

### Section 117 After-Care Re-Visited:

#### Which Local Authority Is Responsible?

Section 117 of the Mental Health Act 1983 imposes a duty on Primary Care Trusts and local Social Services Authorities to provide after-care services to certain defined patients treated under the Act, including those detained under s3 and s37. Section 117(3) confirms that the local Social Services Authority with this duty is the Authority “for the area in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.” The court has again had to consider the meaning of this section. [1]

#### The Facts

A 61 year old man suffered with significant cognitive impairment and Korsakoff's psychosis as a result of long term alcohol abuse. For 15 years between 1991 and 2006 he had lived in the London Borough of Hammersmith and Fulham (Hammersmith) in a one bedroom Council owned flat. However, after a number of road traffic accidents, he was placed by Hammersmith in various different care facilities, finally settling at Ronau House in the London Borough of Sutton (Sutton). Shortly after settling at Ronau House he terminated the tenancy of his flat with Hammersmith.

In April 2008 he was admitted to Sutton Hospital and detained under s3 of the Mental Health Act. By October 2008 his consultant psychiatrist considered that he was ready for discharge. However, Hammersmith and Sutton disputed which authority was responsible for accommodation and services under s117. In March 2009 the patient was discharged from Sutton Hospital to Kenilworth House in the London Borough of Ealing.

#### Disputed Law

Hammersmith argued that they were not responsible for the patient under s117. They disputed Sutton's assertions that as Hammersmith had originally placed the patient in Sutton, which was where he resided immediately prior to his admission under s3, the deeming provision under s24(5) of the National Assistance Act 1948 applied and transferred the responsibility for accommodation under s117 onto Hammersmith. Section 24(5) does hold that where a person is provided with residential accommodation under the National Assistance Act 1948 he is deemed for the purposes of that Act to continue to be “ordinarily resident” in the area in which he was ordinarily resident immediately before the residential accommodation was provided for him.

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Hammersmith accepted that because of that deeming provision they were responsible for the patient while he was at Ronau House but argued that as soon as he was admitted to Sutton Hospital under s3 their responsibility under the National Assistance Act ceased. They contended that at that juncture the patient was no longer ordinarily resident in their area and for the purposes of s117(3) was, immediately before his admission, actually 'resident' in Sutton.

The court agreed with Hammersmith's position. It indicated that, a "different statutory obligation arose"<sup>[2]</sup> when the patient was discharged from s3, namely the provision of after-care under s117. The court went on to consider the deeming provision under s24 (5) of the National Assistance Act:

*"The question then arises, does the deeming provision in s24(5) make any difference to a conclusion based on the ordinary meaning of the words in s117? The only permissible answer as a matter of construction is that they do not. Section 24 (5) expressly provides that a person provided with residential accommodation is only to be deemed "for the purposes of this Act" to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before the accommodation was provided for him. Those words are unequivocal. What is deemed to occur for the purpose of the 1948 Act cannot be transposed into the 1983 Act."*<sup>[3]</sup>

In the light of the finding that the deeming provision under s24(5) cannot be transposed into s117, the court held that to identify the relevant local authority under s117 it is necessary first to identify the local authority area in which the patient resided before admission. Only failing a decision on that does one consider the default position of identifying the place to which they were being sent. The Judge found that there was 'no perceptible difference between the phrases 'resident' and 'ordinarily resident' and found that both terms connote a "settled presence in a particular place other than under compulsion."<sup>[4]</sup> On the evidence the Judge held that the patient had, prior to his admission, been resident at Ronau House, and that the London Borough of Sutton was therefore the local authority responsible under the provisions of s117.

## Conclusion

The *Hammersmith* case is of particular importance for those involved in arranging s117 after-care and especially those responsible for commissioning related accommodation. Notwithstanding the deeming provision under the National Assistance Act 1948, for the purposes of s117, the local authority responsible will be the local authority in whose area the patient was actually resident immediately before they were detained.

The Judge did indicate that if there was a separate long standing agreement between local authorities giving rise to a legitimate expectation that the deeming provision under the National Assistance Act also applied to s117 after-care, then that could potentially be binding. However, that was not the position in this case.

Finally, it is of interest to note that the findings in the *Hammersmith* case are mirrored in the Department of Health's recently published guidance on *Ordinary Residence*<sup>[5]</sup>. In particular the Guidance confirms that for the purposes of s117 after-care the deeming provision under s24 (5) of the National Assistance Act 1948 does not apply.<sup>[6]</sup>

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### Footnotes

<sup>[1]</sup> *R (on the application of M) v. London Borough of Hammersmith and Fulham and Another; R (on the application of Hertfordshire County Council) v. London Borough of Hammersmith and Fulham* [2010] EWHC 562(ADMIN) 3 March 2010

<sup>[2]</sup> *Ibid* para. 15

<sup>[3]</sup> *Ibid* para. 26

<sup>[4]</sup> *Ibid* para. 25

<sup>[5]</sup> *Ordinary Residence: Guidance on the identification of the ordinary residence of people in need of community care services, England*. Department of Health, March 2010.

<sup>[6]</sup> *Ibid* see paras. 182-189

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