

Number 16

Psychiatric Patients and Windows

Previous Mental Health Law Briefing notes¹ have dealt with the liability for mental healthcare providers where patients are negligently discharged from care and suffer harm themselves or cause harm to others. This briefing note looks at the liability that may arise where patients come to harm as a result of problems with the hospital premises, and in particular windows which are often the weakest part of a secure environment.

Those responsible for hospitals will owe a duty of care to their patients to avoid negligence and will also be responsible to comply with the duties relating to the hospital premises arising under the Occupiers Liability Act 1957. The legal issues that may arise have been brought into focus by a recent case².

The Claimant suffered from chronic schizophrenia. She had made several suicide attempts, and although she was not on the “at risk” register at the time of the accident, it had frequently been necessary to place her under close scrutiny. She was living in a room on the first floor of the hospital which faced a window which was located on the corridor outside. The window area was hidden from the view of the staff who were positioned further down the corridor. The door to her room and the top portion of the window had been left open. The patient sustained a severe injury when she climbed out of the window and fell /jumped to the ground. She claimed damages for personal injury alleging that the hospital had been negligent in failing to ensure that the window was shut and thus presented no risk of harm to her and for breach of duty under the Occupiers’ Liability Act 1957.

A settlement of £253,536 total damages was agreed, a large sum to arise from the simple act of leaving a window open.

Hospitals may also face claims for damages where the condition of the premises is such so as to enable psychiatric patients who should otherwise have been safely detained to leave hospital without permission. Such a patient may then suffer harm and be able to pursue a claim for compensation against the hospital as a result³. Defective windows (or window locks) are an obvious source of problems of this sort, but all psychiatric hospital premises should be regularly inspected and assessed as to their state of repair and security.

Under the Occupiers Liability Act 1957, those responsible for hospitals will owe a duty of care to those lawfully on the premises. The duty is not an absolute duty to keep premises safe but it does require reasonable care to be taken to avoid injury to those using the premises. This will include both patients and visitors.

This is clearly an important area to consider for risk management purposes. However, where issues arise, care should be taken to investigate whether liability may in fact be passed on. For example, if

¹ Past copies of Mental Health Briefing Notes are available from Radcliffes without charge on request

² Walters-v-Chichester Health Authority 26 April 1999

³ See for example Drake -v- Pontefract Health Authority [1998] Lloyds Medical Reports 425 where the patient was left badly injured after a failed attempt at suicide. However, if the patient causes harm to others, a claim is unlikely unless the risk of injury to that specific individual was reasonably foreseeable: see Palmer-v- Tees Health Authority (1999) where a claim for compensation by the mother of a girl who was attacked, kept hostage and subsequently murdered by an escaped patient was rejected by the Court of Appeal on the basis that harm to her was not foreseeable.

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the hospital have commissioned a specialist professional team (architects, builders etc) to build or alter the relevant hospital premises and a problem has arisen as a result of a defect in the premises, the hospital should look closely at the possibility of a claim in negligence or breach of contract against one or more of the professional team. To enhance the hospital's ability to do this, the issue should be considered at the time the building contract relating to the works of construction or alteration is agreed and specific provisions inserted in the contract. Use of a standard contract may be insufficient and it may well be necessary to obtain advice on the inclusion of specific terms in the contract to ensure that the hospital has the appropriate rights to enforce if necessary in the future.

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Out of office advice available 24hrs on 07802 506 306.

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