

Mental health review tribunals

Zena Muth

The power and responsibility of mental health review tribunals are set out in section 65 et seq. of Part V of the Mental Health Act 1983. Tribunals are independent judicial bodies which were first established under the Mental Health Act 1959. They are charged, when requested, with reviewing the cases of patients compulsorily detained under the provisions of that legislation.

The powers of tribunals

The powers of tribunals in relation to patients are set out in sections 72, 73, 74 and 75 of Part V of the Mental Health Act 1983. In exercising these powers tribunals consider whether it is necessary for a patient to be compulsorily detained in hospital or whether other arrangements would be more appropriate for his or her care and treatment.

Mental Health Review Tribunal Rules

The procedures relating to tribunal hearings are contained in the Mental Health Review Tribunal Rules 1983 (as amended) these are made by the Lord Chancellor, and are legally binding on all participants in a tribunal. The Mental Health Review Tribunal Rules expand upon the Mental Health Act 1983, and explain the procedures to be followed when a patient who is detained under a section of the Mental Health Act 1983 requests a tribunal hearing. Once a patient has made an application for a tribunal hearing it is the duty of the staff of the Mental Health Review Tribunal Secretariat to process the application through to a tribunal hearing. The processes that are followed are those laid down in the Mental Health Review Tribunal Rules.

Tribunal procedures

It is often the tribunal's procedures that bring the tribunal into conflict with consultant psychiatrists and others. This article will seek to explain why the tribunal functions in the way that it does, and why it is incumbent upon all parties to the hearing to comply with the Mental Health Review Tribunal Rules 1983 (as amended).

The Mental Health Review Tribunal Rule that brings the Secretariat into greatest conflict with

consultant psychiatrists is Rule 6: "Statements by the responsible authority and the Secretary of State". This rule requires, in part, that:

"The responsible authority shall send a statement to the tribunal and, in the case of a restricted patient, the Secretary of State, as soon as practicable and in any case within three weeks of its receipt of the notice of application; and such a statement shall contain -

- (a) the information specified in Part A of Schedule 1 to these Rules, in so far as it is within the knowledge of the responsible authority; and
- (b) the report specified in paragraph 1 of Part B of that Schedule; and
- (c) the other reports specified in Part B of the Schedule, in so far as it is reasonably practicable to provide them."

As will be seen from the above, the duty under Rule 6 is placed upon the responsible authority. That is taken to mean the National Health Service trust, nursing home or private hospital where the patient is being detained. It is also assumed that the ultimate responsibility for the provision of these reports lies with the chief officer.

The statement that is required under Part A is a statement of factual information relating to the patient. The statements that are required at Part B are an up-to-date medical report; an up-to-date social circumstances report; the views of the authority on the suitability of the patient for discharge; and any other information or observations on the application which the authority may wish to make.

The European Convention on Human Rights

The recent decision to incorporate the European Convention on Human Rights in UK law through the Human Rights Bill, has far reaching consequences for tribunals. Under the Mental Health Act 1983, there are no statutory time limits, with the exception of applications made under section 2, within which cases have to be heard. Over the years, the European Court has heard a variety of cases, not all of them British, which has led to an expectation that certain time limits should be adhered to when seeking to fix a hearing for a mental health review tribunal. Significantly, it is expected that patients who are detained under section 3 can expect to have a

hearing with eight weeks of applying for a tribunal and patients who are detained under section 37 can expect to have a hearing within 20 weeks of applying.

Conclusion

In order for the tribunal to be able to fulfil these expectations it is imperative that Rule 6, outlined above, is complied with in all circumstances. For its part, the Secretariat to the mental health review tribunals is moving to a situation whereby hearing dates are fixed upon receipt of the patient's application/referral. This should serve to help all parties to the hearing, by informing them from the outset when the tribunal will take place. It should also minimise the need to seek updates on medical reports submitted. However, there will be a need to enforce Rule 6 rigorously. Since the reports, once received, have to be distributed to all patients involved in the proceedings (i.e. the patient's legal representative and the members of the tribunal).

The staff of the Mental Health Review Tribunal Secretariat, in discharging their duties, try at all times to serve the best interests of patients who have applied or been referred for a hearing. This can only be done by ensuring that the hearing is held as quickly as possible – this relies upon the cooperation of all other interested parties. The Secretariat is aware that a patient's mental state fluctuates and changes over time and that it is often very difficult for a report to be prepared within the statutory time-limits. The Secretariat also appreciates the many other calls that are made on consultant psychiatrists. None the less, the staff would be failing in their duty if they did not move to a position of implementing the Mental Health Review Tribunal Rules rigorously.

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