

Number 27

Duty to Provide Psychiatric Supervision in the Community under S.117 MHA

MENTAL HEALTH LAW

The extent of the duty to provide psychiatric supervision in the community has recently been subject to a challenge by judicial review.¹

Camden & Islington Health Authority faced a claim by a patient who was found by a Mental Health Review Tribunal in August not to be suffering from a mental illness of a nature or degree which made it appropriate for her to be detained in hospital for medical treatment. The Tribunal were of the view that further detention was unnecessary for her health or safety or the protection of others. The Tribunal therefore ordered her discharge, subject to conditions that she:

Live at her family home.
Co-operate with her psychiatrist and social worker.
Comply with any treatment prescribed.

The patient's discharge was deferred until satisfactory arrangements had been made.

The consultant who was to take responsibility for the patient in the community felt unable to do so. He disagreed with the Tribunal's ruling as he felt it would be unsafe for her to be released. Other consultants from neighbouring areas also refused to provide supervision in the community and as a result the patient remained in detention. She challenged this claiming that the Health Authority was under a duty to provide psychiatric supervision in the community to enable her release. She also argued that the failure to observe the decision of the Mental Health Review Tribunal was a breach of the European Convention on Human Rights.

The Court held that the duty imposed on the Responsible Aftercare Bodies under Section 117 Mental Health Act was a mandatory duty but it was not absolute. If the psychiatrist did not agree with the Tribunal and was not willing to supervise the patient in the community the Health Authority should have made further enquiries to attempt to provide the necessary care (which it did). In the absence of being able to implement the Tribunal's conditions, the Health Authority should refer the matter to the Secretary of State to enable him, if he wished, to exercise his discretion to refer the matter back to the Tribunal under Section 71.

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¹ R –v- Camden & Islington Health Authority ex-parte K

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The Court confirmed that there was no obligation on the Health Authority to require psychiatrists to supervise patients. Psychiatrists were entitled to exercise their professional clinical judgment and were not compellable under Section 117.

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For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: 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.

BRIEFING

MENTAL HEALTH LAW