RadcliffesLeBrasseur

Mental Health Law Briefing

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Recall from Conditional Discharge

Section 42 (3) of the Mental Health Act 1983 provides that

'The Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged.....by warrant recall the patient to such hospital as may be specified in the warrant.'

Thus the Secretary of State for the Home Department is empowered to recall conditionally discharged patients back to a specified hospital. The question that arises is the basis upon which this power is to be exercised i.e. what is the legal basis and what are the criteria that apply to the power of recall? The Administrative Court has made a recent ruling concerning this power specifically considering the appropriate grounds for such a recall.[1]

In essence the case considered whether a conditionally discharged patient can be recalled to hospital without necessarily at the time meeting the statutory criteria for detention, on the basis that the recall was in order to protect the patient or others. Where there is medical evidence to show that a particular course of action taken by a patient is likely to lead to a deterioration in their mental state and thus put themselves and others at risk, can the Secretary of State lawfully recall when the course of action taken is a breach of a patient's discharge conditions?

The facts

The MM case concerned a paranoid schizophrenic who had been convicted of unlawful wounding and was detained in hospital with Section 41 restrictions. The patient had, on a number of occasions, been discharged by Mental Health Review Tribunals who had imposed conditions on his discharge. The conditions concerned, amongst others, the patient's use of illicit drugs and, on two of the occasions where the patient was conditionally discharged, the Secretary of State used his powers under Section 42 of the 1983 Act to recall the patient. The basis for the recall was that the Secretary of State considered that the patient's mental state was likely to deteriorate in the near future unless the patient was recalled and that such a deterioration put the patient and others at risk. It was the Secretary of State's contention that he was entitled to recall, having obtained supportive evidence, on the basis that should the patient continue to use illicit drugs, there was an imminent and inevitable danger that the patient's mental state would deteriorate posing a danger both to himself and others.

The patient sought judicial review of the Secretary of State's decision arguing that the Secretary of State had misapplied the relevant test when recalling him and that there was insufficient evidence to justify recall.

[1] R (on the application of MM) –v- Secretary of State for the Home Department and Another [2006] All ER (D) 332 (Nov).

info@rlb-law.com
www.rlb-law.com

5 Great College Street
Westminster
London SW1P 3SJ
Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU
Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA
Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

The law

The Court dismissed the patient's application and held that *"If, on the basis of medical evidence and any other material that the Secretary of State had, he reached the opinion that a patient's mental deterioration was likely to take place in the near future unless that patient was recalled, and such deterioration put the health and safety of himself and others at risk, he was entitled to order the patient's recall".*

However, we understand that the patient is seeking to appeal this decision.

At the current time, the decision in the case of *MM* effectively allows the Secretary of State to recall a patient to hospital without the patient meeting the appropriate requirements for detention under the Mental Health Act.

There merely needs to be evidence that should a particular activity be engaged in by the patient (eg. the use of illicit drugs), which was likely to cause a deterioration in the patient's mental state in the near future, this is sufficient for a recall.

As with other recent mental health cases, public safety has triumphed over patient liberty, although we will, obviously, have to await the outcome of the appeal to see whether this decision stands.

Oliver Donald

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For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email andrew.parsons@rlb-law.com.