

Number 14

Who are the Responsible After-care Bodies?

The need to ensure that discharged patients who were previously formally detained have follow-up and the necessary aftercare in the community led to the enactment of s. 117 of the Mental Health Act. The obligations on the Responsible Aftercare Bodies (i.e. the Health Authority and the local Social Services Authority) are well known. However, it is clearly important to identify precisely who are the relevant Responsible Aftercare Bodies for any given patient as this may not always readily be apparent, particularly in the context of transferred patients or reorganised authorities.

The Court has recently had to consider¹ who constitutes the relevant Responsible Aftercare Bodies.

The Facts

The patient had been found not guilty of manslaughter by reason of insanity. The court made an order under s.5(1) of the Criminal Procedure (Insanity) Act 1984 to detain him in a hospital. Accordingly he was a restricted patient detained without limit of time under ss 37 and 41 of the Mental Health Act 1983. His case was considered by a Mental Health Review Tribunal on 4 February 1997. The Tribunal decided that he was still suffering from mental illness but that neither his health nor the safety or protection of others required that he be detained in hospital for treatment. Conditions for his discharge included a residence requirement.

The patient's solicitors wrote to the Torfaen County Borough Council, holding them responsible under s. 117 of the 1983 Act and stated that only the lack of appropriate accommodation was preventing his discharge. Torfaen explained that because of the nature of the original offence it was not possible for him to return Torfaen. Accordingly Monmouth had accepted s 117 responsibility, as he would be resident in their borough. However, Monmouth regarded Torfaen as the responsible borough and were not prepared to offer accommodation because they were concerned about the proximity of the victim's relatives' place of residence.

On 6 March 1998 the hospital wrote asserting that responsibility for the applicant's aftercare rested with Torfaen and the Health Authority, who should liaise with each other and Monmouth to resolve the issue of where the patient should live and who should pay for that accommodation.

A fresh application was made to a Mental Health Review Tribunal. This time the Tribunal decided that the patient was not suffering from mental illness that required him to be detained, but that he ought to remain liable to recall to hospital for further treatment. A residence condition was imposed requiring him to live a considerable distance from the index offence, preferably outside South Wales.

Torfaen's attitude was that they were not the relevant social services authority for the purposes of s.117 of the 1983 Act because, pursuant to the condition imposed by the Tribunal, the patient would be residing outside their area. The Health Authority's position was that once the availability of accommodation had been established, a formal request would be made to the relevant health authority for that area for provision of psychiatric supervision for which they would pay.

¹ R v Mental Health Tribunal & Others 23 April 1999 Butterworths All ER Reporter

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The patient applied for judicial review.

The Court's Decision

Judicial review was granted. The court held:-

- (1) For the purposes of s 117 the relevant health and social services authorities were those for the area in which the patient was resident **at the time he was detained.**
- (2) In order to discharge their functions properly under s 117 the relevant health and social services authorities had to carry out a multi-disciplinary assessment and provide a care plan for the Mental Health Review Tribunal considering the patient's case. What the Tribunal needed to know was where arrangements could be made for the patient to live and how and by whom any psychiatric supervision might be provided. In this case that had not been done and therefore Torfaen and the Health Authority had acted unlawfully.
- (3) A Mental Health Review Tribunal, before imposing conditions under s 73(4)(b) of the 1983 Act or directing arrangements to be made under s 73(7) should satisfy itself that the conditions were appropriate and reasonably capable of implementation within a reasonable period of time. Further, rather than impose unsatisfactory conditions, the Tribunal should adjourn under reg 16 of the Mental Health Review Tribunal Rules 1983, to obtain up to date information by way of a care plan from the relevant authorities, in order to produce practical arrangements for resettlement in the community with appropriate supervision. In this case the Tribunal could not have been satisfied that the conditions were capable of implementation and therefore the Tribunal too had acted unlawfully.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.