

Number 15

## The Treatability Test

MENTAL HEALTH LAW

There has been much debate about the application of the Mental Health Act to patients suffering a psychopathic disorder in the context of whether this is treatable. In a recent Scottish case, Reid –v- Secretary of State for Scotland, the House of Lords held that as a matter of law, the Sheriff in Scotland, (or impliedly the Mental Health Review Tribunal in England), are under a duty to discharge a psychopathically disordered patient if they are satisfied that the patient was not “treatable”. In so doing, a previous judgment of the Court of Appeal in the case of Rv Canons Park MHRT ex parte A[1995] has been overruled.

The case concerned a patient who had been convicted of culpable homicide, at the age of 17. He had been ordered to be detained in a state Hospital for treatment under conditions of special security. He had unsuccessfully applied to be discharged from Hospital. He had been diagnosed as suffering from a psychopathic disorder, although the diagnosis was that he was not mentally handicapped or suffering from mental deficiency. The Sheriff’s decision not to discharge was challenged by the patient in judicial review proceedings.

The question that arose concerned whether the same criteria which applied to the admission and detention for treatment of a patient suffering from a psychopathic disorder were subject to consideration by the Sheriff when considering an application for discharge of a patient. The legislation required the Sheriff to direct the absolute discharge of the patient if (i) the patient was not suffering from mental disorder of a nature or degree which made it appropriate for him to be liable to be detained in a Hospital for medical treatment, or (ii) it was not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment. The Sheriff in this case had taken the view that there was nothing in the legislation to require a discharge if the patient’s condition was not “treatable”.

The “treatability test” forms one of the statutory criteria in relation to admission and detention. The main question in this case is whether such a test should be incorporated by necessary implication into the conditions, which entitle a patient to be discharged.

The House of Lords held that a patient would be entitled to discharge if the Sheriff (or Mental Health Review Tribunal in England) were satisfied that medical treatment in a Hospital was not likely to alleviate or prevent a deterioration of his condition. Thus, the judgment effectively overrules the Canons Park decision, which found that treatability, although part of the admission and renewal criteria, was not part of the criteria for discharge.

A first reading of this case might suggest that it holds major implications for psychopathic patients given the perceived difficulties of treating patients with such a disorder. However, the first point to note is that the Sheriff or Tribunal does not have to be satisfied that the patient is treatable in order to require his continued detention. It is only if the Sheriff or Tribunal considers that the patient is definitely not treatable that a discharge is then legally required.

Furthermore, although the House of Lords in Reid allowed the patient’s appeal against the Sheriff’s conclusion that it was not a necessary part of the criteria to establish whether the treatment was likely to alleviate or prevent a deterioration of his condition, the House of Lords adopted a very wide x

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definition of “treatability”, thus effectively reducing the impact of their decision. Their Lordships held that the definition of “medical treatment” in Section 145 of the Mental Health Act 1983 (the interpretations section) was wide enough to include treatment which alleviates or prevents a deterioration of the symptoms of the mental disorder rather than the disorder itself<sup>1</sup>. It was therefore possible for the Sheriff (or a Tribunal) to conclude that the “treatability test” was satisfied in respect of a patient whose anger management was improved because of the supervision that he received within the structured setting of the state Hospital, as applied to the patient in this case. In the words of Lord Clyde

“While further study and research is continuing it may be more difficult to affirm with confidence that the condition in any particular case is truly unresponsive to treatment or that no alleviation or stabilisation can be achieved in a secure environment of a Hospital”.

Accordingly, the Sheriff’s findings that the patient’s condition was being alleviated by medical treatment would stand. It could only have been disturbed by the judicial review challenge on grounds of irrationality and this was not established on the evidence. Thus the patient was not entitled to discharge, despite the Sheriff having considered that the issue of “treatability” was not a necessary criteria since he had in fact addressed the issue when considering the patient’s application.

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<sup>1</sup> See Hoffman LJ in Bv. Croydon Health Authority [1995]

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