

Number 30

Tribunal not bound to re-classify patient

This briefing note looks at a recent case on the issue of re-classification of a patient's illness, and in particular, whether re-classification is mandatory where there has been a change¹.

Facts

Christopher Hagan is a restricted patient in Broadmoor detained under section 37, following a conviction for unlawful wounding. The S.37 Order was made on the basis that he was suffering from mental illness and psychopathic disorder of a nature or degree which made it appropriate for him to be detained in hospital for medical treatment. He was also subject to a section 41 restriction order.

Mr Hagan applied to the Tribunal to be discharged under section 73. This was refused by the Tribunal, who stated:

“We are quite satisfied that the patient suffers from a personality disorder of such a nature and degree that requires his detention in hospital... we are not persuaded that he was not in addition suffering from schizo-typical disorder, which is at present in remission, but we do not think that he would be liable to be detained if that condition stood alone”.

The Challenge

On behalf of Mr Hagan it was submitted that the Tribunal had been bound to reclassify him under section 72(5) and direct that the Court order be amended by deleting “mental illness”. It was argued that once the Tribunal had reached the view that if the applicant suffered from mental illness alone it would not be appropriate to detain him, he was entitled to have the order amended so as to refer only to the mental disorder justifying his detention.

It was also submitted that he was entitled to be reclassified so that the compulsory powers available under the Mental Health Act could not be exercised in relation to his mental illness.

Application to the Court

The question for the Court was therefore (a) did section 72(5) give the Tribunal the power to amend the order other than by substitution (ie simply to delete part of it), and (b) to what extent was this a discretionary power.

¹ R –v- Anglia and Oxfordshire Review Tribunal ex parte Hagan – Times 21st January 2000

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The Court of Appeal held:

1. The main purpose of section 72(5) was to enable a Tribunal to substitute the correct mental disorder, as it was then known, where disorder that required the patient to be detained was different from that specified in the order.
2. In the civil context, reclassification would not have taken place if the RMO felt the applicant still suffered from mental illness, albeit it was in remission, with the result that the patient would still have a specified mental illness and could continue to be compulsorily treated.
3. Section 73(5) provided the Tribunal with a discretion so that it was not obliged to reclassify a patient in a way that was different from that which he would have been classified as if he was a civil patient, and furthermore, section 72(5) ought to be construed as giving the Tribunal discretion not to delete a mental disorder from which a patient still suffered where deletion might frustrate its powers in relation to conditional discharge in the future. Reclassification was relevant to whether the patient suffered from a particular mental disorder, not to whether he was detainable for that if it stood alone.
4. It was possible that if a patient no longer suffered from a form of mental disorder specified in the order at all, then deletion might be permissible where substitution was not required — but that was not the case here.

The Court of Appeal therefore held that the Judge at first instance had been wrong to accept that the purpose of reclassification was to ensure that the patient's disorder was not mis-described. The patient was lawfully detained under the Court order and there was nothing inaccurate in describing him as being detained on the basis specified in that order. Furthermore, there was no obligation to read into section 72, an obligation that it was mandatory for a Tribunal to reclassify a patient if it decided that one of the current forms of mental disorder referred to in the direction which led to his detention was no longer appropriate.

Of course, if the conclusions relation to the mental illness related to the only basis for any patient's detention, then this would not be a case of reclassification, but rather either absolute or conditional discharge.

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