

Lay Justice and Discharge from Compulsory Mental Health Care

In the United Kingdom the primary legislation governing compulsory mental health care is the Mental Health Act 1983. The Act is currently the subject of an independent legislative reform review. One of the areas the review will consider is 'the balance of safeguards available to patients.' Though it is not mentioned specifically in the Review's terms of reference, it is anticipated that one safeguard to be considered is s.23, which establishes, *inter alia*, the basis for Hospital Managers to discharge a person from compulsory care against medical advice. It is a quirk of the development of the s.23 power that Hospital Managers in this context are ordinarily lay individuals specially appointed to exercise the s.23 power, and not the administrative managers of the hospital.

The genealogy of the s.23 power dates from the early 1800s and, while the locus of the power has changed, one of its persistent features has been the culture of involving lay people in its exercise. It can be distinguished in this regard from more modern innovations, such as the professionally dominated Mental Health Tribunal first introduced under the Mental Health Act 1959. Although the historical record suggests that for much of this time lay involvement was uncontroversial, since the early 1990s there has been a sustained call for the abolition of s.23 and thus the removal of lay people from this aspect of compulsory care decision-making. In view of this, the paper assesses the value which lay involvement can bring to compulsory mental health care, especially as a means to bring community-derived legitimacy to the system, and to regulate the potentially normatively insular professional community. It does so by considering the applicability of the arguments regarding cultures of lay justice elsewhere in legal thought and practice.