

Swept Along by the Winds of Change: The History of the Hospital Managers' Discharge Power

Under the Mental Health Act 1983 s.23, Hospital Managers or, as is generally considered to be the case, their nominated delegates, possess a power to discharge individuals from almost all categories of compulsory mental health care. The 1999 Expert Committee contended that this power originated in the Mental Health Act 1959. While the Committee can be forgiven for reaching this conclusion, they were incorrect. The roots of the power are to be found in the early-19th Century with the establishment of public asylums. However, while the emergence of the Hospital Managers might appear to march in step with other recognised themes in the history of the mental health services (*inter alia* the rise of the psychiatric profession, the oscillation between legal and medical oversight of care), closer examination reveals that s.23 has a history all of its own. In consequence, wider historical developments in mental health law provide only limited insight into why s.23 exists in its current form.

In this paper, through an examination of the history of the s.23 power, I argue that the emergence of s.23 is best characterised as one of happenstance. Changes in the power of discharge were largely incidental to shifts in governmental policy towards, and the legal framework regulating, mental health care more generally. The corollary of this observation is that s.23 and its antecedents have never been the subject of detailed legislative reflection. It is true that (unsuccessful) attempts have been made to abolish the power, but these efforts were founded on the basis of little evidence. Now that reform of the Mental Health Act 1983 is again under consideration, it is important to reflect on the lack of attention that has been paid to the s.23 power, given that it is likely to be targeted for abolition once more.