

Number 61

## Hospital Managers' Decisions – Do They Have to Be Unanimous?

MENTAL HEALTH LAW

We previously reported on the decision in the case of R –v- The Hospital Managers of the Park Royal Centre ex parte Tagoe-Thompson<sup>1</sup>. This has now been considered by the Court of Appeal which has upheld the decision at first instance. However, in view of the importance of this case, it may be helpful to summarise the issues and the decision of the Court of Appeal.

### Facts

The patient was detained under Section 3 Mental Health Act. His detention was reviewed by a panel of three Hospital managers. Two were in favour of discharge. One was not. Accordingly, the managers took the view that the provisions of Section 23 were not fulfilled and they therefore decided not to discharge the patient.

The Hospital managers' powers of discharge are contained in Section 23:

“(2) an Order for discharge may be made in respect of a patient (a) where the patient is liable to be detained in hospital in pursuance of an application for assessment or for treatment by the responsible medical officer, by the managers....

(4) the powers conferred by this section on any authority, trust or body of persons may be exercised.... by any three or more members of that authority, trust or body which has been authorised by them in that behalf or by three or more members of a committee or sub committee of that authority, trust or body which has been authorised by them in that behalf.”

The issue which arose is whether three duly appointed members could make an Order for discharge by a majority vote or whether it was necessary for all three members to decide unanimously. The question was whether sub-section (4) merely established a quorum of three and thereafter majority voting should apply, or whether it established a need for there to be three managers voting in favour of discharge before the power of discharge could be exercised.

### Issues of Law

The trust contended, on a clear reading of the Act that Section 23 required three hospital managers to vote in favour of discharge for any discharge to take place. In this case, given that only two had voted in favour of discharge, the power to discharge did not arise and the managers had no power to discharge the patient.

It was contended on behalf of the patient that ordinary public law rules of majority voting should apply and that as the majority were in favour of discharge, the patient should have been discharged. Accordingly, detention after that date would have been unlawful.

RadcliffesLeBasseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax+44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax+44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax+44 (0)29 2034 3045  
DX 33063 Cardiff 1

info@rlb-law.com  
www.rlb-law.com

---

<sup>1</sup> Briefing No 59

The patient's submissions were rejected by the Court at first instance who held that the Trust's interpretation of Section 23 was correct<sup>2</sup>.

### Court of Appeal

The Court of Appeal carefully considered the arguments and decided that the Trust's interpretation of the Act was correct. Whilst it is expressly the case that an MRHT can vote by a majority, there is no such express provision in relation to the decisions of hospital managers. To the contrary, Section 23 clearly requires three managers to vote in favour of discharge in order for the power of discharge to arise. Despite submissions by the patient that this meant that the patient had a higher burden than the RMO (who need only persuade one manager not to discharge), the Court of Appeal felt that this was not inappropriate given the need to protect the patient and the public. In any event, the Act made express provision for the decision to discharge to be taken by three managers. It was accepted that there was no breach of the Human Rights Act.

### Comment

The Court of Appeal decision clearly establishes that where panels of three members decide whether to exercise a power of discharge, the decision to discharge must be unanimous. Where panels comprise four or more members, the majority decision (as long as at least three are voting in favour of discharge) takes effect.

© RadcliffesLeBrosseur  
March 2003

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

Future editions can be received by email. Please e-mail: [marketing@rlb-law.com](mailto:marketing@rlb-law.com) or telephone 020 7227 7388.

<sup>2</sup> RadcliffesLeBrosseur acted on behalf of the Trust

RadcliffesLeBrosseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax+44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax+44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax+44 (0)29 2034 3045  
DX 33063 Cardiff 1

[info@rlb-law.com](mailto:info@rlb-law.com)  
[www.rlb-law.com](http://www.rlb-law.com)