

Number 63

Renewal of Detention of “Patients in the Community”

MENTAL HEALTH LAW

Previous case law has considered the basis upon which a patient’s detention may be renewed when they are on Section 17 leave. It was made plain in the case of *Halstrom*¹ that patients on leave could not be recalled to hospital simply to renew their detention as Section 20 required the patient to have a need for treatment in hospital.

The case of *ex parte Barker*² decided that a patient’s detention could be renewed when their treatment plan included some in patient element even if the patient was only in fact spending a relatively short time at hospital. The treatment plan included monitoring the patient’s condition in hospital and this was held to be part of the patient’s medical treatment as defined in Section 145 of the Act.

A recent case has further considered this area of law³.

In the *Merseycare* case, the patient was detained under Section 3. Her treatment plan provided for occupational therapy at the hospital once a week and for a CPN to visit the patient at home each fortnight to administer drugs. When her detention was renewed, this was subject to challenge. The patient argued that her treatment was in effect as an “out patient”. She argued that renewal was appropriate only where the treatment plan was as an “in patient”.

The hospital contended that the in patient/out patient terminology was a unhelpful gloss on the statutory criteria. It contended that the treatment plan had a sufficient element of treatment in hospital for the renewal to be lawful.

The Court agreed. The test laid down in Section 20(4) of the Act was whether a treatment plan provided for the patient to receive medical treatment in a hospital. Any distinction between treatment at a hospital and treatment in a hospital was said by the Court to be too subtle. It would be an illogical gloss on the Mental Health Act to say that the lawfulness of renewal depended upon a plan to put the patient at specific times into a hospital bed. The difference between in patient and out patient treatment was irrelevant. Section 145 defined “medical treatment” as including rehabilitation under medical supervision. In this case, the requirement to attend a hospital for dialogue, review and monitoring was a sufficient component of the plan to satisfy the requirement for treatment in a hospital.

RadcliffesLeBrasseur
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

¹ R-v- Halstrom ex parte W, R-v- Gardner ex parte L [1985] 3 All ER 775

² R-v- BHBCHT ex parte Barker (1998)

³ R(on the application of DR) -v- Merseycare NHS Trust [2002] All ER D(28th August)

Comment

This case provides very helpful additional commentary on the extent of medical treatment necessary to justify a renewal of detention for a patient on leave. However, it will still be necessary to consider carefully whether the patient is receiving a sufficient level of “medical treatment” to justify a lawful renewal.

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

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RadcliffesLeBrasseur
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