BRIEFING

Number **56**

"If at first you don't succeed…"

Re-sectioning revisited

MENTAL HEALTH LAW

Previous Mental Health Briefings have looked at the question of re-sectioning a patient after discharge by a Mental Health Review Tribunal. The previous key case authority[1] was reviewed after the implementation of the Human Rights Act[2] and found to be lawful, within certain specified parameters[3].

However, issues still fall to be decided and a recent case has revisited[4] this area.

Facts

The patient had a long history of mental illness and detention in hospital. At the relevant time he was detained under Section 37 of the Mental Health Act. His detention was reviewed by a Mental Health Review Tribunal. His RMO prepared a report for the Tribunal in which he described his past history, continuing challenging behaviour and expressed a view that his behaviour was unlikely to change. The Tribunal concluded that the patient was not treatable and did not fulfil the statutory criteria to justify continued detention. The Tribunal proposed discharge, subject to deferring this to enable the after-care bodies to implement the appropriate services.

The patient was transferred to another hospital where he agreed to remain as a voluntary patient. However, within a matter of days, an application was made for his re-detention under Section 3. The patient sought Judicial Review on the basis that the doctors completing medical recommendations in such circumstances were obliged to set out in those recommendations reasons for their decision, addressing expressly the preceding decision of the MHRT.

Court decision

The Judicial Review was rejected. The court held that there was no requirement for medical recommendations to refer in specific terms to the previous MHRT decision. Although it was necessary for the forms to identify the circumstances that currently justified detention, in making the recommendations, doctors were exercising clinical judgment not acting in a judicial capacity. All that was required was for them to comply with the requirements of the Mental Health Act. They did not have the same obligation to give reasons that a judicial body would.

[1] R -v- South Western Hospital Managers Ex-parte M [1993] QB 683
[2] R (on the application of Von Brandenburg) -v- East London & City Mental Health NHS Trust
[3] See Mental Health Law Briefing No 38
[4] R (on the application of H) -v – Oxfordshire Mental Healthcare NHS Trust and others [2002] All ER (D) 63 (Mar)

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In any event, there was sufficient evidence to support the view that the patient's condition had deteriorated, thereby justifying a further detention under Section 3.

Comment

This case therefore follows the earlier decision of *Von Brandenburg*[5] and confirms that there are indeed situations where a patient may be re-sectioned following discharge by a Tribunal. This particular case was a prime example of where this would be appropriate, namely where the patient's clinical condition has changed from the time of the Tribunal hearing.

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September 2002

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[5] The Von Brandenburg case is however currently going on appeal to the House of Lords (RadcliffesLeBrasseur are acting for the Trust).