Re GK (Patient: Habeas Corpus)

Issue: Whether a nearest relative application for discharge was properly delivered on being placed in the named administrator's pigeon-hole for the purposes of the time limit of the barring order.

Court and Reference: Administrative Court; CO/2453/99

Judges: Sedley LJ, Collins J

Date: 21 June 1999

Facts: GK was detained under s3 Mental Health Act 1983 on 31 July 1998; this was renewed under s20 of the Act; on 27 May 1999, after a Mental Health Review Tribunal decided against his discharge, his mother and nearest relative, DB, was advised of her powers as the nearest relative to discharge GK from hospital under s23 of the Act, though subject to the power of the treating psychiatrist to bar this within 72 hours under s25 of the Act.

DB handed an appropriate letter to the reception desk of the unit where GK was detained on 27 May 1999. It was placed in the pigeon-hole of the hospital administrator. The receptionist was not told of the purpose of the letter. The administrator was absent, and the letter did not come to the attention of his deputy. On 3 June 1999, DB arrived at the hospital to take GK home; on the same date, the administrator had returned from leave, read the letter and arranged to have a barring order made.

GK then sought a writ of habeas corpus on the basis that 72 hours had passed from DB's application to discharge and so the hospital had no jurisdiction to continue to detain.

Decision: The power of discharge vested in the nearest relative under s23 of the Act is to ensure that nobody who is entitled to their discharge is prevented by bureaucracy or inertia or error in a hospital's administration from gaining their freedom. The barring order under s25 ensures that the mere desire of a close relative to discharge a patient does not defeat the purpose of the Act which, both in the interests of the patient and in the interests of the public, has ultimate regard to the patient's mental state.

Under Reg 3 of the Mental Health (Hospital Guardianship and Consent to Treatment) Regulations 1983, the nearest relative's order to discharge shall be delivered to an officer of the managers authorised by them to receive it or sent by post to the managers. This narrows the method of service of the order. The question is whether placing a letter in the pigeon-hole of the administrator amounted to delivery to the managers.

The purpose of the Regulation is to ensure that by one prescribed means or another an order for discharge comes to the notice of a properly authorised person without delay. This is met if the Regulation is construed to require personal delivery to an authorised officer or use of the postal system: this requires the managers of the hospital to ensure that an appropriate officer is always available to receive and scrutinise documents addressed to them. If it were possible to comply with the Regulation by simply leaving a letter at the desk or addressing it by post to a named person, the very personalisation of the addressee of the notice would mean that if he or she was away, nobody else deputed to respond to it would be likely to receive it and the 3 days would elapse by accident. That would introduce an element of hazard into the system.

Consequently, the nearest relative's order for discharge was not effective until opened by the administrator and the barring order was made in time; and so the application for habeas corpus was refused.

Appearances: L Daniel (instructed by Jackson & Canter) for K; J Butler (instructed by Hill Dickinson) for the Hospital.

Judgment:

Sedley LJ

1. GK has been suffering for many years from a psychiatric disorder, diagnosed as chronic paranoid schizophrenia. Among the evidence of his condition has been a history of attempts at serious self harm and violence towards others close and dear to him. He was detained under s3 of the Mental Health Act 1983 as from 31 July 1998 and his detention was extended thereafter under s20 of the Act. On 27 May 1999 a Mental Health Review Tribunal decided against discharge.

2. GK's mother, DB, who cares for him and has been extremely loyal to his interests, was distressed by the way the Tribunal went. In her statement (which, by consent, like all the statements of evidence to which I shall refer, has been treated as evidence in the case) she records:

> "I was so distressed by the way in which the tribunal had gone on and also by the way in which Dr Segar [the responsible medical officer] was treating everybody that in discussion with Mr Topping [her solicitor] I was then advised that as GK's nearest relative I could make application for him to be discharged from the hospital."

3. Accordingly, Mrs B put a written document in to the hospital. The power to do this arises under s23 of the Mental Health Act 1983. The section is captioned "Discharge of patients" and provides:

> "(1) Subject to the provisions of this section and s25 below, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him from detention or guardianship (in this Act referred to as an 'order for discharge') is made in accordance with this section.
>
> (2) An order for discharge may be made in respect of a patient -
> (a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment by the responsible medical officer, by the managers or by the nearest relative of the patient;
> (b) where the patient is subject to guardianship, by the responsible medical officer, by the responsible local social services authority or by the nearest relative of the patient."

4. Section 25, to which s23(1) makes reference, provides by subs(1):

> "An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital; and if, within 72 hours after such notice has been given, the responsible medical officer furnishes to the managers a report certifying that in the opinion of that officer the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself -
> (a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and
> (b) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date of the report."

5. Such an order in response to a discharge order has been referred to conveniently in these proceedings as a 'barring order'.

