

Number 23

## Criteria for discharge

MENTAL HEALTH LAW

The criteria for admission are well known. The Court has however recently held that the criteria for discharge are the same.

### Facts

The patient was convicted in 1991 of an offence of unlawful wounding. He was made subject to a hospital order with restrictions unlimited in time pursuant to the Mental Health Act 1983. He was diagnosed as suffering from schizophrenia. By 1998, his illness was apparently fully controlled by drugs and he therefore applied to the Mental Health Review Tribunal for his discharge from liability to be detained under S 73 of the Act. Section 73 requires the matters contained in S 72 to be satisfied before discharge. S 72 contains provisions almost identical to those in S 3 which deal with the criteria for admission.

At the Tribunal hearing, the psychiatrists stated that the patient's condition was not such as would make him liable to be detained if he was in the community. However, they said that if he stopped taking his medication he would relapse.

The patient submitted that the relevant statutory provisions required his discharge on the basis that the admission and discharge criteria should mirror each other. Accordingly if it would not be appropriate for him to be admitted if he was in his condition in the community then he must be discharged.

Discharge was refused. The tribunal expressly declared that they did not accept that the discharge criteria should mirror the admissions criteria.

### Application for Judicial Review

The patient therefore applied for a judicial review of the tribunal's decision on the grounds that the tribunal misdirected itself as to the law to be applied when considering an application for discharge.

The Court granted the judicial review. The judge held that the question of discharge should be approached on the basis that the criteria for discharge were meant to match or mirror the admission criteria. However he also held that the burden of proof was reversed when considering discharge. The question of whether the criteria were fulfilled was to be decided by the tribunal. The tribunal was not bound by the opinion of the psychiatrists. In this case, by expressly denying that the admissions criteria were the proper test criteria, the tribunal had failed to ask itself the correct question and had therefore acted unlawfully. Accordingly, the decision of the tribunal was quashed and the matter remitted to the Tribunal for reconsideration.<sup>1</sup>

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<sup>1</sup> R v. London South and South West Region Mental Health Review Tribunal ex-parte Moyle [1999] ALL ER 1504

## Comment

The clarification of the discharge criteria is welcome. In fact it is not surprising that the admissions and discharge criteria are to mirror each other, as it clearly makes sense for there to be one test to assess whether or not a patient should be detained. If nothing else, this decision simplifies the law which should assist in its application.

## RadcliffesLeBrasseur March 2000

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: [andrew.parsons@radleb.com](mailto:andrew.parsons@radleb.com).

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.