

MENTAL
HEALTH
REVIEW
TRIBUNALS

LAW AND PRACTICE

Anselm Eldergill



MENTAL HEALTH REVIEW TRIBUNALS

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To Helen

and to

James Cooke and David Evans

by

Anselm Eldergill

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Preface

The primary aim of this book is to provide professionals of all disciplines with the materials which they need in order properly to prepare, present and determine mental health review tribunal cases. Because hearings do not take place at a court venue, those attending them have no immediate access to a law library. Furthermore, many practitioners have difficulty obtaining copies of reported and unreported decisions concerning tribunals' powers. I have tried to help them by including case summaries which are sufficiently detailed to both ensure their accuracy and to enable the decisions to be distinguished if the facts are materially different. Similar problems are often encountered when it comes to keeping abreast of health and social services developments about matters such as risk assessments, discharge planning, and the provision of services following discharge. The book therefore summarises and distinguishes the most important legislation and circulars. Further difficulties arise when the medical reports are only available shortly before the hearing or instructions are received late in the day. There is often then an urgent need for information which helps the practitioner to analyse the medical evidence. The medical chapters in Part III contain a glossary of medical terms, international diagnostic guidelines for the major forms of mental disorder, information about treatment and prognosis, details of drugs prescribed to treat mental disorder, medical abbreviations in common usage, and other material of this kind. All of this information will, of course, be far too much for an individual to assimilate in a single evening. The introduction and overview, together with the questions listed on pages 932-941, are designed to help lawyers, in particular barristers, who only have a few hours within which to come to terms with the subject. I have throughout made extensive use of tables and flow-charts, because it seemed to me that there was a need for a book in this area which presents some of the material in this, more digestible, form. The legal contents necessarily extend beyond tribunal law and procedure. The patient's representative, and to a lesser extent the tribunal members, require a working knowledge of associated areas of mental health law and practice. They need to know how a patient's detention is authorised, renewed and terminated; when judicial review and habeas corpus proceedings may be more appropriate remedies; when compulsory treatment may be given; what are the functions of bodies such as the Mental Health Act Commission and the Secretary of State; and so forth. Richard Jones' *Mental Health Act Manual* already contains extensive notes on the 1983 Act and I have therefore concentrated on explaining first principles, both in relation to the law and medicine. A recurring theme is that it is essential to try to analyse, expose and understand the underlying logic of the various subjects covered in the book. The importance of always going back to first principles cannot be over-emphasised and, on its own, the rote learning of definitions does not take matters very far. Some people, of course, object to any detailed exposition of the law on the ground that such an approach is "legalistic." On closer examination, the word usually means nothing more than "legal", so that the objection is merely to the burden of learning and applying the law. Where the liberty of the individual is

involved, the overriding consideration must always be to ensure the law is correctly applied and rigorously observed, albeit in as informal a setting, and as informal a manner, as possible. I should lastly add that I have received out-patient treatment for depression in the past. It is important that practitioners acknowledge that mental health is relative, and that they are not ashamed of any problems which they themselves have experienced, if the burden experienced by people who have been detained and cannot hide their histories is to be reduced.

Anselm Eldergill
September 1997

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Abbreviations

For the benefit of readers who are not lawyers, only decisions which are considered to determine important points of law are reported in the two main series of law reports. These series are The Law Reports and the All England Reports [abbreviated "All E.R."]. The former should be cited where a case is reported in both. Most of the reported mental health case law will be found in the Queen's Bench volumes of The Law Reports [abbreviated "Q.B."], or in the Weekly Law Reports [abbreviated "W.L.R."]. However, cases considered on appeal will be located in the Appeal Cases volumes for the relevant year [abbreviated "A.C."]. A number of interesting judgments not reported in either series have been summarised in the daily law reports of *The Times* or *The Independent*. Old case law may be found in law reports dating back to the sixteenth century and beyond. Some of these series predate the commencement of the modern reports and are named after a private compiler [e.g. Vesey's Reports]. The following are examples of the standard citations used throughout the book to denote the source of a case report.

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[1981] 3 All E.R. 878	Commencing on page 878 of the third volume of the All England Reports for the year 1981.
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