

Number 31

So what do you need to say to the nearest relative?

There have been several cases recently dealing with the rights and position of the Nearest Relative. The latest case deals with the extent to which the nearest relative has to be consulted and the nature of that consultation.

Facts

The ASW and one doctor visited the patient at home. The ASW had spoken to his mother, the nearest relative, the night before. The patient was assessed and the ASW doctor both concluded that the tension under Section 4 was warranted. He was taken to hospital. At hospital the ward staff did not want to medicate him unless he was detained under Section 3. He was therefore seen by a second doctor and was also seen again by the first doctor for the purpose of completing the medical recommendations needed for Section 3. However, he was not seen again by the ASW nor did the ASW discuss with the nearest relative again the question of detention.

Challenge

The patient's detention under Section 3 was challenged on two grounds:-

1. The detention was said to be invalid as the nearest relative had not been consulted in accordance with Section 11(4) MHA in the proper terms. Although it has been suggested that the nearest relative should be asked whether she objects to the detention, the Court said that the correct test was simply to notify the nearest relative that an application for detention was being considered and why (see Re Whitbread¹). It was not necessary to consult the nearest relative in anymore extensive terms.
2. It was said that it was not possible for the ASW to rely on the pre-Section 4 interview with the patient as sufficient for the purposes of Section 13(2). It was said that as a detention under Section 4 cannot be converted to a Section 3 (but only a Section 2), it should also not be possible to rely on a pre-Section 4 detention interview for the purposes of a Section 3 admission.

The Court held that the act should be strictly interpreted. The act does not specifically say separate interviews are required, simply that the patient should be interviewed before detention. Accordingly the detention here was lawful.

Comment

The clarification of the nature of the consultation required with the nearest relative is helpful. It is probably less extensive than had previously been thought, and to that extent, provides less protection for the patient.

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

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¹ M v Derbyshire County Council and North Derbyshire NHS Trust