

Number 58

A Christmas Miscellany

MENTAL HEALTH LAW

As we approach the festive season, this Briefing reports several recent issues of relevance to mental healthcare providers.

Mental Health Bill delayed?

The Government appeared to have backed down over its plans to overhaul mental health laws. The Queen's Speech on 13 November made no reference to a new Mental Health Bill. The decision not to include the Bill in the Speech suggested that new legislation was unlikely in the next year although Ministers could still introduce a Bill if there is sufficient Parliamentary time available.

The draft Bill was subject to extensive and wide ranging criticism from numerous interest groups, ranging from the Mental Health Alliance to the Royal College of Psychiatrists.

Commenting on the fact that the Mental Health Bill was not referred to in the Queen's Speech, Shadow Health Secretary Dr Liam Fox said: "The Government's decision to withdraw its Mental Health Bill from the Queen's Speech is a triumph for the voice of reason".

However, in a subsequent answer to a parliamentary question the Health Secretary has indicated that the Bill may still be brought forward once the Department has finished considering the various representations made on the draft Bill.

Section 117 Aftercare

Readers will recall that in a previous Briefing, we reported on the Court's decision that there would be no breach of Human Rights if a Health Authority used its best endeavours to put in place the necessary aftercare but was unable to procure this. This case has now been reviewed by the Court of Appeal who have upheld the previous decision.

Accordingly, where an MHRT is considering conditional discharge, they should either (1) adjourn to investigate the possibility of imposing those conditions, or (2) make a provisional decision to make a conditional discharge on specified conditions but defer directing such a conditional discharge until the responsible aftercare bodies have made the necessary arrangements to enable the conditions to be met. The Tribunal should then meet after an appropriate interval to monitor progress in making those arrangements. However, if problems arose, the Tribunal should either defer a decision to see if the problems could be overcome, or should amend or vary the proposed conditions.

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Are Medical Examinations Before an MHRT Mandatory?

A patient who felt all psychiatrists viewed him unfavourably recently sought judicial review of the insistence of the Chairman of the MHRT that he be seen by the medical member of the tribunal in advance of the hearing pursuant to Rule 11 MHRT Rules 1983.

The patient contended that the examination by the medical member and the fact of his forming a provisional opinion would infringe the patient's rights under Article 5 (4) European Convention of Human Rights¹.

The Report held that Rule 11 was not inconsistent with Article 5 (4). Whilst the review clearly required impartiality, the fact that the medical member had formed a provisional opinion as a result of his examination was not necessarily objectionable (unless he expressed his views in such a way as to suggest that he had a preconceived concluded opinion).

RadcliffesLeBrasseur
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MENTAL HEALTH LAW

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Does a managers' review by a panel of 3 managers require a unanimous decision or will a majority decision be acceptable? This is currently being considered by the court and will be the subject of our next briefing.

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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¹ Article 5 (4) gives that those who are detained the right to a review of their detention.