

## *Mental Health Act*

### *Alleged unlawful detention*

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#### *Clinical history*

On several occasions in 1979 a GP member was consulted by the father and brother of a young man because they were concerned about his violent and aggressive behaviour. The GP arranged for a consultant psychiatrist to visit the patient at home on three occasions, although once he was not in and on the other two refused to see the psychiatrist and threatened him with violence.

The young man's psychopathic behaviour continued unchanged and in 1981, at the GP's request, the psychiatrist performed yet another domiciliary visit. The patient refused to speak to him. He rushed past him and up the stairs to his room making strange noises. In view of this, and with his previous knowledge of the patient, the psychiatrist felt that it would be irresponsible to leave him uninvestigated. He recommended to the GP that the man should be admitted to hospital under Section 26 of the Mental Health Act 1959.\* The GP attended his patient's house again with a psychiatric social worker and both of them talked to the disturbed young man for a considerable time—with some difficulty because he had locked himself into his bedroom and refused to come out. Eventually he emerged and went down the stairs; he was abusive, threatening and aggressive and tried to run out of the back door. He was caught by three policemen and put forcibly into an ambulance in which he was taken to hospital. The GP decided that the patient was suffering from mental illness within the meaning of the Mental Health Act and signed the recommendation required under Section 26. His clinical judgement was based partly on information given to him by the psychiatrist and the patient's father and partly on his own observations that morning.

For two weeks immediately afterwards the psychiatrist was on leave but on his return concluded that the patient had not shown any evidence of psychotic illness while in hospital. He accordingly diagnosed a personality disorder, cancelled Section 26 and discharged the patient from hospital.

#### *Complaint and civil claim*

Shortly afterwards the patient lodged a complaint with the Family Practitioner Committee, alleging that the GP had been in breach of his terms of service in participating in his

removal to a mental hospital. A service committee investigated the facts and reported that in their opinion the member had not been in breach.

The young man was not satisfied with this: he instructed solicitors to seek damages from both GP and psychiatrist for wrongful compulsory admission to hospital. He claimed that he had suffered false imprisonment, pain, mental anguish, indignity and the stigma of being committed to a mental hospital when he was not mentally ill. He was assisted in this action by the National Association for Mental Health (MIND).

In order to issue proceedings for damages under the terms of Section 141 of the Mental Health Act 1959 it was necessary for the patient and his solicitors to make an application to a Judge in Chambers. This was considered in January 1983 by a judge who refused the application for leave to issue proceedings against the doctors. The solicitors made an application for leave to appeal to the Court of Appeal but this also was refused. They were not to be rebuffed: they made an *ex parte* application for leave to appeal which was heard in the Court of Appeal later the same year. The appeal was allowed and the patient was granted leave to bring an action against the two doctors.

#### *Expert opinions*

The MDU took expert advice from consultant psychiatrists and experienced GPs who agreed that neither doctor had been negligent; they felt that the psychiatrist had attempted on a number of occasions to assess the patient and that he had obtained considerable background information both from the GP and from the patient's father. There were sufficient grounds to feel concern about the young man's mental state and behaviour, and as conscientious efforts to help him on a voluntary basis had failed it was reasonable to invoke compulsory powers. The patient's behaviour had deteriorated progressively from May 1979 to July 1981 and this deterioration, with aggressive behaviour in a young person, was a common manifestation of schizophrenic psychosis. Assessment of a psychotic illness or an uncooperative patient depends to a large extent on information given by relatives or other informants. In assessing this particular case it was considered correct that great weight was given to the views of the patient's father.

The issue of what constituted an "examination" for the purposes of the Mental Health Act had been raised by the plaintiff. The MDU's experts felt that the psychiatrist had made several very conscientious efforts to obtain

\*Now superseded by Section 3 of the Mental Health Act 1983.

information from the patient without success and that it would have been a grave error of judgement for him to attempt to force himself on a hostile, aggressive and uncooperative patient. This might have provoked a violent outburst against the psychiatrist or a member of the family by the patient who, particularly if psychotic, might also have become frightened and fled the house. It was thought appropriate for the psychiatrist to recommend admission under Section 26 of the Mental Health Act, which enabled the patient to be treated rather than simply observed, as would only have been permitted by Section 25. Section 26 allowed compulsory detention for one year and could be reviewed and, if necessary, revoked—as subsequently occurred in this case.

The patient did not display psychotic symptoms on admission and a second consultant's opinion was obtained during the member's absence on leave. The second psychiatrist also felt that the patient should remain in a closed ward for further observations and when the member returned he agreed to the patient being discharged when appropriate arrangements had been made for him.

#### *The trial*

The case came to trial in October 1986 and lasted 10 days. Unusually in a civil claim the plaintiff elected for trial by jury. This was possible because the action included a claim for damages for false imprisonment. The doctors and the plaintiff were questioned carefully and experts on each side gave their opinion. At the end of the case four questions were put to the jury by the judge:

1. Was the plaintiff mentally ill within the meaning of Section 26 of the Mental Health Act 1959 when he was admitted to hospital?
2. Did the psychiatrist fail to exercise reasonable care in making his recommendation?
3. Did the GP fail to exercise reasonable care?
4. If either of the defendants failed to exercise reasonable care what sum would the jury award by way of (a) damages and (b) aggravated damages (if any).

The jury retired for over three hours and returned their verdict:

1. No, the patient was not mentally ill.
2. No, the psychiatrist was not negligent.
3. No, the GP was not negligent.

Judgement was accordingly entered for the defendants with costs against the plaintiff. Unfortunately these costs could not be enforced without the leave of the court, and the MDU could not recover the considerable expense of defending its members.

Both doctors expressed their gratitude and relief at the end of the trial. The GP said that he hoped to get his life back to normal as quickly as possible as the case had been hanging over his head for more than five years.

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## *Serious Head Injuries*

The National Head Injuries Association, 'Headway', is a registered charitable trust which has been formed to provide advice and help to relatives of patients with serious head injuries. With the co-operation of hospital consultants and staff, medical social workers, relatives of patients and patients themselves, groups are already meeting here and abroad, and new groups are being formed. The main aims of these groups are to give support alongside medical staff in hospital through counselling, to lessen the sudden trauma of having a seriously head injured relative and to offer activities, independently or in a group, to help rehabilitate the patient at home, as well as providing social and other activities for the long-term handicapped.

'Headway' aims to act as a liaison body between all local groups and to encourage groups to start in areas where they do not exist. It will encourage the development of mechanical, electronic and other aids not otherwise available. It also hopes to promote specialist services for assessment and training facilities, to provide short-term holiday care for patients and long-term care when this becomes essential, and to facilitate the provision of suitable housing for independent living. Further information is available from the National Head Injuries Association, 17-21 Clumber Avenue, Sherwood Rise, Nottingham NG5 1AG (telephone 0602 622382).

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## *Award*

Sir Martin Roth has been awarded the 1988 Medal of the Salmon Committee on Psychiatry and Mental Hygiene. He will receive the medal at the Annual Meeting of The New

York Academy of Medicine on 1 December 1988. The first recipient of the award was Adolf Meyer.