

Challenging Hospital Managers' Panel Decisions

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We look at the impact of a recent case which clarifies the options open to Trusts where there is concern about a Hospital Managers' Panel decision to discharge a patient.

The case of *South Staffordshire and Shropshire Healthcare NHS Foundation Trust v Hospital Managers of St George's Hospital (2016)* involved a Trust seeking to challenge a Hospital Managers' Panel decision to discharge a patient from detention under the Mental Health Act despite the concerns of his Responsible Clinician and despite a recent Mental Health Tribunal decision that he should remain in hospital.

The key points arising from this case are:

- A Trust can seek to challenge decisions made by its own Hospital Managers' Panel by way of judicial review;
- If a Trust has concerns about a Hospital Managers' Panel decision to discharge, judicial review is a more appropriate route than simply re-sectioning the patient;
- Hospital Managers' Panels are not obliged to take a Mental Health Tribunal decision into account. It is up to these separate decision-makers to decide whether or not to take each other's decisions into account and, if so, how much weight to give them.

Facts

The case related to a man in his sixties who had a long history of involvement with mental health services. He had a diagnosis of bi-polar affective disorder and personality disorder. He had lived with his parents (now in their '80s) most of his life and there was history of aggressive behaviour towards them.

The patient was detained under Section 3 of the Mental Health Act ('MHA') in September 2015. He appealed to the Mental Health Tribunal in March 2016 and the Tribunal decided that he should not be discharged in light of concerns about whether he would comply with treatment in the community and the risk of aggression/violence towards his elderly parents. Then, in April 2016, the Trust's Hospital Managers' Panel (consisting of a non-executive director of the Trust and two lay members) met to consider whether to exercise the power delegated to it by the Trust to discharge the patient. The Panel decided that the patient should be discharged, having concluded that he would engage with community-based treatment and that the risk to his parents was balanced against other factors. This was despite the Responsible Clinician's concerns about discharge and the recent Tribunal decision.

The Trust applied for judicial review of its own Hospital Managers' Panel decision on the grounds that (a) the Panel had failed to treat the Tribunal decision as a 'relevant consideration' (i.e. a matter which must be taken into account if the decision is to be lawful) and (b) the Panel's decision was 'irrational' (i.e. not within the range of reasonable decisions open to it) in light of the evidence available and the reasons it gave.

What did the court decide?

- Re-sectioning the patient in the face of a Panel decision to discharge them is not a suitable alternative to challenging the decision by way of judicial review as this undermines the Panel system.
- The starting point in law is that a public body cannot judicially review its own decisions and the power of discharge under section 23 MHA falls to the Trust itself. However:
 - The Trust's power of discharge can be delegated to a panel of three or more people authorised by the Trust Board (i.e. a Hospital Managers' Panel). The fact that the panel members cannot be executive directors or employees of the Trust underlines that these panels are intended to be independent decision-making entities;
 - The nature of the delegation in this scenario means that the Hospital Managers' Panel is sufficiently separate from and independent of the Trust to enable the Trust to challenge its decision by way of judicial review;
 - The Trust ought to be able to bring a judicial review challenge to protect the public if it considers that the Panel has made an unlawful decision.
- A Trust can challenge discharge decisions made by its own Hospital Managers' Panel by way of judicial review;
- The judgment highlighted, however, that such challenges are likely to succeed only in exceptional circumstances. In this case, the judicial review challenge failed because:

- The Tribunal decision was not a 'relevant' consideration in the sense that there was no legal requirement to take it into account. The Panel and Tribunal are separate decision-makers of equal standing and they can decide to what extent it is appropriate to take one another's decisions into account. There was accordingly no obligation on the Panel either to follow - or even to read - the Tribunal decision about whether the patient should be discharged;
- The decision made by the Panel in this case was within the range of reasonable decisions open to it on the evidence and the Panel gave clear reasons for reaching it.

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