



Risk Assessments and the law: The MM case and its aftermath

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Secretary of State for Justice
(Respondent) v MM (Appellant)
[2018]

'The MHA does not permit either the FTT or the Secretary of State to impose conditions amounting to detention or a deprivation of liberty upon a conditionally discharged restricted patient, regardless of whether that patient consents'

Who does the MM ruling affect?

- People detained on s37/41, &
- People who are conditionally discharged in the community (following s37/41).
- Risk assessed as required a care plan that deprives them of their liberty.
- With capacity in relation to their care plan.

Hertfordshire County Council v AB (2018)

- Asked High Court to exercise its inherent jurisdiction to authorise a deprivation of liberty as part of a conditional discharge
- If the plan were to be ruled unlawful, AB would either have to consent to return to hospital or to a relaxation of his restrictions, which would ultimately put both him and the public at risk



Mental Health Casework Section

Guidance:

Discharge conditions that amount to deprivation of liberty

January 2019

‘The Secretary of State is aware of the case of *Hertfordshire County Council v AB [2018] EWHC 3103 (Fam) ...* The Secretary of State does not consider that this is the correct approach...’

Why is risk assessment key?

- S41 only given to people who pose a risk of significant harm to the public.
- Highest risk time is likely to be after return to the community.
- Risk assessment is vital to determine appropriate risk management plan.
- Post-MM, risk assessment is also vital to determine whether capacious patient can be conditionally discharged.

S17(3)

- Interim operational policy as temporary solution while legislative change is considered
- Patients can be kept in custody of persons authorised by hospital managers
- Patient resides in the community while remaining on s37/41
- MHA authorises the deprivation of liberty

MHA white paper

- 'Reforming the Mental Health Act: January 2021'
- Supervised discharge

Questions / comments