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BRIEFING

Number 65

Charging for Aftercare Services under s117 Mental Health Act 1983 – The Final Story

MENTAL HEALTH LAW

The section 117 duty to provide free after-care services, has been subject to a sequence of Court cases on whether such services has to be provided free of charge. Approximately two thirds of all Health Authorities providing aftercare services to those covered under section 117, have for the last two decades been charging for such services[1]. However, the House of Lords has now made it clear that this is incorrect[2].

Section 117 provides that those individuals who have previously been detained for treatment under section 3 of the Act or those convicted and transferred to hospital pursuant to sections 37, 45A, 47 and 48, are afforded a duty by the Primary Care Trust/Health Authority in conjunction with social services, to be supplied with after-care services. The services (which include social work, domiciliary services and residential facilities[3]) are to be maintained until the PCT or Health Authority in joint agreement with the social services are satisfied that the individual no longer requires them.

Section 117 services are to be provided without charge to the individual.

Confusion

Why then did some Health Authorities charge for these services?

This was primarily the question posed by the Respondents to the House of Lords in the case of *R v Manchester City Council Ex parte Stennett, R v Redcar and Cleveland Borough Council, Ex parte Armstrong & R v Harrow London Borough Council, Ex parte Cobham*[4]

The Respondents had all been admitted to hospital under section 3 of the Act, and on discharge, placed in residential accommodation, a service for which they were all charged. They successfully argued to the Court of Appeal that such a service should be provided free of charge, however, the Authorities appealed to the House of Lords. They argued that section 117 did not function within its own vacuum but rather that it acted merely as the necessary "gateway"[5]section to other statutory provisions[6] which provide charging regimes for such services[7].

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[1] Paragraph 4 of Lord Steyn's Judgement in *R v Manchester City Council Ex parte Stennett, R v Redcar and Cleveland Borough Council, Ex parte Armstrong & R v Harrow London Borough Council, Ex parte Cobham* [2002] 2 AC 1127.
[2] Ibid - As held by their Lordships
[3] See *Clunis v Camden and Islington Health Authority* [1998] 3 All ER 180 at 191
[4] [2002] 2 AC 1127
[5] Ibid - Paragraph 7 in Lord Steyn's Judgement
[6] Section 21 of the National Assistance Act 1948 provides for the provision of caring residential accommodation to persons over the age of 18 by reason of age, illness, disability or any other circumstance. These reasons have been interpreted to include those who were mentally disordered or at risk of mental disorder. Section 22 of that Act provides a charging regime when such accommodation is provided.
[7] See section 22 of the National Assistance Act 1948.

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House of Lords Decision

The House of Lords dismissed the Authorities' appeal and held that Section 117 is a free-standing provision which imposes a duty on the PCT/Health Authority and social services authority to provide after-care services to those covered by the section without charge. Such services are to be such aftercare services as the patient is assessed to require.

Comment

This ruling places the financial burden for such provisions squarely on the shoulders of the PCT/Health Authority and social services and perhaps even more ominously opens the door to multiple claims being bought on behalf of previous recipients of after- care where they have been charged. Lord Steyn considered the financial impact of such past claims (which could total approximately £80 million) on the NHS before noting that "behind these figures lie, no doubt, innumerable tragic personal stories of mentally-ill individuals who were charged for after-care services."[8] Clearly then, such claims have been anticipated by the Judiciary and, barring resourceful use of the Limitation Act 1980, there will be little or no tenable defence.[9]

The decision of the House of Lords has wide reaching implications. Not only will in some cases, future financial provisions have to be set in place to cover both future care provision and even past claims, thought will also have to be given to the procedure by which aftercare services are withdrawn.

Joint policies between PCTs/health authorities and social services are to be agreed to ensure the duty is met (HSC 2000/003). Where funding issues arise, and the health agencies are considering their obligation only to fund health costs under S.3 of the NHS Act 1977, regard may be had to the pooling arrangements for health and social care budgets under the Health Act 1999.

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

[8] Paragraph 4 in Lord Steyn's Judgement in *R v Manchester City Council Ex parte Stennett, R v Redcar and Cleveland Borough Council, Ex parte Armstrong* & *R v Harrow London Borough Council, Ex parte Cobham* [2002] 2 AC 1127.
[9] Priaulx, N. *Charging for After-care Services under Section 117 of the Mental Health Act 1983 –*, Journal of Mental Health Law, December 2002, pp318-319

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