

Number 9

Distinction between Nature and Degree of Mental Disorder

The criteria for detaining a patient under the Mental Health Act includes the assessment of whether he is suffering from a mental disorder both of a nature or degree which makes it appropriate for him to be detained in hospital.

The Court has recently had to determine whether to fulfil this criteria it is necessary for a patient to suffer from a mental disorder both of a nature and of a degree which requires detention, or whether the illness may be of a nature as to warrant detention even if the degree of illness does not.

In *R -v- Mental Health Review Tribunal for South Thames Region ex parte Smith*¹ the Court was required to consider an appeal against the refusal of the Tribunal to discharge a patient.

The patient was subject to a restriction Order under Section 37 and 41. He was diagnosed as suffering from paranoid schizophrenia.

The patient applied to the Tribunal for a discharge. At that time he was not displaying positive or negative symptoms of his illness.

The Tribunal found that the patient's mental disorder was of a nature but not of a degree which warranted his detention in hospital. On that basis, they refused to discharge him. He therefore applied to the Court by way of judicial review to contest this finding on the basis that the phrase in the Mental Health Act "nature or degree" was to be read conjunctively and that as his disorder was not of a degree warranting detention, there was no power to detain him lawfully and he should be discharged.

Section 72 of the Act provides:-

"The Tribunal shall direct the discharge of a patient liable to be detained otherwise than under Section 2 above if they are satisfied - (i) that he is not then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment or from any of those forms of disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment..."

The Court rejected the patient's argument. It held that there was a reason for the distinction in the Act between the words "nature" and "degree". If the degree of the disorder alone was to be considered, it would have been right to direct the discharge even though the nature of the condition was such that a discharge was not appropriate. Although the applicant had a chronic condition which was static at the time, the nature of the illness was that it might also cease to be static. The degree of the condition at the relevant time was not relevant because it was static and stable.

Accordingly, the Court held that the Tribunal's decision was lawful.

This is a useful decision and confirms that in considering detention, the nature of the patient's illness and the degree of his illness may be looked at separately and distinctly.

¹ (1998) Times Law Reports 9th December

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Although this decision was specifically based upon the interpretation of Section 72, it is also relevant when one comes to construe the same words in Sections 2 and 3, and Sections 7, 20, 37 and 51.

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