

Number 3

Mental Health Act Managers Meetings

When a patient is detained under a Section of the Mental Health Act, his nearest relative may apply to discharge him from the Section. A discharge can however be barred by the responsible medical officer (“RMO”) by issuing an order under Section 25 of the Act. In order to make such a barring order the RMO must be satisfied that the patient will fulfil the test of dangerousness to himself or others laid down by the Act:

“the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself”

If the test is fulfilled, the barring order will prevent the discharge sought by the nearest relative.

The Code of Practice provides that in such circumstances the hospital managers should hold a meeting to review the patient’s detention. When doing so, what criteria should they consider? If the patient is being detained under Section 3, are the managers therefore simply required to consider the criteria for detention under Section 3, or are they restricted only to consider whether he is dangerous as certified by the RMO which is what has given rise to the review?

This point has recently been decided by the Court in a judicial review brought to quash the decision of managers who considered the patient’s detention in these circumstances on the basis of the criteria laid down by Section 3.

The patient contended that the managers had to consider his detention simply in the light of the dangerousness criteria of Section 25. He contended Section 3 was irrelevant and unless he could be said to be dangerous, he must be discharged by the managers even if they were of the view that he still required treatment under Section 3.

The Judge held that that this was incorrect. The managers were entitled to review the patient’s detention on the basis of the criteria for detention laid down by section 3 and were not constrained only to consider Section 25. To do so would make the managers meeting simply an “appeal” against the barring Order. The Act does not require this. However, the Judge held that when reviewing a patient’s detention in such circumstances following a barring order by the RMO the hospital managers were required as a matter of law to have regard in addition to the criteria of Section 25 and to consider whether they thought the RMO’s barring order to be justified. If the patient does not fulfil the test of dangerousness to himself or others, in many cases this will mean that he should be discharged.

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Out of office emergency 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.

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