

NHS Trust obtains injunction for possession of hospital bed from dischargeable patient amid coronavirus pandemic (University College London Hospitals NHS Foundation Trust v MB)

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Local Government analysis: University College London Hospital (UCH) obtained an interim injunction against an inpatient (MB) for possession of the patient's bed during the coronavirus (COVID-19) pandemic. UCH had decided (long before the coronavirus crisis) that there was no need for inpatient care, and the local authority had outlined a suitable care package. However, MB refused to leave hospital until her desired amendments to the proposed package were made, claiming the local authority's failure to do so would cause extreme distress leading to self-harm and suicide. Possession proceedings were stayed for 90 days due to the provisions of CPR PD 51Z, but the injunction was allowed to proceed. The decision to discharge MB was rational, lawful and non-discriminatory. UCH had to balance any potential distress against the needs of other patients when distributing scarce resources. There was no failure by UCH to discharge its public law obligations, and as such, clearly no defence to the possession proceedings. The injunction was granted. Written by Adam Heppinstall, barrister, at Henderson Chambers.

University College London Hospitals NHS Foundation Trust v MB [\[2020\] EWHC 882 \(QB\)](#)

What are the practical implications of this case?

This is an extremely unusual case. It does confirm the court can still grant proprietors immediate possession against trespassers, despite the 90-day stay on possession proceedings due to the coronavirus pandemic, by way of an interim injunction. Whether courts will grant such injunctions in more quotidian circumstances is yet to be seen. That a hospital can discharge a patient no longer needing inpatient treatment into local authority care where a hospital-approved care package is in place is however likely to be useful to hospitals and local authorities after coronavirus.

The discussion of Article 3 of the European Convention on Human Rights (ECHR) in the context of triaging patients is interesting, if potentially controversial. In commenting that 'it is difficult to conceive of a case in which it could be appropriate for a court to hold a hospital in breach of [its Article 3] duty by deciding, on the basis of an informed clinical assessment and against the background of a desperate need for beds, to discontinue in-patient care in an individual case and, accordingly, to require the patient to leave the hospital' (at para [57]), the High Court has apparently held that so-called 'wartime triage' is compatible with Article 3 of the ECHR and (later in its analysis) Article 8 of the ECHR. Although in the context of an interim application, this may give NHS Trusts some protection if the coronavirus pandemic—or indeed another reason—makes difficult decisions as to allocation of treatment between patients necessary. This discussion was not limited to the coronavirus pandemic, and would potentially apply to shortages of medical resources however caused.

What was the background?

MB was admitted to UCH in February 2019. MB suffers from complex neurological and psychological conditions, but had capacity. UCH had decided there was no ongoing need for inpatient care and MB could be safely discharged to local authority accommodation with a suitable care package. Discussions as to Camden LBC's proposed package had been ongoing for over a year, each being rejected (and some sabotaged) by MB. MB refused to be discharged unless her desired amendments to the care package were made. Not doing so would cause extreme distress that could, MB said, lead to self-harm or suicide. Meanwhile, the coronavirus pandemic began.

UCH argued MB no longer required inpatient care, which was not seriously disputed. It had no control over Camden's (more than adequate) care package. MB had a history of using threats of self-harm to persuade others to give her what she thinks she needs, but no history of self-harm. The low/moderate risk would be managed by Camden's proposed 24-hour care. MB could be safely and lawfully

discharged. There was an urgent need to free up beds for coronavirus patients, and a needless risk MB would be exposed to coronavirus.

UCH issued possession proceedings of MB's bed and applied for an interim injunction for immediate possession. MB advanced public law defences, arguing that discharging her would breach Articles 3, 8 and 14 of the ECHR and be contrary to [sections 29](#) and [149](#) of the Equality Act 2010 ([EqA 2010](#)). MB also applied for an adjournment to obtain independent medical evidence.

What did the court decide?

UCH had granted a licence to MB to use one of its beds. It had stopped providing inpatient care, withdrawing that licence. MB was therefore a trespasser and UCH had a right to possession. [CPR PD 51Z](#) stayed possession proceedings for 90 days during the pandemic but injunctions could still be granted.

The adjournment sought by MB was refused. Evidence impugning the clinical basis for not providing inpatient care would be inadmissible in a judicial review, here was no different. The application was to free beds to treat coronavirus patients and adjournment would defeat that purpose.

The injunction, if granted, would be tantamount to final relief. Chamberlain J had to be satisfied there was 'clearly no defence to the action' (at para [38]). He granted the injunction, accepting UCH's submissions.

The positive duty under Article 3 of the ECHR, where resources are scarce, is to take reasonable steps to prevent suffering. The hospital had rationally, lawfully decided others were in greater clinical need. Distress caused to MB would have to be balanced against the needs of other patients (or even, perhaps, a general need). Anyway, the care package managed risks to MB and Article 3 of the ECHR was not engaged. Interference with Article 8 of the ECHR was justified to protect other prospective patients. UCH had treated MB according to clinical need as it would someone with different or no disabilities, and the discrimination defences also failed.

The balance of convenience still favoured granting the injunction, even if MB had real prospects of defending the claim. MB's care package was appropriate, there was no need for inpatient care, and MB was using resources that needed to be urgently redeployed.

Case details

- Court: High Court of Justice, Queen's Bench Division
- Judge: Justice Chamberlain
- Date of judgment: 9 April 2020

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