

Number 78

## Tribunals (and Managers?) – The Duty to Give Adequate Reasons

The Mental Health Review Tribunals have a duty to give adequate reasons for their decisions. The scope of this duty has recently been considered by the Court<sup>1</sup>.

### The Facts

The patient was detained under Section 37/41 of the Act. He sought judicial review of a decision by the Tribunal not to grant conditional discharge.

The patient suffered from paranoid schizophrenia. The Tribunal had heard conflicting evidence as to whether he should be allowed to return to the community. This evidence included the fact that he had relapsed on a previous occasion and committed several serious sexual offences.

At the hearing, the Tribunal accepted that the patient had been responding well to his medication, but having “reflected” on his index offences and the fact that these appeared to be attributable both to his mental condition and his attitude to women (which was said to be separate from any illness), the Tribunal refused his conditional discharge.

The patient contended that the Tribunal had not properly addressed the criteria for discharge set out in Sections 72 and 73 of the Mental Health Act.

### Court Decision

The Court held that the Tribunal had properly considered the first criteria, namely that the patient was suffering from a mental illness of a nature of degree that made it appropriate for him to be detained<sup>2</sup>.

However, as regards the second criterion, namely whether the detention was justified in the interests of the patient’s own health and safety or with a view to the protection of others<sup>3</sup>, the Court felt that it was unclear how the Tribunal had considered the patient’s attitude to women generally, how it had taken into account this attitude and indeed why it was considered to be relevant.

Accordingly, the Tribunal’s reasons were inadequate as they did not consider what was meant by the word “reflected” nor was it clear as to the relevance attributed to the patient’s attitude to women generally. Accordingly, judicial review was granted.

<sup>1</sup> R (on the Application of Li) v Mental Health Review Tribunal [2004] EWHC 51

<sup>2</sup> Section 72 (1)(b)(i)

<sup>3</sup> Section 72 (1)(b)(ii)

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## Hospital Managers' Decisions

Although this decision directly applies to Tribunal hearings, it may also be illustrative for hospital managers hearings. The Code of Practice<sup>4</sup> makes it plain that the decision of hospital managers as to whether or not to discharge a patient should be communicated both orally and in writing to the patient. At least one member of the panel should see the patient to explain the reasons for the decision.

As managers' decisions must give reasons, this case should also assist in that context.

**Andrew Parsons**

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August 2004

### Government Publishes Consultation Paper on Reviewing Tribunals

The Secretary of State for constitutional affairs has published a White Paper proposing reform of the Tribunal system in all aspects, including the Mental Health Review Tribunals. The main thrust of the proposals is to create a unified Tribunal service under the control of a Senior President of Tribunals. In addition to creating this new organisation, the White Paper is also concerned with how the Tribunal system can assist in resolving disputes more quickly.

At the moment this is simply a White Paper however, it proposes that the Mental Health Tribunal System should join the new unified system in 2008

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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<sup>4</sup> Paragraph 23.19

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