Mental Health Tribunal

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10 August 2015

Mr David Crofts
23 Brisbane Street
Berwick VIC 3806

Dear Mr Crofts

MENTAL HEALTH TRIBUNAL HEARING – 19 JUNE 2015

Please find enclosed the Tribunal's Statement of Reasons for its decision in this matter.

Yours sincerely

Grace Horzitski
Legal Officer

Mental Health Tribunal

STATEMENT OF REASONS

1. DETAILS OF THE HEARING

At the time of hearing, DC was subject to an Inpatient Temporary Treatment Order made on 14 May 2015.

The Tribunal conducted a hearing to determine whether the Tribunal should make a Treatment Order or whether DC should become a voluntary patient. DC's current Temporary Treatment Order is due to expire on 22 June 2015 (the Order had been extended on 5 June 2015 to this later date). At the time of hearing, DC was being treated at Casey Hospital where the hearing was held on 19 June 2015.

The division of the Tribunal conducting this hearing comprised:

Legal Member:	Ms D Saunders
Psychiatrist Member:	Dr C Mileshkin
Community Member:	Mr J Griffin

Attending the hearing were:

DC
Dr DH (DC's treating doctor)
DC's nurse

DC's UR number: 355101

2. INFORMATION PROVIDED TO THE TRIBUNAL AT THE HEARING

The Tribunal received the following evidence at the hearing:

(a) Mental Health Tribunal statement of reasons, dated 15 August 2014 (relating to a hearing held on 18 July 2014).
(b) A report on DC's compulsory treatment prepared by Dr DH, dated 3 June 2015 with a Supplementary Report dated 17 June 2015.
(b) DC's clinical file.
(c) Oral evidence was also provided by DC and Dr DH.

This statement of reasons is not intended to be a detailed record of all the material provided or issues discussed in the hearing. The evidence accepted and relied upon by the Tribunal to reach its conclusions and final determination is identified in Part 4.

3. ISSUES UNDER CONSIDERATION

Pursuant to section 53(1) of the *Mental Health Act 2014* ("the Act"), the Tribunal must conduct a hearing to determine whether to make a Treatment Order for DC. If not, DC becomes a voluntary patient.

If the Tribunal is satisfied that all of the treatment criteria in section 5 (which is attached to this statement) of the Act apply to DC, the Tribunal must make a Treatment Order

and also decide the length of the Treatment Order and whether it is for treatment in the community or in hospital.

If the Tribunal is not satisfied that each of the treatment criteria in section 5 apply to DC, the Tribunal must revoke the current Treatment Order, meaning DC becomes a voluntary patient.

The Tribunal's consideration of these issues must also be conducted in accordance with the *Charter of Human Rights and Responsibilities Act 2006* ("Charter").

Preliminary Issues

At the request of DC the hearing listed for 5 June 2015 was adjourned for two weeks. Section 192 of the Act provides that an adjournment until a date that is after the Order expires can only be made in exceptional circumstances. The Tribunal granted the adjournment because one of DC's parents, to whom he is particularly close, was seriously ill in hospital. The Temporary Treatment Order was extended to 22 June 2015.

4. APPLYING THE TREATMENT CRITERIA IN SECTION 5 TO DC

Background

DC has a long history of illness going back to the 1980s with multiple admissions to hospital for treatment. He has also been treated as a voluntary patient for extended periods. He lives on property owned by his parents and is in receipt of a disability support pension.

In July 2014 the Mental Health Tribunal revoked DC's Community Treatment Order as it was not satisfied that all the treatment criteria applied to him.

A statement of reasons for the decision SOR025/15 included:

> *DC gave evidence that now that he is on the medication that he had been seeking he would continue to take that medication through his GP, Dr MP. Although his short admission to hospital in January 2014 was in the context of refusal to take medication, DC explained that was in protest at that time because he wished to change his medication to the present one. He was adamant that he did not wish to stay in the public mental health service but wanted to engage a private psychiatrist. As stated previously, he wished to receive intensive psychotherapy. He stated that he believed that psychiatry should be about interpersonal relationships not just medication.*
> *….*
>
> *The Tribunal felt that given the objectives of the Act, the Tribunal's obligations to have regard to the Mental Health Principles and DC's clearly expressed preferences, there was a less restrictive means for DC to receive treatment. Although DC seeks to have psychotherapy, he has stated that he will continue to take his present medication through his GP. He has the support of his mother, RC, who sees him daily and is able to recognise any deterioration in his mental health. He has functioned well in the past for several years as a voluntary patient in the private system. Although the Tribunal has no doubt that the treating team are endeavouring to give DC as much support as they can, the Tribunal considered that DC can receive treatment in a less restrictive way as a voluntary patient.*

Accordingly, DC was made a voluntary patient such that he was in charge of his mental health and any treatment he wished to receive.

