

Number 73

## Executing Warrants Under Section 135

On occasion it may be necessary to obtain a Warrant to enable patients to be taken from their home to hospital. Section 135 of the Mental Health Act provides for a magistrate to issue a warrant authorising a policeman to enter premises (by force if necessary) to remove a mentally disordered individual to a place of safety. The patient does not have to be specifically named but the premises do.

The Court has recently had to consider the nature of these Warrants and the formalities with which they must comply.

### Facts

In a recent case<sup>1</sup> a Warrant under Section 135 was granted by the magistrates sitting at Sutton. The Warrant, which was subsequently described as “sloppily drafted”, had stated the specific names of a Consultant Psychiatrist, the patient’s GP and an approved social worker. The Warrant was then executed by a police constable entering the patient’s home accompanied by a doctor (who was not one of the doctors named), and the named ASW. The patient was taken under the Warrant to a hospital, but having been assessed was discharged on the basis that her medical state did not justify detention.

The patient claimed that detention was unlawful and brought a claim for false imprisonment on the grounds that the Warrant and/or its execution were invalid.

### Court Decision

Although the patient’s claim failed at first instance, in the Court of Appeal, the Court held that the fact that the Warrant had specified particular named individuals, was not a matter that could be ignored. It could not be said that the magistrates had not taken this into account. For example, it might have been the case that they had granted the Warrant to the named doctors because of those doctors’ particular knowledge of the patient and her circumstances. Accordingly, the Court held that the execution of the Warrant was defective and the case was returned to the County Court for a final decision.

### Comment

It is of note that in reaching this decision, the Court of Appeal took close account of Article 5 of the Human Rights Act<sup>2</sup>. It was plain that the Court felt that there was a need to follow closely the precise terms of any legislation (here the Mental Health Act) giving powers that infringed an individual’s right to liberty.

<sup>1</sup> Ford –v- Metropolitan Police Commissioner and Epsom and St Helier NHS Trust [2003] EWCA CIV 1152

<sup>2</sup> Right to Liberty

MENTAL HEALTH LAW

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BRIEFING

Where Warrants are required under Section 135 to remove patients from their home (or alternatively, to enter premises to retrieve patients who are AWOL), it is important to ensure that the Warrant is correctly drawn up. Such Warrants are often needed at very short notice and our experience is that Court staff and magistrates are often not very familiar with the procedure under the Mental Health Act. However, it is clearly essential to ensure that they are properly made out if they are to be valid. In particular, if the Warrant is to name a specific individual who is to carry out the Warrant, it is essential that they then attend on the execution of it.

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