

Number 41

The Treatability Test – Further Case Law

Although the current proposals for new Mental Health Act legislation will remove the treatability test per se¹, the test remains an important one whilst the Mental Health Act 1983 remains in force.

The treatability test has been the subject of previous *Mental Health Law Briefings*², but it has recently been re-approved and its nature explained³.

Facts

The patient had been convicted of assault and arson and was due for release from Prison. Shortly before, he was transferred to Rampton Hospital under Section 47 MHA and therefore treated as though subject to a Hospital Order. Accordingly he remained in detention at Rampton once the period of his original prison sentence expired. He was diagnosed as suffering from a psychopathic disorder.

The patient's detention came up for renewal under Section 20. It was necessary for his psychiatrist to certify that he met the treatability test in Section 20. His doctor expressed the opinion that although there had been only limited benefit from any treatment whilst in hospital, there was nevertheless in place a plan for ongoing treatment with further treatment options potentially available. The patient sought to challenge this by Judicial Review but this was refused.

Court Decision

The Court held that treatability was to be interpreted very widely. In assessing this, a psychiatrist was entitled to look to the future and consider whether any proposed treatment would be likely to alleviate or prevent a deterioration in the patient's condition. Although on the evidence, the psychiatrist was currently only able to identify limited benefits to the patient, the Court held that there was evidence to show that she was entitled on a proper basis to take the view that the patient met the treatability criteria of Section 20 as the psychiatrist had a hope that treatment would bring about an improvement in the future.

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¹ See Sections 3(2)(b) and 20(4) MHA 1983 for the current test.

² See Mental Health Law Briefing No.15 — available on request from RadcliffesLeBrasseur.

³ R (on the application of Wheldon) —v- Rampton Hospital Authority [2001] All ER (D) 157.

Comment

In the circumstances, and given the Court has underlined yet again the very wide definition of “treatment”⁴ it is perhaps surprising that the Government feels that it is necessary to create a new regime for DSPD patients without the “restrictions” of the current treatability test.

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⁴ See Section 145 MHA 1983: Medical treatment includes nursing, and also includes care, habilitation and rehabilitation under medical supervision.