RadcliffesLeBrasseur

BRIEFING

Number 17

Conditions on Discharge imposed by Tribunals

MENTAL HEALTH LAW

A previous Briefing Note dealt with a recent case which decided who were the responsible after-care bodies [1] when there was doubt as to where the patient would be living when he was discharged and therefore into whose catchment area he would fall. In that case [2] the Court held that the responsible after-care bodies were the Health Authority and Local Authority for the area in which the patient was initially resident at the time that he was detained.

The same case also criticised the Mental Health Review Tribunal. The Tribunal had concluded that he should be discharged but placed conditions on his discharge, including a residence requirement.

Before his detention the patient had resided within the area of Torfaen Borough Council. When his case was considered by the Mental Health Review Tribunal it concluded he was no longer mentally ill but made his release subject to a condition that he live outside the Gwent area and preferably outside South Wales. The Tribunal also required that he should be supervised by a forensic psychiatrist. Torfaen Borough Council and Gwent Health Authority failed to satisfy the Tribunal's conditions and the patient applied for Judicial Review.

The Court allowed the Judicial Review and found that the Tribunal had acted unlawfully by not ensuring that any conditions it imposed could be implemented within a reasonable time.

The Tribunal appealed against this finding [3].

The Court of Appeal held that once a Tribunal had set out its conditions, the burden was passed to the responsible after-care bodies to make the necessary arrangements within a reasonable time and for the patient to co-operate with arrangements made. The Mental Health Review Tribunal did not have the power to police these conditions and it could not even set a time limit for them to be implemented. It had no way of ensuring that its reasonable conditions were met within a reasonable time and indeed, if the statutory conditions for discharge were met, the Tribunal was under a duty to discharge, if necessary with conditions.

The Tribunal's appeal against the previous Order was therefore allowed. The Court said the Tribunal could not be criticised on the basis that it had failed to exercise a power that it did not have. The fact of delay by the responsible after-care bodies did not render the Tribunal's decisions unlawful nor could the prospect of any such delay (or indeed non-compliance) prevent the Tribunal from imposing the conditions which the Tribunal considered to be necessary in the first place [4].

The Court also held that there was nothing in the Mental Health Act to require the Tribunal to have available a care plan setting out workable conditions before those conditions were imposed.

[1] Mental Health Law Briefing No 14 – available from RadcliffesLeBrasseur on request.
[2] R –v- Mental Health Review Tribunal & Others 23 April 1999.
[3] It should be noted that the Court's finding as to the identity of the responsible after care bodies was not challenged and the original decision reported in Mental Health Law Briefing no 14 therefore stands.
[4] Although this will of course always be subject to the Courts' review as to whether these conditions are reasonable.

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When approaching Mental Health Review Tribunal hearings (in particular, adjourned hearings to enable care packages to be considered), those responsible for the care of patients should have met to discuss after-care arrangements if the patient were to be discharged (see the new Code of Practice), and should ensure that the Tribunal is aware of anticipated timescales. Any delay that is foreseen will not in itself prevent the Tribunal attaching conditions (unless they are unreasonable), however, the Tribunal will no doubt find this information useful, and take it into account in its decision.

In this case, the European Convention on Human Rights was also argued as being relevant [5]. It was contended that Article 5 of the Convention (which provides for the right to liberty) had been infringed. In this particular case, the Court held that the Convention did not apply as it was not as yet part of English law – obviously this will change in the near future. However, the Court held that even if the Convention had applied, there was no breach of the Convention as the Tribunal was seeking to implement the patient's right to liberty. If the conditions proposed by the Tribunal had been fulfilled within a reasonable time by the responsible after-care bodies this would have secured his discharge.

A further recent case[6] has also clarified the position regarding the practice of charging previously detained patients for the cost of accommodation in which they are required to reside as part of their S.117 after-care arrangements. This was held to be unlawful. S.117 services are not to be provided at a cost to the patient, as there is a duty to provide these until the patient no longer needs them.

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

[5] The Convention has been enacted into UK law by the Human Rights Act 1999 and is due to come into effect on 2 October 2000.

[6] R –v- London Borough of Richmond & Others (28th July 1999)