CO/5704/2005

Neutral Citation Number: [2005] EWHC 2329 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Friday, 26th August 2005

B E F O R E:

**MR JUSTICE COLLINS**

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**THE QUEEN ON THE APPLICATION OF EAST LONDON AND THE CITY MENTAL HEALTH NHS TRUST**

**(CLAIMANT)**

-v-

**MENTAL HEALTH REVIEW TRIBUNAL**

**(DEFENDANT)**

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Computer-Aided Transcript of the Stenograph Notes of
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**MR V SACHDEVA** (instructed by Messrs Bevan Brittan) appeared on behalf of the CLAIMANT
Counsel did not attend (represented by TREASURY SOLICITORS) appeared on behalf of the DEFENDANT
**MR K GLEDHILL** (instructed by Messrs Kaim Todner) appeared on behalf of the INTERESTED PARTY, IH.

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J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE COLLINS: This claim concerns a decision of the relevant Mental Health Review Tribunal to discharge a patient, who is to be called IH, from liability to be detained. The claimants are the Authority responsible for providing aftercare for IH following his discharge. They contend that the decision of the Tribunal was wrong in law. The Tribunal itself does not appear to defend its decision. It was asked to consent to an order quashing that decision but declined to do so. The reasons that it gave are set out in a letter of 22nd August in which the Treasury Solicitor says this:

> "I can confirm that my client would not, in principle, agree to a consent order that the MHRT's decision of 19th July 2005 be quashed. Firstly, it is clear that the Interested Party [that of course is IH] would not agree to such an order and secondly given that the Interested Party's liberty is at the heart of this matter, he should be allowed an opportunity to defend this claim. As I made clear in my letter to the court dated 19th August, my client is of the opinion that it is a waste of court time and public funds to defend this claim when it is already being defended by the Interested Party. I can also confirm that my client does not possess evidence that may assist the court in determining the claim, had he possessed such evidence it would have been filed on Thursday."

2. IH has been represented and Mr Gledhill has argued that the decision should stand. IH is now 39. He suffers from paranoid schizophrenia. He believes that he is the Messiah. The illness commenced to show itself in 1992 when he left home and went to live on the streets. He assaulted a verger in a church and in 1993 he stabbed his brother with a bread knife in the belief that God had required him to do so. When charged with grievous bodily harm, he was found not guilty by reason of insanity. But due, I was told, to the failure of the Home Office to process the necessary paperwork, he was not committed to hospital in pursuance of the court order. He was, however, detained in due course under section 3 of the Mental Health Act until 1996. He was then discharged into the community and remained with no apparent problems until 1999, when he committed a serious offence of arson.

3. The circumstances appear to have been that he emptied his own flat of personal belongings and furniture and started a fire with rubbish collected outside. He expressed the intention of killing everybody in the hostel because he considered they were all sinful. For reasons of which I was not informed, he was not prosecuted but was committed again under section 3 of the Mental Health Act. He remained in hospital until he was discharged in 2002 to a hostel, the Riverside Hostel. Again, it seems that all went reasonably well for some two years, but on 22nd June of 2004 he committed a serious assault on a fellow resident. There was much evidence called before the Mental Health Tribunal about that assault. It was clear that he was provoked and had been bullied by the other resident whom he assaulted. The violence shown was undoubtedly excessive and he expressed a desire to kill his victim because he regarded him as the anti-Christ. It seems that he also assaulted a nurse who intervened in order to try to pull him away from the victim.

4. He was admitted to hospital as a result of this and displayed, at that stage, psychotic symptoms. The report of the nurse who was in charge of him when he was admitted to hospital records that he initially appeared suspicious, guarded, unwilling to discuss the assault incident and that other patients were sinners not worthy of him. He refused to sit or eat with them and he was displaying psychotic symptoms expressing bizarre grandiose religious ideation.

5. In July, he indicated that God had sent a message of deliverance to him but God had disappointed him during the past 15 years and he was anxious that God might disappoint him on his birthday, which was the following day, 16th July. A month later, in August, he was granted an escorted walk within the hospital grounds each day and on 27th August he absconded whilst on that walk. He was returned some week later. Whilst he had been at large, he had apparently entered various businesses in west London demanding money and he had wrapped a black woollen hat around his left hand and pretended he had a gun. He was initially arrested for armed robbery but no weapon was found and because it was discovered that he had a history of mental illness, no further action was taken. He was returned to the hospital.

6. There was reference to the possibility of self-harm, but he denied that he had more than fleeting thoughts of self-harm. In any event, it appears there was a gradual improvement, he kept to his medication and he earned the description as a model patient. He was in low security conditions.

