Mental health tribunals have the potential to be difficult and challenging.

Tribunals lie at the interface between psychiatry and the law, and use concepts which are not frequently used in clinical practice.

The meanings of these concepts are rarely taught during psychiatric training and can leave clinicians ill prepared for the scrutiny of the tribunal.

This module will primarily aid clinicians facing mental health tribunals within England. The aim of the module is to demystify the medico-legal aspects of tribunals by reviewing the law (section 72 MHA 1983) and key factors they consider in reaching their decision.

The module presents a mock tribunal to aid learning, where you will be asked to follow the case history of a patient with paranoid schizophrenia. You will be presented with typical questions from the tribunal, and given an opportunity to respond. Model answers are also provided. The statutory criteria, legal definitions and case law will be discussed as part of the answers.

Please note that the module does not aim to account for all questions asked in tribunals but it will provide you with a framework to address the key issues. We address the following key points:

- The section 72 statutory discharge criteria is of considerable importance to tribunal decision making. There are various tribunal disposal options including the powers to discharge, discretionary discharge, delay discharge and to make recommendations.

- The term 'suffering from' found within the discharge criteria is dependent on the prognosis of what would occur if medication was withdrawn.

- The term 'mental disorder' found in the discharge criteria is an inclusive definition.

- The terms 'nature' and 'degree' are to be read disconjunctively. 'Degree' refers to the current manifestation of the disorder. 'Nature' refers to the particular mental disorder from which the patient suffers its chronicity, its prognosis, and the patient’s previous response to receiving treatment for the disorder.

- The term 'medical treatment' is an inclusive one which can include treatments which are non-medical.

- Continued detention of a symptomatic individual is generally dependent on degree arguments. Continued detention of an asymptomatic individual is dependent on nature arguments.

- The concept of proportionality is important in the continuing detention of an asymptomatic individual.

This module is paired with Mental health and tribunal law: an introduction.
Reflection – tribunal questions

(2.5) Is he suffering from a mental disorder? If so, what disorder is it?

(2.10) Do you believe he needs to be detained under nature, degree or both?

(2.13) What is the current degree of his disorder?

(2.16) Please describe the nature of his condition.

(2.22) Why do you believe Jonathan requires continued detention?

(2.25) Is appropriate medical treatment available?

References


Mental Health Act 1983 s145.

Mental Health Act 2007 s145 (4).


Further reading


The law of mental health tribunals – Section 72 of the Mental Health Act


Useful websites

Care Quality Commission (CQC) – access to MHAC reports detailing many mental health law issues. [website]

ECHR and HUDOC – the official website of the ECHR and a legal website detailing all ECHR judgments. [website]

Mental Health Law Online [website]

The final Mental Health Act Commission Report – it discusses the practical application of mental health law. [website]

The Open University: Outlining the basics of mental health law. [website]

Tribunals Service – Outlines the structure and function of tribunals. [website]

UK Parliament website – Outlines the functions of the House of Commons and Lords. [website]

Wikimental health – frequent updates detailing important case law. [website]


Cases

Devon cc v Hawkins 1967 2 Q.B. 26 In this case the patient suffered from epilepsy but was free from symptoms for some time because of medication. Despite not having any signs of epilepsy it was deemed he still suffered from epilepsy. [website]

Dorset healthcare NHS Foundation Trust vs. MH [2009] UKUT4 (AAC) [website]

Handyside v UK [1976] 1 EHR 737

MHRT v ex parte Hemstock (1998) 39 BMLR 123

R (o the application of N) v (1) Ashworth (2) Secretary of state for health [2001] EWHC 339 Admin [2001] HLR 46


R (on the application of H) v Mental Health Review Tribunal North and East London Region [2000] M.H.L.R. 242

R (on the application of H) v MHRT North and North east London region [2001] EWCA Civ 415; M.H.L.R. 48

R v MHRT for South Thames Region Ex Parte Smith 1999 COD 148.


R v Secretary of State for the Home department, Ex Parte Daly [2001] UKHL 26

Smirek v Williams 2000 M.H.L.R. 38.

Winterwerp v Netherlands (1979) EHRR 387. [website]