

Number 43

Human Rights – Tribunal Hearings

Article 5 of the Human Rights Act enshrines the individual's right to liberty and security but also includes a provision permitting the detention of persons of unsound mind.

However, the Human Rights Act also includes the right for an individual to have a periodic review of his detention and the lawfulness of it¹.

The review function under the Mental Health Act is performed by the Mental Health Review Tribunal system. It had been thought that this was ripe for challenge after the implementation of the Human Rights Act, particularly in view of the fact that the European Court of Human Rights had previously held that 8 weeks was too long a delay for such a review in order for it to be said that it was "speedy"². The national average in the UK for hearing applications to tribunals is in excess of 8 weeks.

Tribunal practice in the listing of hearing dates for applications for discharge by patients detained under Section 3 of the Mental Health Act was recently challenged in the Court of Appeal³.

Facts

The Applicant was admitted to hospital compulsorily under Section 3 of the Act in October 2000. He suffered from schizophrenia and had previously had periods in hospital on a voluntary and compulsory basis. He applied to the Tribunal to determine the lawfulness of his detention. Following its usual practice, the Tribunal hearing date for the application was fixed 8 weeks after the date of the application.

The patient sought judicial review on the basis that this practice of automatically listing hearings 8 weeks later contravened Article 5(4) as it failed to give the patient his entitlement to have the lawfulness of his detention decided speedily.

Court Decision

The Court of Appeal held that the practice of routinely listing applications for hearing by a Tribunal 8 weeks after the date the application was made did not comply with the Human Rights Act and did not provide the patient with a speedy review of his detention. Each individual application should be heard as soon as reasonably practicable in the circumstances of each case and not fixed by reference to a set period for the hearing which arose because of administrative convenience rather than administrative necessity.

¹ Article 5(4): "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a Court and his released ordered if the detention is not lawful".

² E v. Norway (1990) 17EHRR30

³ R (on the application of C) v. Mental Health Review Tribunal [2001] All ER (D) 24th July 2001

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Comment

The decision is unsurprising. It had been thought that periods of review would be susceptible to challenge and the need to fix reviews as soon as each one can be heard (rather than imposing an arbitrary administrative timescale) is obvious and welcome.

It was suggested in this case that the Section 3 cases should be dealt with in the same way as cases of detention under Section 2⁴ This was rejected by the Court. Section 2 cases must proceed on a shorter timescale because the period of detention itself is short and the nearest relative has no right to prevent admission.

The point was also made that the provisions of the Human Rights Act requiring a speedy review do not require undue haste. It will clearly be important for the MHRT to have the relevant information available before it in order to give a considered judgement.

The position of Hospital Managers reviews was not apparently raised before the Court. It remains to be seen whether similar issues would be raised in connection with Managers hearings.

Violence in the NHS

The Government has set the NHS a national target for reducing the incidence of violence against NHS Staff by 20% by 2001 and by 30% by 2003. All NHS Trusts are required to have systems in place to record violence against staff, and have published strategies for reducing such incidents.

Radcliffes have published a series of briefings on violence in the NHS, copies of which may be obtained upon request from Andrew Parsons at RadcliffesLeBrasseur.

If you would like to receive this briefing by email please contact
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September 2001

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: andrew.parsons@rlb-law.com.

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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⁴ ie the hearing of an application for discharge would be required to take place within 7 days – see Rule 31 MHRT Rules.