Current admission

Prior to this admission DC had been seeing a private psychiatrist and a general practitioner ("GP"). He had known the GP for approximately 10 years. DC said the dosage and frequency of his medications had been gradually reduced.

DC was brought to the Emergency Department in handcuffs after assaulting a member of the police force during a welfare check. The admission was associated with significant violence and aggression, resulting in a *Code Black* and an evacuation as well as major property damage in the Emergency Department at Casey Hospital.

Determining whether the treatment criteria in section 5 applied to DC required the Tribunal to reach a conclusion in relation to the following questions.

(a) Does DC have mental illness?

Under section 4(1) of the Act, mental illness is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory. At the hearing, the Tribunal had regard to the considerations in section 4(2) (section 4 is attached to this statement).

During the hearing DC appeared agitated and was particularly abusive toward the treatment team, including Dr DH. He remained very guarded about his psychotic symptoms. He was also guarded in his description of events prior to his admission saying that *someone named Stacey called the Triage with serious concerns* and that *no one knows what this means.* He repeatedly made reference to *Stacey* raising concerns and that no one can explain this, to such a degree that he seemed pre-occupied with this.

He stated that since he had been in hospital he had been getting *worse and worse* but was resigned to being given medication.

DC's current diagnosis is paranoid schizophrenia. The Report on Compulsory Treatment ("the Report") noted that he was very agitated and thought disordered with grandiose and bizarre delusions on admission. He said that bones had been removed from his body metaphorically. The Report also detailed that on admission he expressed that he was being persecuted by police and the mental health system. After a lengthy period in seclusion in the early days of his admission, the clinical file noted that he was settled, easy to engage and polite. In contrast just two days before the hearing, DC was noted to be irritable, agitated and swearing.

Based on the Report, the clinical notes, the evidence of Dr DH, that of DC himself and his presentation at the hearing, the Tribunal was satisfied that DC has mental illness. The criterion was therefore met.

(b) Because of DC's mental illness, does he need immediate treatment to prevent serious deterioration in his mental or physical health or serious harm to DC or to another person?

Under section 6 of the Act, treatment is defined as things done to the person in the course of the exercise of professional skills to remedy the mental illness or to alleviate the symptoms and reduce the ill effects of the mental illness (section 6 is attached to this statement).

The Report stated that DC needed immediate treatment to prevent serious deterioration in his mental health and to prevent serious harm to other persons. The evidence of the treating team was DC had caused serious harm to another patient and was at risk of causing harm to others on the ward.

DC is being treated with flupenthixol decanoate depot every two weeks. The Report outlines that other medications had been slowly reduced then ceased so as to assess DC's mental state before discharge on a depot injection that will stabilise his mental state.

The Report also states that oral medication is consistently refused by DC. The immediate treatment aims to achieve some acceptance by DC that medication on a consistent and regular dose will provide him a stable mental state and minimise the prospects of a further serious relapse.

On the material before it, the Tribunal was satisfied that DC needed immediate treatment to prevent serious deterioration in his mental health and serious harm to other persons, and was therefore satisfied that the criterion was met.

(c) Will the immediate treatment be provided to DC if he is subject to a Treatment Order?

The Report states that the plan for treatment and recovery for DC is to assess how well DC is on depot alone as it will be the mainstay of his treatment in the community as he refuses oral medication. The Report also made reference to a forensic assessment in relation to DC's management in the community.

Considering the current treatment for DC and the plan for his community treatment, the Tribunal was satisfied this criterion was met.

(d) Are there less restrictive means reasonably available to enable DC to receive the immediate treatment?