7. On 6th June of this year, he was transferred to a medium secure unit. Unfortunately, the evidence before the Tribunal was decidedly sparse as to why that had happened and surprisingly his RMO, Dr Horgan, when pressed apparently was unable to explain precisely why it was that he had been transferred to the medium secure unit. It seems that the reason was that it was decided that he needed to work on anger management because of his lack of insight into his condition, and that it was decided that there might be a need for specialist forensic psychiatric treatment. The reason why it appears that it was decided that it was necessary to transfer him to a medium secure unit was because this sort of treatment could result in a reaction which might be dangerous either to him or to others.

8. Whether that was in truth the reason, I do not know because to an extent it seems that that is ex post facto speculation by the parties. I am bound to say that I do find it extraordinary that this was not set out or explained to the Tribunal in greater detail. However, the Tribunal was aware that the RMO, Dr Horgan, believed that IH would benefit from a treatment plan. In the statement that she provided to the Tribunal, she set out what she regarded as the appropriate treatment plan which included: a) continued detention in a supported, secure, therapeutic environment, b) ongoing monitoring of his mental state presentation, c) a review of medication and monitoring compliance and levels, d)engagement in occupational therapy, e) encouragement to engage in psycho educational therapies addressing mental health awareness and anger management and f) escorted ground leave leading to unescorted ground leave and subsequently escorted community leave and unescorted community leave.

9. Thus what was being proposed, (indeed this was stated when Dr Horgan gave evidence and was the view of others of the professionals who were looking after him) was that there should be a gradual path to discharge which would involve a less secure sort of environment, culminating in an open ward in hospital where he could remain under treatment before being discharged to a hostel, such as Riverside.

10. The Tribunal sat on 19th July at the hospital. The Tribunal's powers in this connection are contained in section 72 of the Mental Health Act of 1983. So far as material when dealing with a section 3 patient, it provides as follows:

> "1. Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is liable to be detained under this Act, the Tribunal may, in any case, direct the patient be discharged and b) the Tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 above if they are not satisfied:
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> i) that he is 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 or;
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> ii)that it is necessary for the health or safety of the patient or for protection from other persons that he should receive such treatment.
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> "2. In determining whether to direct the discharge of a patient detained otherwise than under section ii above in a case not falling within paragraph b of subsection i above, the Tribunal shall have regard: a) to the likelihood of medical treatment alleviating or preventing a deterioration of the patient's condition and b) in the case of a patient suffering from mental illness or severe mental impairment to the likelihood of the patient, if discharged, of being able to care for himself and to obtain the care he needs or to guard himself against serious exploitation.
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> "3. A Tribunal may, under subsection i above direct the discharge of a patient on a future date specified in the direction. Where a Tribunal do not direct the discharge of a patient under that subsection, the tribunal may a) with a view to facilitating his discharge on a future date recommend that he be granted leave of absence or transferred to another hospital or into guardianship and b) further consider his case in the event of such recommendation not being complied with."

11. It is necessary to note that section 145, which is the definition section in the Act, defines medical treatment in these terms:

> "Medical treatment includes nursing and also includes care, habilitation

and rehabilitation under medical supervision."

It is and has been construed as a very wide definition.

12. The evidence of the RMO and the doctors and nurses who were looking after him was that he was suffering from mental illness, that is to say paranoid schizophrenia within the meaning of the Act and that it was of a nature or degree which made it appropriate for him to be liable to be detained in hospital for medical treatment and that it was necessary for the health and safety of himself to an extent, but more importantly for the protection of other persons that he should receive such treatment. Accordingly, this was not a case in the view of those witnesses which should lead to a mandatory discharge order under section 72(1)(b). Their view was that the process should be a gradual one.

13. There was also, before the Tribunal, the evidence of an independent psychiatrist, called on behalf of IH, and a social work consultant. They were both of the opinion that he was not suffering from mental illness which required that he be liable to be detained. They were of the view that the appropriate decision should be a discharge in accordance with section 72(1)(b) of the Act. However, it is to be noted that the social worker, Mr Perches, in dealing with the question of risk said this in his statement which was before the Tribunal:

> "As long as he continues to accept treatment and live in supported accommodation of the type provided by Riverside, and proactively supported by his CMHT [that is the aftercare] there is a good likelihood that his mental state will continue to remain stable and present a low risk of harm. His team have identified early indicators, such as poor self care, increased irritability and becoming withdrawn and should be able to intervene at an earlier stage to prevent further deterioration reaching an acute stage."

