

Book Reviews

Mental Health Act Manual by Richard Jones (7th edition)

Published by Sweet and Maxwell (2001) £49.00

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Introduction

Those of us who regularly teach Approved Social Workers will be familiar with the critical rejoinder to a disputed point “well, Richard Jones says...”. The tenor of this remark is that if the teacher were to then disagree with the ASW trainee, the teacher must be wrong. Owning the Manual is a compulsory requirement for those that practise in the mental health law field. There are many copies in circulation, some unread and in pristine condition, but many so obsessively colour coded they resemble an on-line encyclopaedia. The value of the Manual is well established and the new edition will be much sought after. This review will nonetheless offer a critique.

The Manual has grown. The first edition (published in 1985) was 2 centimetres thick while the current seventh edition is over 4 centimetres thick. The new edition contains an update on recent litigation in the mental health law field and in particular includes a section on the Human Rights Act. The Manual will continue to grow, with a new Mental Health Act a dark cloud on the practitioner’s horizon and threatening a major downpour of new law to be dealt with.

It is worth going back to the origins of the Manual, which are to be found in a slim purple book published in 1983 in the “Current Law Statutes Annotated Reprints” series. This was an annotated version of the Mental Health Act together with its schedules. The seventh edition remains at heart an annotated statute with all the strengths and weaknesses that go with that format. For those who understand the shape and purpose of the legislation then the analysis of the minutiae of statutory wording and accompanying commentaries will be clear and helpful. To the beginner the format may be more problematic.

Indexing is far from clear and the non-lawyer user may have difficulties with legal terms. This is significant, as many social workers, doctors and other mental health professionals will use the Manual. By way of example, “De facto” is undefined. The reader searches through the index for a definition and although there is one reference to the term (Paragraph 1-048) that paragraph in fact contains no reference whatsoever to de facto detention. “De facto” detention is covered in Paragraph 1-1048 but there is no specific definition within the discussion. Perhaps a glossary of terms would be helpful together with a simpler and more accurate indexing system based on page numbers. Unlike the encyclopaedia¹ on which it is based, the Manual is not in loose-leaf format where a paragraph-based indexing system makes more sense.

Similarly a non-lawyer wanting to understand the *Bournewood* case will not be helped at all by the

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index. If they know to refer to the Table of Cases they will be referred to eleven disparate references in the case index, and only then if they understand that the case is referred to as *R. v Bournewood Community and Mental Health NHS Trust ex parte L; sub nom: L, Re*. Lawyers may understand this form of referencing, but as so many of the readers of the Manual are non-lawyers more thought and care should be given to signposting the reader.

There is a dearth of up to date texts in the area. Hoggett's incisive book² is still required reading. This is so particularly for lawyers given the fact that the author is now a senior judge frequently making decisions in the mental health law field. The latest edition was however published in 1996 and is now showing its age. Eldergill's³ extraordinary, and sometimes brilliant, book appears from its title to concentrate on Mental Health Review Tribunals. In fact the book covers many areas of mental health law and is therefore probably the most effective companion to the Manual. The once reliable Gostin and Fennell⁴ on Mental Health Review Tribunals was published in 1992. The most up to date book which is available is *Mental Health Law Policy and Practice* by Peter Bartlett and Ralph Sandland.⁵ This book bravely integrates areas that have been avoided in the past, such as capacity and service provision. It is however less a practitioner's manual and more an academic text.

So the Manual fills the field. Does the seventh edition fulfil its objectives, which are to provide material and analysis to assist practitioners? To attempt to answer that question some key areas in the text have been analysed.

Children and mental health law.

The Manual includes a new section entitled "The medical treatment of children." The analysis of common law principles is much as one would expect - fair, balanced and comprehensive. Our criticism is the absence of analysis of the difficult interface between common law and statute and in particular the impact of the Convention on this area of law. A person or body with parental responsibility can override the refusal of a capacitous child of whatever age to accept treatment.⁶ How does this principle translate into psychiatric practice? Can, or should, children refusing psychiatric treatment be detained outside a statutory framework? Surely this type of detention will violate the child's Convention Rights under Articles 5 and 8, notwithstanding *Nielsen*?⁷ In this case the European Court held that no deprivation of liberty had occurred when the mother of a 12 year old boy consented to his admission to a psychiatric hospital against his wishes.⁸ How do those assessing the competent child for Mental Health Act detention reconcile the common law principles identified by Jones with the requirement contained in section 3 that that detention will only be justified if the treatment cannot be provided unless the child is detained?⁹

Although Jones has come up with a thoroughly workmanlike section on the Human Rights Act his

1 *The Encyclopedia of Social Services and Child Care Law* edited by Richard Jones and published by Sweet and Maxwell since 1993.