6. It has not been possible, and indeed not been necessary, to explore in detail in these proceedings the purpose of what might at first blush look like a rather painful statutory game of cat and mouse. But it is evident, even on a cursory examination, that the power which is vested in the nearest relative and in others is there essentially to ensure that nobody who is entitled to their discharge is prevented by bureaucracy or inertia or error in a hospital's administration from gaining their freedom. But the barring order is there to ensure that the mere desire of, in particular, a closest relative to have a patient out does not defeat the purpose of the Act which, both in the interests of the patient and in the interests of the public, has ultimate regard to the patient's mental state.

7. The letter which Mrs B handed in was dated 27 May 1999, that is the day of the Tribunal hearing, and read:

> "I request my son GK be released from his section three.
> Yours faithfully
> DB."

8. Mrs B in her evidence recounts that she handed it at the reception desk of the unit at which her son was detained to a lady she knew as 'Val' and who, it emerges from the respondent's evidence, was Valerie Winward. Mrs B says that Ms Winward told her that she would see that the letter got to the right person and put it in the pigeon hole of Mike Davis, who is a Mental Health Act Administrator at the hospital. This Ms Winward confirms, adding that at no time did Mrs B give any indication of the content of the letter. Mrs B for her part does not say otherwise.

9. It turns out that Mr Davis was not present at the hospital that day. He was absent on leave, returning on 1 June, and was absent again on 2 June. In his absence from work, his duties are undertaken by another nominated officer, Barry Butcher.

10. The importance of the identity of the individual to whom a letter of this kind is either addressed or

delivered will become apparent in one moment. Before I reach that question, however, I should say that I am content to approach the case on the footing that the letter which I have read out was in truth an order for discharge, even though it does not contain mandatory language. As will appear in a moment, the hospital's response, when the letter finally reached its notice, was consistent with its being an order.

11. The problem which arises in the case is this. The application is for the issue of a writ of habeas corpus and the basis of the right to discharge which Mr Leon Daniel claims on behalf of GK is that more than 3 days went by before a barring order purported to be made. Mr Butler for the responsible Health Trust accepts that if this was an order and if it was properly served on 27 May then the purported barring order that was eventually made was made too late to prevent GK's discharge. It is nothing to the point that, had discharge occurred, there would almost certainly have been an immediate compulsory readmission to hospital in the light of the medical evidence about GK's mental state. If he was entitled to his discharge then it is for this Court to give what effect can now be given to that entitlement.

12. Whether he was so entitled depends upon the Regulations made under the Mental Health Act, namely, the Mental Health (Hospital Guardianship and Consent to Treatment) Regulations 1983. By Reg 3 the following provision is made. I will read out the first 3 paragraphs of the Regulation, although it is only the third which ultimately matters in this case, because it seems to me that the first 2 cast light upon the intended meaning of the third:

> "(1) Except in a case to which para (2) or (3) applies, any document required or authorised to be served upon any authority, body or person by or under Part II of the Act (compulsory admission to hospital or guardianship) or these regulations may be served -
> (a) by delivering it to the authority, body or person upon whom it is to be served, or upon any person authorised by that authority, body or person to receive it; or
> (b) by sending it by prepaid post addressed to the authority or body at their registered or principal office or to the person upon whom it is to be served at his usual or last known residence.
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> (2) Any application for the admission of a patient to a hospital under Part II of the Act shall be served by delivering the application to an officer of managers of the hospital, to which it is proposed that the patient shall be admitted, authorised by them to receive it.
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> (3) Any order by the nearest relative of the patient under s23 for the discharge of a patient who is liable to be detained under Part II of the Act, and the notice of such order given under s25(1), shall be served either by delivery of the order or notice at that hospital to an officer of the managers authorised by them to receive it or by sending it by prepaid post to those managers at that hospital."

13. Before I turn to the meaning of the Regulation, let me complete the story. Mrs B was patient and allowed 3 working days rather than simply 72 hours to run before she went to the hospital to take GK home. She went there on Thursday 3 June. When she arrived, she asked for some medication so that she was equipped to take GK home. It is not, I think, helpful to go into the 2 accounts of what then happened in any detail. As perceived by Mrs B, the hospital went into panic mode in order, first, to hold her off until they could medicate her son, and then to get a barring order made. So far as the hospital was concerned, an unexpected situation had arisen. Mr Davis had opened Mrs B's letter in his pigeonhole on the very day that Mrs B arrived to take her son home. The hospital, from its point of view - a very different point of view from Mrs B's - set about ensuring that the needs of the patient and the public were attended to by whatever measures were properly open to them. The measure that they took was to prepare a barring order. Everything therefore turns upon whether the receipt, for statutory purposes, of the discharge order (as we will assume it was) was on the very day of the barring order, 3 June, in which case the order was made in good time, or on 27 May, in which case the barring order was of no validity because it came too late.

