

Submission

Legal Aid should not be provided to patients treated under the 2003 Mental Health Act. Solicitors, unlike in criminal cases where they will try and prove a person is innocent, in Mental Health Tribunals they try and prove a person is mentally ill. The reason for this is to increase their Legal Aid fees. This is very cruel. I received 300 pages of Tribunal transcripts on behalf of my wife, Claire which clearly showed this.

These Tribunals are very unfair for many other reasons. Legal Aid should instead be available to those people who have been wrongly detained under mental health law and who wish to take out civil actions.

Additional Submission

Mental Health Tribunals are very unfair and lead to wrong conclusions for the following reasons: therefore the money spent on legal aid is wasted, about 98% of tribunals agree with the psychiatrist. I enclose the transcripts of five tribunals concerning myself and my wife.

1. There is no "equality of arms" between the patient and the treating psychiatrist and therefore too many people are subject to compulsory treatment.
2. There is a presumption that the patient has a mental illness.
3. A patient is likely to be heavily sedated and cannot properly represent themselves.
4. The National Health Service (NHS) controls all the documentation. Thus they have more time to prepare and can also withhold information unfavourable to them.
5. The constitution of the tribunal (a lawyer, psychiatrist and usually an NHS employee) is such that the diagnosis of the treating psychiatrist is less likely to be challenged than if they were drawn from the public.
6. They are held in secret and can therefore not be scrutinised.
7. Witnesses are not on oath and are thus more likely to make misleading statements.
8. The Limited Review of the 2003 Mental Health Act (published in 2009) describes the quality of legal representation as poor.
9. Tribunal members are paid about £400 per day. It is possible that it might be in their financial interest for people to be on compulsory treatment.
10. The tribunal too often functions as a tick box exercise where judicial process is seen to be done but is not really fair or proper. Usually it seems to boil down to the opinion of the Responsible Medical Officer which the tribunal team will rarely go against unless the patient can afford to get another psychiatrist as an alternate expert. The cross-examination process is quite feeble and clinical judgements such as how an opinion on lack of capacity was made are not tested.

My wife later took legal action against her solicitor. I also enclose the closed record of the case and the judgement.

(Supplied but unpublished)