



Key practices for social workers

The barrister's perspective

Lesley Ann Cull

The next speaker is Mark Mullins, a practising barrister, working in the field of community care and mental health. Mark is also president of a mental health review tribunal and he begins by talking about the role of the MHRT and the purpose of reviews.

Mark Mullins

The tribunal is made up of legal members, of medical members and of members that are called lay members, although that's a bit of a misnomer because most of them have quite a lot of experience either in social work, or social administration, or in some other field like voluntary organisation work or as magistrates. The purpose of the tribunal is to review the justification for a patient's continued liability to detention, or in some circumstances it can also review a liability to guardianship or to be subject to after care under supervision under the Mental Health Act 1983. So what that means is that the tribunal is there to decide whether or not a person should carry on being subject to those legal powers. What it's not there to do is to decide whether or not the decision to make a person subject to those legal powers in the first place was right or wrong. It's also not there to decide whether the treatment the person's getting or the care they're receiving is the right care or the wrong care for that particular person at that particular time.

Lesley Ann Cull

Mark went on to talk about when reviews take place and what typically happens at a review hearing.

Mark Mullins

Apart from applications either by the patient or by some other person, some cases reach the tribunal by means of reference or referral. That is, some patients don't make applications for quite long periods or wouldn't make an application for quite long periods, and so there wouldn't be an independent review of their detention. And so what the law provides for is for an automatic reference to the tribunal for the patients under section 3 of the Act, if the haven't made an application within the first 6 months of their detention. The tribunal can interview the patient and must interview the patient, if the patient asks to be interviewed. If the patient wants to be interviewed in private without any persons there, so for example without the doctor being there, or the social worker and the nurse being there, then the tribunal must do that. What happens in practice is that before the tribunal meets to hear the application, either earlier on in the same day or several days before, the medical member will visit the patient and will interview and speak to the patient. Then come back to the tribunal, when the tribunal convenes the medical member will typically give a short factual account of what he or she found when he or she spoke to the patient, what their symptoms appear to be. The medical member can also often give some quite useful information to the tribunal about how the patient might be dealt with, how the application or reference might be dealt with. For example, sometimes it might be a good idea to have the patient's evidence first, if the patient, for example, would be very distressed and would find it very difficult to sit through a tribunal that might last two or three hours, and might be able to give us guidance about the patient's attitude to other people who may be in the tribunal, family members and so on. Next a social worker, sometimes more than one social worker, because there are social workers attached to clinical teams working within hospitals, as well as social workers for the individual's home area, and sometimes both come along. Sometimes a nurse attends to give evidence, that's often very useful because nursing staff on the ward often have the closest relationship with the patient and can actually tell the tribunal a lot about how they function, and how they are getting on in hospital and how they think they might get on out of hospital.

In some cases there may be other members of the clinical team there. There may be a psychologist or an occupational therapist, but that would be less usual. The patient will normally be there, if the patient is able to be there, it doesn't cause the patient any distress or difficulty to have the patient there and hearing all of the proceedings. Also present, quite often will be perhaps the nearest relative, which is a statutory definition under the Mental Health Act and it identifies actually the person of the member's family who the Act is going to give certain rights to discharge and make applications under the act to. But as well as the nearest relative there may well be other family members or people perhaps in some cases friends and neighbours, who are particularly concerned with, or interested in the patient's care. And not that unusual for there to be several family members or friends of that kind in the tribunal.

Lesley Ann Cull

I asked Mark about his role in the tribunal.

Mark Mullins

As a legal member and president of the tribunal it's my job to ensure that there is some structure to the hearing, and that it does follow the rules and that a decision is reached fairly and legally. And so I suppose it's my role to see it from a slightly legalistic point of view. It's sometimes quite difficult to steer the right path between an overly-formal court type hearing and a case conference. Certainly I think for social workers used to a case conference type setting, a tribunal would feel more formal than that. There's an order in which persons giving evidence are taken, which the tribunal president will announce. There's an order in which the evidence is to be taken, which should be made clear at the beginning of the tribunal.

Lesley Ann Cull

Mark went on to explain how the procedures in the reviews are not always the same.

Mark Mullins

Broadly there are two different types of tribunal. Firstly, there are tribunals concerning what are called unrestricted patients and that covers patients who are subject to Section 2, admission for assessment, Section 3, admission for treatment, Section 7, guardianship and Section 25, discharge under supervision. And there are certain powers and duties on the tribunal for those cases.

But there's another class of tribunal which is held in connection with what are called 'restricted patients'. Restricted patients are patients who have come into the mental health system through a criminal route, and a criminal court has decided, essentially because of the risk that these individuals pose, or might pose to society at large, that they will not only be detained and treated against their will, but also that special restrictions apply to their discharge back into the community. Restricted tribunals are heard again by a three person panel made up of a legal member, a medical member and a lay member, but the legal member in the case of a restricted case is always either a circuit judge or a senior barrister who sits as a part-time judge. And so the status of the legal member is higher, to reflect the possible risk to the community involved in these particular cases.

Lesley Ann Cull

What are the different outcomes of these two kinds of review tribunals?

Mark Mullins

The tribunal in an unrestricted case has certain powers which it can exercise. It can recommend that a patient be given more leave out of hospital; that is permission to go out of the hospital or perhaps to go off the ward within hospital grounds. It can recommend that a patient be transferred to a different hospital or setting, both with a view to promoting the eventual discharge of that particular patient. A tribunal can also recommend that an application for discharge under supervision, under Section 25 of the Mental Health Act is made. The tribunal's powers in restricted cases are firstly, it has the power to discharge a patient if it considers that the statutory criteria are met. It doesn't have a discretionary power to discharge a restricted patient. If it does decide that a restricted patient should be discharged, the tribunal has the power to impose a form of conditional discharge on a restricted patient that isn't available when it's considering an unrestricted case.

Lesley Ann Cull

What advice would Mark give to ASW's practising in this field of work?

Mark Mullins

I think that they need a good technical grasp of the law as it relates to mental health, and as it relates to community care and social services, duties and functions. And I think that they also need to be able to be flexible and keep themselves up to date with that area of law. I think they have to be good at making connections and keeping links with different agencies, both within health settings and social care settings, statutory and voluntary.