At the hearing there was discussion about DC's preference for treatment by a private psychiatrist but it was noted that the private psychiatrist refuses to see anyone who is subject to a compulsory Treatment Order.

DC said that he has a good relationship with his GP whom he has been seeing for 10 years. The last time that DC saw his private psychiatrist was nine weeks ago, though he had an appointment the day that he was admitted to Casey hospital.

The management plan as outlined by Dr DH included follow-up by either the Community Care Team or the Mobile Support Team, preferably on a Community Treatment Order and continuation of the depot medication at the current dosage.

DC was adamant that he *refuses to accept* a Community Treatment Order on discharge from the hospital.

On the materials before it and the evidence of DC, the Tribunal was satisfied that there were no less restrictive means reasonably available at that time to enable DC to receive the immediate treatment and, accordingly, the criterion was met.

5. DETERMINATION

As it was satisfied that each of the treatment criteria in section 5 of the Act applied to DC, the Tribunal made a Treatment Order in the terms specified in Part 6 below.

Having determined that all the criteria in section 5 of the Act applied to DC, the Tribunal was satisfied that while the Order engaged and limited DC's rights to privacy, liberty, freedom of movement and freedom from medical treatment without consent, those limitations were lawful and reasonable.

6. TREATMENT ORDER

Pursuant to section 55(1), if the Tribunal is satisfied that the treatment criteria apply, the Tribunal must determine the duration of the Treatment Order and whether it should be a Community Treatment Order or an Inpatient Treatment Order. The Tribunal must also have regard to the circumstances in section 55(2).

The Tribunal was satisfied that the immediate treatment that DC requires cannot be provided in the community and therefore makde an Inpatient Treatment Order.

The Tribunal made a Treatment Order for 12 weeks. In determining this time period, the Tribunal took into account that DC had been treated for significant periods as a voluntary patient. His hostility to compulsory treatment was also a factor taken into account. A longer period at this point in time was not seen as therapeutic for DC.

Date of determination: 19 June 2015.

Ms D Saunders
Presiding member, on behalf of the Tribunal division.

Date: 10 August 2015.

Note: Pursuant to section 194 of the *Mental Health Act 2014*, the name and other details of a person who is the subject of a proceeding before the Tribunal must not be published unless the written consent of the President has been obtained. If publication is sought, consent in writing from the patient must first be obtained.

Section 4 What is mental illness?

(1) Subject to subsection (2), mental illness is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

(2) A person is not to be considered to have mental illness by reason only of any one or more of the following—
- (a) that the person expresses or refuses or fails to express a particular political opinion or belief;
- (b) that the person expresses or refuses or fails to express a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express a particular philosophy;
- (d) that the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in a particular political activity;
- (f) that the person engages in or refuses or fails to engage in a particular religious activity;
- (g) that the person engages in sexual promiscuity;
- (h) that the person engages in immoral conduct;
- (i) that the person engages in illegal conduct;
- (j) that the person engages in antisocial behaviour;
- (k) that the person is intellectually disabled;
- (l) that the person uses drugs or consumes alcohol;
- (m) that the person has a particular economic or social status or is a member of a particular cultural or racial group;
- (n) that the person is or has previously been involved in family conflict;
- (o) that the person has previously been treated for mental illness.

(3) Subsection (2)(l) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of using drugs or consuming alcohol from being regarded as an indication that a person has mental illness.

Section 5 What are the treatment criteria?

The treatment criteria for a person to be made subject to a Temporary Treatment Order or Treatment Order are—

(a) the person has mental illness; and

(b) because the person has mental illness, the person needs immediate treatment to prevent—
- (i) serious deterioration in the person's mental or physical health; or
- (ii) serious harm to the person or to another person; and

(c) the immediate treatment will be provided to the person if the person is subject to a Temporary Treatment Order or Treatment Order; and

(d) there is no less restrictive means reasonably available to enable the person to receive the immediate treatment.

Section 6 What is treatment?

For the purposes of this Act—

(a) a person receives treatment for mental illness if things are done to the person in the course of the exercise of professional skills—
- (i) to remedy the mental illness; or
- (ii) to alleviate the symptoms and reduce the ill effects of the mental illness; and

(b) treatment includes electroconvulsive treatment.