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Mr Christophe Peschoux
Special Procedures Branch
Thematic Engagement
Special Procedures and Right to Development Division
Office of the High Commissioner for Human Rights

Dear Mr Peschoux,

Thank you for your letter dated 13 April in which you raised concern that a UK national, [redacted] may have faced "denial of access to justice, prolonged administration of psychiatric medication without free and informed consent, and denial of support for living independently in the community." Data protection and patient confidentiality rules prevent the NHS Trust involved in [redacted] treatment from sharing specific details of his case. However, I would like to set out the legislative and policy context in order to provide you with reassurance that UK continues to take disability rights extremely seriously.

1. Any additional information and/or comments on the allegations.

As noted above, patient confidentiality prevents us from commenting in detail on [redacted] case. The following information therefore covers the general legislative and policy framework for how decisions as to the most suitable treatment for persons with mental health conditions should be taken, the relevant safeguards, and avenues of appeal.

2. Information on the legal grounds for [redacted] confinement to a psychiatric hospital and medical treatment against his will and without free and informed consent. Please indicate how these provisions are compatible with international human rights norms and standards.

The main purpose of the Mental Health Act 1983 (the Act) is to allow compulsory action to be taken, where necessary, to make sure that people with mental disorders get the care and treatment they need for their own health or safety, or for the protection of other people. It sets out the criteria that must be met before compulsory measures can be taken, along with protections and safeguards for patients. The Act has been amended by the Mental Health Act 2007. Mental disorder is defined in the Act as any disorder or disability of the mind.

Under the Act, a person suffering from a mental disorder of a nature or degree which makes hospitalisation appropriate may be detained and treated (or be made subject to certain other restrictions) without his or her consent where that is justified by the

risk that the mental disorder poses to him or her or to other people and appropriate medical treatment is available. Safeguards ensure that any such deprivation of liberty is not arbitrary and complies with the law (including Article 5 of the ECHR as set out in the Human Rights Act 1998). Those making decisions under the Act must have regard to a Code of Practice that sets out guiding principles. The principles are:

(i) a requirement to always use the least restrictive option and maximise independence – this means that a person should not be detained where it is possible to treat them safely without detention;
(ii) empowerment and involvement – this means that patients should be fully involved in decisions about their care, support and treatment;
(iii) respect and dignity;
(iv) purpose and effectiveness – this means that decisions about care and treatment should be appropriate to the patient and promote recovery; and
(v) efficiency and equity – this means that mental healthcare services should be of high quality and should be given equal priority to physical health and social care services.

Legal grounds for [redacted] confinement to a psychiatric hospital and medical treatment

Our understanding is that [redacted] has been detained under the civil section (Part 2) of the Act. The legal basis for this is as described here.

As referenced above, Section 1 of the Act defines mental disorder as "any disability or disorder of mind". This straightforward definition applies throughout the Act. Section 1 continues to make clear that a person with a learning disability shall not be considered by reason of that disability to be suffering from a mental disorder for the purposes of admission for treatment or for community treatment orders unless that learning disability is associated with abnormally aggressive or seriously irresponsible conduct.

The Act defines medical treatment for mental disorder as "medical treatment which is for the purpose of alleviating or preventing a worsening of a mental disorder or one or more of its symptoms or manifestations". Medical treatment includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care. The Act does not regulate medical treatment for physical health problems.

Part 2 of the Act sets out the civil procedures under which people can be detained in hospital for assessment or treatment of mental disorder. Detention under these procedures normally requires a formal application by either an Approved Mental Health Professional (AMHP) or the patient's nearest relative, as described in the Act. An application is founded on two medical recommendations made by two qualified medical practitioners, one of whom must be approved for the purpose under the Act. Different procedures apply in the case of emergencies.

A person can be detained for treatment under section 3 only if all the following criteria apply:

- the person is suffering from a mental disorder of a nature or degree which makes it appropriate for them to receive medical treatment in hospital;
- it is necessary for the health or safety of the person or for the protection of other persons that they should receive such treatment and it cannot be provided unless the patient is detained under this section; and
- appropriate medical treatment is available for him/her.