14. I turn then to the meaning of the Regulation. The way the Regulations are configured is cautious, in the sense that each document or class of document has a different variety of permitted modes of service. Taking para (2) of Reg 3, an admission application has to be made by delivery to an officer of the hospital managers who has authority to receive it with no option of posting. That is perfectly understandable. The interesting contrast is the difference between the modes of service prescribed in para (3), which is the one we are concerned with, and those prescribed in para (1), the general paragraph which applies where a specific paragraph does not. The difference is in essence that delivery to the authority upon whom the notice is to be served is not possible in relation to a discharge order: more precise forms of delivery are required.

15. The second of these is sending the notice by prepaid post to the managers at the hospital. Pausing there, it is clear - and the Code which has been made in pursuance of the Act and Regulations confirms this - that is for this reason: it is up to the managers to make sure that at all times a designated person with authority to receive and scrutinise documents on their behalf is on hand. If, therefore, a document is received by post addressed to the managers, it is at

the managers' own risk that they fail to have somebody on hand to open the letter and deal with it, if not promptly, at least within 3 days. If that course is not adopted, then the nearest relative has the single other option of delivery of the order at the hospital to an officer of the managers authorised by them to receive it. Mr Davis has deposed in his evidence that he is such an officer so authorised. In his absence, Mr Butcher, whom I have mentioned, is authorised to deputise for him.

16. The question, therefore, boils down to this: was the handing of the letter to the receptionist and its placing to Mrs B's knowledge in Mr Davis' pigeonhole the delivery of the order to Mr Davis? If it was, then the notice was well served on 27 May.

17. I have considered the rival submissions on this with care and have concluded that it was not good delivery within the meaning of the Regulation. It seems to me that the purpose of the Regulation is to ensure that by one prescribed means or another an order for discharge comes to the notice of a properly authorised person without delay and most certainly without allowing as much as 3 days to elapse. If the 3 days are allowed to elapse, then it will be the hospital's own fault for not having a proper mechanism in place for receiving and responding to such a notice. The policy is intelligible and sensible.

18. If it were possible by simply, for example, leaving a letter at the desk or addressing it by post to Mr Mike Davis to comply with Reg 3(3), then the very personalisation of the addressee of the notice would mean that if he happened to be away, as he might well be, nobody else deputed to respond to it would be likely to receive it and the 3 days would elapse by accident. If on the other hand the Regulation is construed, as I would construe it, as meaning that if the notice is not sent by post and the ball thereby passed into the managers' court, it has to be delivered personally to an officer authorised to receive it, then the manifest purpose of the Regulation is met. It means that, for example, if somebody in Mrs B's position does leave a letter addressed to Mr Davis in his pigeonhole and he is subsequently demonstrated to have received it at any particular time, then from that particular time without doubt the hospital's 3 days will run. But the balance of risk that he will not receive it is shifted by delivery to the nearest relative, just as by posting it the nearest relative can shift the balance of risk to the hospital managers. This scheme seems to me to make good sense. The contrary scheme, which Mr Daniel has to depend on, seems to me to introduce an unnecessary and unintended element of hazard into the process.

19. In speaking of hazard, I do not overlook Mr Daniel's submission, which is a well-aimed one, that the Regulation as written is not exactly doubt-free. What amounts to delivery is capable of debate on the facts of any particular case, as both this case and the illustrations which I have given show. Sending by prepaid post, even assisted by the Interpretation Act 1978, can give rise to all kinds of factual disputes about receipt. But the fact remains that the intention and purpose of the Regulation falls clearly on the side of the construction proposed by the Health Trust.

20. This being so, I would hold that the order for discharge, as I am prepared to assume Mrs B's letter to have been, was not delivered to the hospital, through Mr Davis, until the point of time of 3 June when he picked up and opened the letter. It follows that the barring order under s25 was made well within the 3-day period and was effective to prevent the right to discharge arising. For this simple reason, I would refuse to grant a writ of habeas corpus.

21. It means that the further questions, not only of the true construction of the letter but of whether proceeding by this means rather than by judicial review amounts to an abuse, as submitted by the hospital authority, do not have been to be decided, and for my part I am glad that it is so. I would refuse this application.

Collins J

22. I agree. Apart from the obvious mistake in Reg 3(1)(a) of the Regulations, as my Lord has indicated, they are not free from all doubt, but one thing that is clear is that paras (1), (2) and (3) of Reg 3, are designed to narrow what otherwise would be the interpretation of "served", because if one looks at Reg 2(1), one sees that "served" in relation to a document includes "addressed, delivered, given, forwarded, furnished or sent". Accordingly, as I say, the obvious purpose of Reg 3 was to narrow in individual cases (of which Reg 3(3) is one) the manner in which service can be effected.

23. For the reasons given by my Lord, I agree that this application must be dismissed.