Nonetheless, as I have indicated, his view was that a discharge under section 72(1)(b) was the appropriate result.

14. It is also to be noted that there was evidence from the nurse who had been involved by him in the incident in June of 2004 at Riverside. That nurse, who had himself been assaulted, said this in a letter to the solicitor representing IH:

> "Further to my telephone call today, I understand that IH has made good progress and responded well to treatment. Should the Mental Health Tribunal no longer consider him to be a risk to himself or others and will keep to his treatment plan, then we are looking forward to having him back here for rehabilitation pending funding being agreed and bed availability. Clearly what happened, prior to his admission from Riverside House, was a relapse of his illness and an unfortunate incident which I witnessed and was not injured as a result. The other service user involved has since been discharged."

There was a letter from the deputy manager/director of Riverside dated 12th February, again written to IH's solicitors. He indicated that a bed would be available once the individual who had been assaulted had moved on. As I say, there was evidence that Riverside would accept IH, were he to be discharged.

15. The Tribunal chose to reject the views of both sides which were put before them. I should say that the case before the Tribunal was put on IH's behalf that he should be discharged under section 72(1)(b) and on the other side that he was not within section 72(1)(b) and that it was inappropriate for there to be discharge but what there should be, as I have said, was a gradual path to discharge.

16. The evidence from Mr Polson, IH's solicitor, indicates that he did raise before the Tribunal the possibility of a discretionary discharge but understandably he does not seem to have elaborated on that. The Tribunal decided that that was, in their view, the appropriate course of action. They gave their reasons and I should state what those were:

> "The Tribunal accepts the evidence of Dr Horgan that the patient suffers from a mental illness, schizophrenia. He has a well documented history dating back to 1992 and involving lengthy admissions to psychiatric hospitals. The patient, following an assault on a co-patient at his hostel, was admitted to Homerton Hospital in June 2004. It was noted by his CPM at this time and date that his mental state was deteriorating and an admission was being considered. He has a history of acting on his grandiose delusions at times when unwell, claiming that he is the Messiah and is acting on God's will. Presently, he continues to believe he is the Messiah and the prince of peace. Furthermore, he continues to believe that the television and radio have special reference to him. During his one year at Homerton Hospital, he was described as a model patient and likewise continued to be entirely appropriate in his present placement.
>
> "We note that he did abscond on one occasion from Homerton whilst being acutely distressed by the side-effects of his medication. Currently he reports feeling well with no side-effects. His former hostel is prepared to have him back. Given the excellent support he received and will receive at Riverside, we believe that his detention in conditions of medium security is disproportionate to the risk and is not warranted. The discharge is delayed until an aftercare package is put in place."

In fact, the Tribunal directed the discharge should take effect on 19th August 2005. The attack upon that decision is based both on a lack of proper reasons and upon a failure to ensure that there was a care package in place before directing discharge. It is submitted that the Tribunal failed to have proper regard to section 72(2)(a) in particular of the Act. If they were minded to decide, as they did, that discharge was appropriate in the exercise of their discretion, then they ought to have ensured that a proper care plan was in place and they ought to have identified the treatment which was necessary to ensure that he could be discharged in safety.

17. Mr Sachdeva submitted that it was, in the circumstances, irrational for them to decide simply that he be discharged to the same hostel where he had committed the assault and where things had gone wrong, when there was no sanction of any sort and no indication of what treatment ought to be put in place. In addition, he submitted that the Tribunal was in error in deciding that there should be an immediate discharge from medium security to the community. Mr Gledhill drew attention to the fact that there was a care plan now in place. Very properly the claimants had to ensure, as best they could, that a care plan was in place and that there was a doctor available to supervise because that had been a problem since there was no doctor who was willing, in the circumstances before the decision of the Tribunal, to act as the supervising doctor.

18. Accordingly, he submits that since the decision was not an irrational one and there was evidence before the Tribunal which could justify the decision which they had reached that the discharge was not an unacceptable risk, there was no basis for judicial review. Either the court should exercise discretion in favour of IH or, as he would submit, the decision was a proper one and the reasons, although no doubt sparse, were adequate.

19. I will now deal with the submission that the Tribunal failed to comply properly with section 72(2)(a). The requirement is to have regard to the likelihood of medical treatment alleviating or preventing a deterioration. It is to be assumed, for obvious reasons, that once the Tribunal is satisfied that it was necessary for the protection of other persons that IH should receive such treatment, they had to be satisfied that it was likely that there would be available medical treatment to achieve that result.