The statutory Code of Practice, which must be followed by persons making detention decisions, makes clear at paragraph 14.7 that before it is decided that admission to hospital is necessary, consideration must be given to whether there are alternative means of providing the care and treatment that the patient requires. This includes consideration of alternative forms of care and treatment. The guiding principles explained above make clear that the least restrictive option must be chosen.

Safeguards

Individuals have the right to have their case reviewed by an independent and impartial Tribunal, who can order the discharge of a patient.

A patient can apply to a Tribunal during the first six months of his or her detention, once during the second six months and then once during each period of one year thereafter (ss.66(1)(b) and (2)(b)). A patient's nearest relative can also discharge a patient, and if that is prohibited, a patient's nearest relative can apply to the Tribunal for discharge (s.25(1)).

Further, if a patient does not apply in the first six months of detention, the hospital managers are under a duty to refer the patient's case to the Tribunal, and after that, must also refer when a period of three years has elapsed since a Tribunal last considered the patient's case (section 68).

Patients also have the right to receive support from statutory Independent Mental Health Advocates, who would help take a case to a Tribunal if the patient wishes.

Hospitals where patients are detained, like all other hospitals, are monitored or inspected by the Care Quality Commission (CQC) in England.

Legal grounds for treatment

Medication after the first three months of its first administration requires the patient's consent or the agreement of an independent medical practitioner (s.58). However, hospitals are required to involve patients as far as possible in planning and reviewing care and treatment, in accordance with the Code of Practice principle of empowerment and involvement, so that patients are fully involved in decisions about their care, support and treatment.

This is important because at the point of having had medication for three months, the patient must give consent again to continue the treatment, or an independent medical practitioner must review decisions about the care the patient is receiving.

3. Please explain what community support services and treatment alternatives respectful of the rights, will and preferences of persons with disabilities have been made available to [redacted]

Patients who are detained under the Act can be discharged into the community under a Community Treatment Order (a CTO), and we believe that this has been the case with [redacted]. The purpose of CTOs is to enable suitable patients to be treated safely in the community. CTOs are an option for patients for whom appropriate medical treatment can be provided without the patient being detained in a hospital, but subject to the responsible clinician having a power under to recall the patient to hospital (ss.17A and s.17E(1)). The patient is discharged subject to two standard conditions, namely that the patient must be available for examination for the purposes of renewing the CTO and for the purposes of a second medical opinion in relation to treatment (s.17B). Other conditions may be imposed to ensure the patient receives treatment or to prevent risks to self or others. Medication cannot be forcibly given – the patient must consent if he has capacity to do so.

Compatibility with international human rights norms and standards

Article 5 ECHR

The legal framework around detention found in the Act is compatible with Article 5 ECHR. The Act provides for the detention of people suffering from a sufficiently serious mental disorder such that hospitalisation is required, where they are a danger to themselves or others such that treatment and detention are necessary, and appropriate treatment is available. The Act sets out the necessary safeguards and there are also advocacy rights and rights to challenge the detention before a Tribunal.

The Convention on the Rights of persons with disabilities

- Article 14: The justification for the detention under the Act is based on more than simply the existence of a disability and there are a range of safeguards in place to protect against the "unlawful or arbitrary" deprivation of liberty. We note that Article 14(b) does not prohibit detention of people with mental disorders where that is in accordance with law and justified by the risk that the mental disorder poses to the person or to other people.

Detention under the Act is not merely based on "the existence of disability" because:

1. It is risked based; detention and other compulsory measures are only permitted where they are justified by the risk posed by a person's mental disorder. Simply having a mental disorder is not sufficient justification. Two people with similar mental disorders may present very different levels of risk - the risk will vary according to:

   (i) the patient's own attitude to the disorder, their willingness to seek and accept treatment, and their ability to cope with the consequences of their disorder;

(ii) the patient's personal circumstances – for example, whether their living situation puts them at risk of exploitation or puts others at risk of violence or other damage by the patient; and
(iii) the availability of other effective methods of managing the risk.

2. Disability and risk are not synonymous. It applies to all mental disorders whether or ~~not~~ they could be considered to be disabilities.