2 Hoggett B. (1996) *Mental Health Law 4th edition* (London Sweet & Maxwell)

3 Eldergill E. (1997) *Mental Health Review Tribunals - Law and Practice* (London Sweet & Maxwell)

4 Gostin L. and Fennell P. (1992) *Mental health: Tribunal Procedure 2nd edition* (London: Longman)

5 Bartlett P. and Sandland R. (2000) *Mental Health Law Policy and Practice* (London:Blackstone Press)

6 *Mental Health Act Manual* page 274

7 *Nielsen v Denmark* (1989) 11 E.H.R.R. 175

8 *Mental Health Act Manual* page 429

9 *Mental Health Act 1983 section 3(2)(c)*

analysis of the way the Convention impacts on mental health law has not always been effectively interwoven in the text. This is evidenced by his treatment of the common law principles relating to children where Jones does not deal with the conflict between these principles and the children's Convention rights in as comprehensive a way as the subject requires.

There is an ongoing debate amongst those who work in Child and Adolescent Mental Health Service as to whether the Mental Health Act should be used to compel the child patient on the grounds that the child's human rights are best protected by the use of the Act. Because the text is not integrated – moving from Part IV to section 131 to Chapter 31 of the Code of Practice (also included in the Manual) – is not a route that the uninitiated would necessarily know to follow, Jones's contribution to this discussion is hidden.

Mental Health Review Tribunals.

The Manual just missed the Remedial Order and so this heavily annotated edition will have to be even more obsessively overwritten. The commentary on the application of the statutory tests in section 72(1) and 73(1) is now out of date.¹⁰

The MHRT Rules are included in the Manual. Jones's analysis of the detail in the Rules is sometimes disappointing, if only because his views would be interesting. For instance what are the tribunal responsibilities when an automatically referred patient does not want to participate in the tribunal process? (Rule 22(4) requires the tribunal "to hear and take evidence from the applicant [and] the patient (where he is not the applicant)...") He does however helpfully analyse other problem areas. He identifies the Article 5 rights of the patient as on occasion competing against the Article 8 rights of the relative, and identifies this potential for conflict as a factor that the tribunal should take into account in deciding on disclosure under Rule 12(2).¹¹ ASWs and other specialist social workers are increasingly being propelled into the tribunal arena and up-to-date guidance in these areas is essential.

Section 2 or 3?

Jones provides a carefully argued analysis justifying the routine use of section 2 which departs from current Code of Practice guidance that section 3 should be used for the patient well-known to mental health services.

The decision to use a section 2 rather than a section 3 is unlikely to be subject to judicial review and so authoritative sounding guidance is important. There are however alternative views which need to be taken into consideration. In reality the use of a section 2 to assess a patient well-known to services may slow down the creation of a treatment plan and inhibit the process of after care planning. This may be for no other reason, as Jones tartly comments in his text, on the "widely held, but totally erroneous view expressed by some practitioners that treatment under Part IV cannot be given to patients detained under section 2"¹²

¹⁰ *Mental Health Act Manual commencing page 317*

¹² *Mental Health Act Manual page 22*

¹¹ *Mental Health Act Manual page 578 in the footnote to Rule 12(2)*

So Jones departs from Code guidance and offers an alternative route. The difficulty with this approach is that the readers of the Manual do not always distinguish between “the law” and Jones’s opinion. Another example is where Jones comments that “using section 2 as the initial detaining power will enable the approved social worker to avoid the difficult situation that can occur when an application under section 3 is met by an unexpected objection by the patient’s nearest relative.”¹³ This contrasts with the Code which states, in its analysis of the merits of section 2 against section 3, “decisions should not be influenced by the possibility that...(d) a patient’s nearest relative objects to admission under section 3.”¹⁴

Jones is being used as a judge, a parliamentary draftsman and an arbiter for good practice. This is unfortunate, as his views should be developed in the context of debate and discussion rather than being cast in tablets of stone. This may reflect the fact that Jones is too modest and does not recognise that his guidance in key areas (consulting the nearest relative would be another good example) is being adopted as the gospel by practitioners.

The appointment of approved social workers

Although the Manual still includes the Code of Practice and various rules and regulations, it no longer contains any government circulars. This is understandable in terms of the pressure on space. Clearly people need to be able to carry the Manual rather than having to use a trolley. However, the absence of the short circular LAC (86) 15 which covers the appointment of ASWs is unfortunate. Jones¹⁵ draws on the circular when forming the view that ASWs must have a contract of employment with the relevant local authority (thereby casting doubt on the legality of the use of locum ASWs employed by agencies). Circulars are not always easily accessible to practitioners and their inclusion in earlier editions of the Manual was helpful.

Conclusions

The Manual is an invaluable text for many mental health professionals. However, we have identified two major problems with this latest edition. Firstly the layout coupled with imperfect indexing mean that the Manual’s format does not always allow for a coherent analysis of key problem areas. Improvements in indexing and a glossary of terms might help. Secondly the structure of annotated statute and supporting documents is now being used for purposes for which it was never originally intended.

Jones has an encyclopaedic knowledge of mental health law. His notes on both the statute and its related text reflect that knowledge. He is a “safe pair of hands” and provides a mass of material and analysis to assist practitioners. There is however a danger of his text being used for purposes that were not always intended. Perhaps an introduction on how to use the Manual together with cautionary caveats around some of his views would make the Manual an even more indispensable text to the practitioner.

13 *Mental Health Act Manual* page 23

15 *Mental Health Act Manual* page 463

14 *Mental Health Act Manual* page 620 containing paragraph 5(4) of the Code