20. That meant, if one goes to the definition, that there had to be some degree of medical supervision. As is the case with perhaps most schizophrenics, it is of vital importance that they continue to keep to their medication but that is not the be all and end all. There was clear evidence in this case before the Tribunal that it might be necessary that there be further forms of treatment. Mr Gledhill submitted that they could have been available in the community. Certainly some of them could. It was surely important that the Tribunal spelt out, or at least gave reasons, why it was not necessary to state what form of treatment in general terms was needed. It ought to have applied its mind to what was needed in relation to medical treatment.

21. The reasons given do not indicate that it did have regard to those matters. Furthermore, the Tribunal deferred release to 9th August on the basis that time would be given to put a care plan in place. It seems to me that that was also a wrong approach.

22. I have been referred to the decision of the Court of Appeal in R (H) v Ashworth Hospital Authority [2003] 1 WLR 127. That was a case which was different on its facts and involved a discharge of a patient who had been at a special hospital under section 72(1)(b). The Court of Appeal made it clear that in the circumstances of that case, no reasonable Tribunal could have made an order for the discharge of H without being satisfied that suitable aftercare arrangements for him were in place.

23. Of course, each case I recognise depends upon its own facts but it seems to me that that is a point of principle. The Tribunal must be satisfied that appropriate care arrangements are available and normally I imagine there will be some evidence put

before the Tribunal of their existence, and in many cases it may be a straightforward matter. But it was not entirely straightforward here. IH had in the past acted in a way which showed that he could be a danger to others. It was important to note that he was still suffering from the effects of his illness, and he maintained the delusions that he was the Messiah. Fortunately whilst he was under medication and treatment, it was possible that that would not trigger any dangerous behaviour, but the risk was clearly there and the question, as I say, that the Tribunal had to ask itself was whether that risk, in light of their findings, was an acceptable one.

24. It is interesting to note that a letter was sent to the RMO by a consultant psychiatrist three days after the decision in which the psychiatrist in question expressed some concern at the order that had been made because, as she said, IH had been referred and she understood it to Kneesworth House for inside work, anger management and specialist forensic psychiatric treatment for his illness and associated risk behaviour. He had not yet received that treatment and the risks that he posed had not been reduced. She said the risks were unmanageable before the admission, and she was not aware that the risks had in any way been lessened during the admission and her view was that he needed specialist patient care.

25. That of course was a view contrary to that formed by the Tribunal and the Tribunal was entitled, on the evidence, to take the view that the risk was acceptable. But, as it seems to me, the Tribunal ought in the circumstances to have assured itself that there was going to be an appropriate care plan in place before the discharge was ordered. In those circumstances, it ought clearly to have thought in terms of adjourning to enable it to receive the necessary information before the discharge took place.

26. That course would also, as it seems to me, have been in the interests of the patient. What was done was capable of producing an unfortunate effect because if there was no care plan properly in place, since he was still liable to detention he might well find that the order could not be complied with and he was immediately recalled under section 2 or section 3, whichever was appropriate. Alternatively, the authority responsible for providing care would be bulldozed into a plan which might not be entirely appropriate and that could cause future problems.

27. If a Tribunal is minded to exercise its discretion in the way that this Tribunal did to order discharge, and if there is not before it sufficient information, as there clearly was not, to show that an appropriate care plan was in place it seems to me that to order discharge in the way that occurred was wrong. The appropriate course, as was indicated in H's case, would have been to adjourn to see that the matters were all in place. Those are, in my view, defects in the approach that the Tribunal adopted.

28. It does not stop there because I am quite satisfied that the reasons were inadequate. Mr Sachdeva submitted that where the Tribunal had rejected the evidence of the experts, they ought to have given reasons for that. The reasons of course have to deal with the matters that have seriously been in issue, and they have to show that the Tribunal has grappled with those points. They do not have to be lengthy; short reasons are capable of being as satisfactory as lengthy reasons.

29. It seems to me that it is quite clear that what the Tribunal had done was to accept the evidence of the RMO and those who had care of IH, that he was still liable to be detained. But the risk, if he were discharged to Riverside, was an acceptable risk having regard to the way in which he reacted to his detention in hospital and to the treatment that had been administered. In those circumstances it was, as it seems to me, clear why the Tribunal decided as it did. I do not think there is anything in that particular complaint raised by the claimants.

30. The Tribunal stated that it believed that IH's detention in conditions of medium security was disproportionate to the risk and was not warranted. That was a conclusion which was acceptable on the evidence and indeed it was, to an extent, supported by evidence that when he had been admitted in October, the view was formed that it might well be that a low security was all that was needed.

