

NAPICU CONFERENCE 2012
Legal Update:
CTOs, Transfers, DOLS and Human Rights

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Community Treatment Orders

- A key plank of government policy
- What the public would expect for CTOs
- Living in the community whilst subject to the MHA, liable to recall to hospital. Must meet criteria and be agreed by AMHP

- Only after Detention in Hospital
- But did we need it? The Courts have already given us a virtual Community Treatment Order
 - Ex parte Barker
 - Merseycare
 - CS
- Consideration of CTO required before s17 leave is granted for periods beyond 7 days
 - S17(2A)
 - “But longer-term leave may not be granted to a patient unless the responsible clinician first considers whether the patient should be dealt with under section 17A instead.”

- Criteria
 - The patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
 - It is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
 - Subject to his being liable to be recalled as mentioned below, such treatment can be provided without his continuing to be detained in a hospital;
 - It is necessary that the responsible clinician should be able to exercise the power under section 17E (1) below to recall the patient to hospital, and
 - Appropriate medical treatment is available for him
- Consulting the AMHP

Conditions attached to Order

- CTO can specify conditions only if the responsible clinician with approval of the AMHP thinks they are necessary for one of the following purposes:
 - Ensuring that the patient receives medical treatment
 - Preventing risk of harm to the patient's health or safety
 - Protecting other persons

- Original proposals for "menu" of conditions:-
 - Reside at X
 - Attend at time and place for treatment
 - Receive Treatment
 - Make available for examination
 - Abstain from conduct
- The CTO must specify that the patient make themselves available for examination under s20A & Part 4A

- Period of Order: Same as S.3
- Recall to Hospital
 - The RC can recall the patient to hospital if in his opinion:
 - The patient requires medical treatment in hospital for his mental disorder;
 - There would be a risk of harm to the health and safety of the patient or to other persons if the patient were not recalled for that purpose

Recall to Hospital (Cont)

- The responsible clinician can also recall if the patient fails to comply with a condition concerning making themselves available to examination pursuant to s20A or Part 4A.

- Does the patient have to consent?
- Appeal to MHRT on need for CTO, but not its conditions
- Judicial Review – if challenge conditions

Effect of recall

- To give immediate treatment needed
- Return P to community within 72 hours. After which if P remains, CTO must be revoked
- When it is, terms should continue as if had never been on CTO
- Calculating renewal periods:
 - Treated as if admitted on s.3 on the day CTO revoked
 - If AMHP does not agree CTO to be revoked, then cannot detain in hospital at the end of 72 hours and, therefore remains on CTO
 - 17F(6): If P not released, nor CTO revoked after 72 hours, must be released
- S.68(7) references to the Tribunal

SCT: The Role of Hospital Managers

- Must review SCT when renewal report made or patient request
- Criteria in Code

When is recall lawful?

- R v Home Department, 5 Boroughs ex p MM 2007
 - S.37/41 MM always deteriorated if took drugs in community
 - Though warned, took illicit drugs within days of CD and was recalled.
 - The Court rejected his complaint that there could be no recall without evidence that he would “deteriorate” imminently”.
 - The test is whether “unless recalled, his deterioration would put health and safety of MM or others at risk”.
 - Recall therefore must be justified by such evidence

Litigation Risk?

- What if there is an incident during SCT?
- Clunis v UK 2001 ECHR
 - “It cannot be said that Camden’s failure to discharge its statutory duty under S.117...led inevitably to the fatal stabbing of Jonathan Zito”
- There is no general duty of care to the public to ensure CTO and its conditions risk free (like S.17 Leave)
- Really??

Community Treatment Orders

- PS v Islington Foundation NHS Trust
CTO reference does not lapse despite new CTO
- Role of Tribunal
Decision of UT HM/2201/2010
Judge should not pre-judge CTO without first hearing submissions
- KL v Somerset Partnership NHS Trust
Relationship between Section 17 leave and CTO

Community Treatment Orders Cont'd

- MU v Mersyside NHS Trust
Discharge or CTO?
- CQC Annual Report
- SOS v RUB & Lancashire Care Trust
No discharge with deprivation conditions

Transfer Between Hospitals: Section 19 Mental Health Act:

- R (T) Northamptonshire Healthcare NHS Trust [2006]
EWHC 800
- Code of Practice:
“Ensure good reasons for the transfer and that the needs and interests of the patient have been considered ... potentially an interference with
Article 8...”

Treatment and CTOs

- Treatment, 1 month and SOADs
- Similar to S.58/63
 - Only if Pt recalled to hospital – existing powers available (62A)
 - Treatment of P in the community (64D)
 - Pt with capacity may not be given treatment – unless consent (Code 23.14), even in emergency (23.22)

Note: MCA decisions cannot veto MHA psychiatric treatment, save ECT

Treatment of patients without Capacity (64D)

- Pt without capacity (64D)
 - 5 conditions:
 - (i) take reasonable steps to establish whether Pt lacks capacity to consent;
 - (ii) reasonable belief that Pt lacks capacity;
 - (iii) Pt does not object or, if does, not necessary to use force to give it;
 - (iv) decided by the person in charge of treatment;
 - (v) does not conflict with an AD that is valid and applicable, or a decision by a donee of Power of Attorney or Deputy or Court of Protection

Patients without capacity – emergency treatment (64G)

- Similar to S.62 and common law test
- 3 conditions:
 - (i) Reasonable belief lacks capacity
 - (ii) Treatment immediately necessary
 - (iii) If force needed – necessary and proportionate to seriousness of harm

DOLS

- Discharge from MHA to DOLS?
 - DOH letter
 - DN v Northumberland FT
- Treatment and MHS/MCA/DOLS
 - GJ v Foundation Trust
 - Flowchart available from:
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Article 2 Obligations

- Savage
 - >Duties in respect of detained patients
- Rabone
 - >Duty extended to cover informal patients

Thank you for Listening

Urgent advice is available 24 hours on: 07802 506306
To receive our free monthly email briefings on Mental Health Law
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