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BRIEFING

Number 7

Renewing the detention of patients on Section 17 Leave

MENTAL HEALTH LAW

Before 1985, Psychiatrists were content to permit sectioned patients whose condition was sufficiently stable to live in the community, rather than hospital. They nevertheless remained formally detained under the Mental Health Act.

This arrangement was achieved by either (a) renewing the detention period on expiry, even though the patient was not in hospital but out on leave under Section 17 Mental Health Act, or (b) by recalling the patient to hospital from leave for a fairly short period (sometimes only overnight), then renewing the section and immediately granting leave once more.

As a result of the Court's decision in R -v- Hallstrom, ex parte W[1] this arrangement was held to be unlawful because the strict wording of Section 20 of the Act required the RMO to certify when renewing a section that the patient continued to require treatment in hospital. This could not be said to be the case if the patient was out on leave and therefore, following that decision, a patient who was either on leave at the end of a period of detention or who was on leave for longer than six months could not have their section renewed.

These issues have recently been considered by the Courts again in the recent case of R -v-BHB Community Healthcare NHS Trust ex parte Barker.[2]

In the Barker case, the patient was detained under Section 3. Detention was renewed under Section 20. At the time of renewal, she had been granted weekly leaves of absence under Section 17 for 5 days a week for four hours per day on the two remaining days.

In this case, the Court held the renewal was lawful. A detained patient could have her detention renewed even though at the time of renewal she had been granted a lengthy leave of absence from hospital and only returned periodically for her progress to be monitored. It was contended on her behalf that the only treatment she was receiving on the times when she was in hospital was in the nature of "assessment" which was insufficient for a detention under Section 3. However, the Court of Appeal held that this was an incorrect analysis. For the patient's treatment plan as a whole to be successful there would often need to be an in-patient element which meant it was appropriate for her to receive medical treatment at a hospital which could not be provided unless she continued to be detained. The requirement that the patient had to return to hospital and be monitored from time to time as an in-patient was an essential part of the treatment. "Treatment" should be defined broadly and would cover that which was to alleviate or prevent a deterioration of the mental disorder from which the patient was suffering. As long as the treatment viewed in that way involved some element of in-patient treatment, the requirements of Section 20 would be met.

[1] [1996] 2 All ER 306
[2] [1998] Times Law Reports 14 October

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This case does not totally overturn the Hallstrom decision but it does provide further explanation of the operation of Section 17 and Section 20. It also provides useful further court guidance on the meaning of "treatment" under the Mental Health Act, and stresses that this is to be construed widely.

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November 1998

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