package.

However, this dicta does not prohibit conditional discharge Orders which are subject to a condition precedent.

The challenge in SR was not directed at the legality of a conditional order being made per se nor was there any argument as to whether, in general, Hospital Managers can make orders for discharge which are conditional upon some condition precedent being met. The dicta simply

addressed the specified ground of challenge. It would be taking the Judge's comments out of context to suggest that they are general authority for the proposition that conditional discharge (in the sense of a condition precedent) may never be ordered by Hospital Managers. The comment is, furthermore, obiter dicta, as no such order had in fact been made by the managers.

There is in principle no reason why discharge should not be ordered subject to a condition precedent. A patient may well have improved so as to justify discharge if particular support is available. On the other hand, without that support (perhaps particular hostel accommodation) the patient's condition may require continued detention.

Both as a matter of principle and a matter of law, there is no reason why Hospital Managers should not order discharge subject to the satisfaction of some condition precedent. That said, in many cases it would be better practice for the Managers to adjourn to a specified date to see if the matters that would otherwise form the basis of any condition precedent had been dealt with.

Andrew Parsons
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