31. Indeed, before he was taken back into medium security in June of 2005, as I understand it he had been in conditions of low security. But the Tribunal failed to explain why it rejected the view that the appropriate course was the gradual steps to discharge. Mr Gledhill submitted that the Tribunal had no power to make any directions in relation to that, and accordingly it was not necessary for them to go into that aspect. Furthermore, he submitted that where there was a discretionary discharge, that related to a particular hospital rather than to hospitals in general and since the decision was that the particular hospital in which the claimant was being held was not appropriate, or rather the conditions were not appropriate, the Tribunal was not only entitled but if they formed the view that it was inappropriate bound to order the discharge that they did in exercising their discretion. That, in my judgment, is entirely wrong.

32. If one goes to the opening words of section 72(1), it is clear that the discharge is a discharge from a liability to be detained. It is a discharge which prevents detention of any sort continuing. A detention in low security conditions is as much detention as in higher security conditions. Indeed if one looks at the formal decision of the Tribunal, the form states that the patient shall be discharged from liability to be detained. The legal grounds were that the Tribunal considered it appropriate to discharge the patient under its discretionary powers. It seems to me there is no difference at all between the discretionary and the mandatory powers in relation to the effect of the order. It is, as I say, a discharge from detention.

33. As far as the conditions of detention are concerned, of course there would not be a discharge at all if it was a question of low security conditions as opposed to medium security. That is why the powers in section 72(3) are provided. The Tribunal is entitled to recommend that there is a transfer to another hospital, which can effectively mean a transfer to less secure conditions.

34. If there is a failure to comply with that recommendation, the Tribunal has the power to reconsider the matter and, if appropriate, to order a discharge or to take steps in ensure that a relevant care plan, or whatever is needed, is in place so that discharge can be achieved.

35. The exercise of those powers does not seem to have been considered at all by this Tribunal and that is a further flaw, in my judgment, in both its reasoning and its decision. It was not a question that, because medium secure conditions were disproportionate, automatically there should be a discharge. There was a further possibility to which I have referred.

36. Mr Gledhill was not minded to argue that the reasons were entirely satisfactory but as I have said he had submitted that they gave sufficient information. In my view, for the reasons I have indicated, they did not cover what ought to have been covered.

37. In all those circumstances, I am satisfied that this is a decision which cannot stand. It, as I have said, was one which on the evidence before it the Tribunal was entitled to reach, but it was undoubtedly a decision which was, to an extent, a somewhat surprising one having regard to the patient's history and to the views which were accepted that he remained liable to be detained because of the nature of his illness.

38. In those circumstances, it was the more necessary to give adequate reasons to explain why what might seem to be a somewhat exceptional course of action had been taken. The reasons do not measure up to that requirement. Accordingly this decision, as I have said, must be quashed and I will remit the matter to be reconsidered by another Tribunal. Having discussed the matter with counsel, I am persuaded that it is desirable that it should go to a Tribunal other than that which considered the matter on 19th July.

39. It is obviously important that it be dealt with as soon as reasonably possible because, in effect, the result of this decision is that there has, as yet, been no decision on the appeal. As far as costs are concerned, there was an application made by the claimants against IH for costs. He is legally aided and the prospect of any order for costs ever being enforced is, as it seems to me, remote in the extreme. There is also, I would have thought, the possibility and certainly the danger that the existence of an order of costs against him is something which may well have an adverse effect upon him.

40. In all the circumstances, I am satisfied that it is not appropriate to make an order for costs and therefore, as far as costs are concerned, the only order I make is that there be the usual order in relation to the legal aid costs of the IH. Otherwise, no order.

41. I also indicated to counsel that this was not a case in which I thought it would be appropriate to grant any leave to appeal, assuming that any such application were made. It is a case which depends entirely on its own facts and there is no point of law of importance which arises and which has not been dealt with hitherto.

42. MR SACHDEVA: I wondered whether expediting the matter in a form of wording, could you indicate on the papers to assist with that.

43. MR JUSTICE COLLINS: Yes, I am happy to put in the order that I should direct. I do not think I can do more than direct that a fresh hearing be set up as soon as is reasonably possible.

44. MR SACHDEVA: Indeed, that would seem to be most helpful.

45. MR JUSTICE COLLINS: I cannot obviously give directions as to timing and indeed it may be that some up to date reports will be needed.

46. MR SACHDEVA: Indeed, I respectfully appreciate that. I think that that form of wording would assist.

47. MR JUSTICE COLLINS: I am happy for that to be put in the order.

48. MR SACHDEVA: Thank you very much indeed.