

Mental Health Law Briefing

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Discharge conditional upon taking medication

Previous briefings have addressed the issue of conditional discharge by hospital managers. What is, however, not in doubt is that the Mental Health Review Tribunal may order conditional discharge under Section 73 of the Act.

In a recent case¹ the Tribunal imposed a condition that the Claimant shall comply with medication as prescribed by a specified doctor. The patient subsequently applied for absolute discharge which was refused. He then sought judicial review.

The patient asserted that he wished to continue to take the prescribed medication however he sought to have the condition requiring him to take it quashed so that he could show that he was willing to take the medication without any such requirement. He alleged that the condition interfered with his right to choose in relation to medication which was a breach of Article 8 of the Human Rights Act.

The Court rejected the claim. The Court held that the condition was intended to be read as including the issue of consent. It was still up to the patient whether to consent or not but in doing so he would take account of the imperative of the condition as well as the medical advice he had received. To the extent that the patient was under pressure, this arose as a result of the continuing nature of his conditional discharge rather than the condition itself.

The Court held that the Tribunal should not impose such a condition requiring medication to be taken unless it had a proper basis to expect that the patient did and would consent to the particular treatment. Any capacitous adult had the absolute right to choose whether to accept medical treatment or not.

The provisions contained within Section 73 of the Act provide no sanction for failure to comply with a particular provision other than the ability to recall a patient in appropriate cases. The fact that a patient had not complied with a condition would not, of itself, be sufficient.

In this particular case, given in particular the fact that the patient had made it clear that he wished to continue to take the medication, there was no unlawful interference with his rights under Article 8. The Court did however add that it would be preferable for tribunals, when imposing conditions of this sort, to add words such as “*subject always to his right to give or withhold consent to treatment on any occasion*”.

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¹ R (on the application of H) –v- MHRT [2007] All ER (D) 29 (Apr)