- Articles 12.2, 17, 19 and 25: the Act is compliant as it treats all detained patients, and those who are released into the community after detention, in the same way. Detention is based on risk to the person/other people, rather than disability.

4. Measures taken to ensure [redacted] can exercise his right of access to justice, including the measures taken to ensure the provision of procedural accommodation in all legal proceedings.

It appears that [redacted] was subject to the provisions of the Mental Health Act 1983 when he was being forced to have medical treatment. If so, applications to the First-Tier Tribunal challenging such detention are non-means tested and are subject to low merits criteria. This would also extend to any legal advice on medical treatment issues arising alongside the Tribunal application.

In terms of accessing legal aid, on the civil side the Legal Aid Agency (LAA)'s only direct involvement in assisting clients to find a provider is through the Civil Legal Advice (CLA) Helpline, the online tool or the provider directory. Otherwise, LAA are reliant on providers to market and deliver their services in a way that ensures they are accessible to disabled people. This is reflected in the contractual obligations between providers and the LAA.

Where a patient is detained under the provision of the Mental Health Act 1983 various arrangements are in place to help patients exercise their rights, including a requirement to assist them to find a lawyer to challenge their detention if required. In practice, hospitals have a list of (usually local) providers willing and able to act that they make available to patients.

5. Legislation, policies or programmes that have been implemented to ensure equal access to and enjoyment of the right to adequate housing by persons with disabilities and provide details on what housing arrangements respectful of the rights, will and preferences of persons with disabilities have been made available to [redacted].

The Government is responsible for setting the national framework for housing in England. However, the responsibilities for assessing housing needs and considering individual applications for housing assistance rest with the local housing authority.

Under the Equality Act 2010, an individual is disabled if they have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to carry out normal daily activities. Under this Act, local housing authorities, in exercising their function in making decisions on a person's housing application, must have due regard to the need to do the following:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Social housing is below market rents to those who are most in need. Local housing authorities are responsible for drawing up and operating their own scheme for allocating social housing within the framework of legislation set out under part 6 of the Housing Act 1996. By law, certain people must be given 'reasonable preference' (priority) under an allocation scheme. These are:

- people who are homeless or owed a duty under the homelessness legislation,
- people in overcrowded housing
- people who need to move on medical or welfare grounds, including grounds relating to a disability
- people who need to move to avoid hardship to themselves or others

Under section 179 of the Housing Act 1996, local authorities are required to ensure that advice and information about homelessness and preventing homelessness is available to anyone in their area free of charge. Local authorities are also required to make decisions about which duties, if any, are owed to a person who applies to them for homelessness assistance. Households who have becomes homeless through no fault of their own, are in priority need, and are eligible for assistance, are owed a duty to secure that accommodation is available. This is referred to as the 'main homelessness duty'.

The priority need categories include a person whose household includes a dependent child, a pregnant woman or a person who is vulnerable as a result of old age, mental illness or handicap, physical disability or other special reason, or a person who is homeless or threatened with homelessness as a result of an emergency.

All applicants for social housing and homelessness assistance have the right to request information from the local housing authority about the decision that has been made in respect of their application and to ask for an internal review of certain decision taken about their case. The local housing authority is obliged to notify them of the outcome of the review.

Following such a review, there is a right to appeal to a county court on a point of law if the applicant is dissatisfied with the review decision or if the decision is not notified to them within the prescribed time limits.

If a person wishes to raise their concerns with the local housing authority, or make a formal complaint, then in the first instance they should write to the local housing authority's chief housing officer or the chief executive. Every local housing authority must have a formal complaints procedure.

If a person is not satisfied with the conclusions arising out of the complaint, then they may choose to pursue this with the Local Government Ombudsman.

People who require independent advice about finding accommodation, general housing issues, or about their legal rights can contact a local housing advice centre or legal advice centre in their local area, such as the Citizens' Advice Bureau.

6. Information regarding legislative reform processes and other measures that have been taken to ensure that health care, including mental health treatment, is always provided with the free and informed consent of the person with disabilities.

Please see 'Legal grounds for treatment' under item 2.

Yours Sincerely,

Matthew Rowland
Chargé d'Affaires and Ambassador to the Conference on Disarmament
Permanent Representative