Freeing up beds in hospitals - can a hospital patient be evicted?

In the current climate of tight resources, hospitals are rightly concerned about beds being taken up by those deemed not in need of further treatment. There are several options available to hospitals following a clinical judgment that further treatment is not reasonably required. This blog explores those options.

The questions I will explore here are the following:

(a) Stopping provision of medical services;

(b) Potential criminal offences;

(c) Whether a hospital patient can insist on the hospital obtaining a possession order before being removed; and,

(d) If not, whether circumstances in which it is sensible to obtain a possession order.

Stopping provision of services

Section 3 of the National Health Service Act 2006 requires clinical commissioning groups to meet the reasonable requirements of a patient. Thus, a clinical judgment is required to determine whether a patient needs more care. If a provider of services decides that a patient no longer requires care, it is difficult to see that there remains any legal duty to provide medical care. Stopping provision of care may, itself, encourage individuals to go elsewhere.

Potential criminal offences

Also of relevance here is s119(1) of the Criminal Justice and Immigration Act 2008. This makes it a criminal offence to cause a nuisance or disturbance to an NHS staff member on NHS premises. The offence is committed where:

> "(a) the person causes, without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with work,
>
> (b) the person refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a constable or an NHS staff member, and
>
> (c) the person is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself."

Importantly, s119(1)(c) is expanded upon in s119(3) as follows:

> "(a) a person ceases to be on NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself once the person has received the advice, treatment or care, and
>
> (b) a person is not on NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself if the person has been refused the advice, treatment or care during the last 8 hours." (emphasis added)

Consequently, if the hospital is an NHS hospital, an individual commits a criminal offence if:

(a) He/she is causing a nuisance or disturbance to an NHS staff member without reasonable excuse;

(b) He/she is asked to leave but refuses without reasonable excuse; and,

(c) He/she has finished receiving advice, treatment or care or has been refused advice, treatment or care within the last 8 hours.

A police constable is then entitled to use reasonable force to remove that individual from the NHS premises: s120(1).

Whether hospital patient can insist on hospital obtaining possession order before being removed

A hospital may decide, however, that it does not want to get the police involved. Even then, a court order for possession will not always be necessary.

The requirement for a court order for possession is set out in the Protection from Eviction Act 1977. Section 3 is headed "*Prohibition of eviction without due process of law*". It provides:

> "(1) Where any premises have been let as a dwelling under a tenancy which is neither a statutorily protected tenancy nor an excluded tenancy and—
>
> (a) the tenancy (in this section referred to as the former tenancy) has come to an end, but
>
> (b) the occupier continues to reside in the premises or part of them,
>
> it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.
>
> (2) In this section *'the occupier'*, in relation to any premises, means any person lawfully residing in the premises or part of them at the termination of the former tenancy.
>
> ...
>
> (2B) Subsections (1) and (2) above apply in relation to any premises occupied as a dwelling under a licence, other than an excluded licence, as they apply in relation to premises let as a dwelling under a tenancy, and in those subsections the expressions 'let' and 'tenancy' shall be construed accordingly.
>
> ..."

A hospital patient could argue that they occupied their hospital bed/room under a licence and, effectively, as the place where they lived. If true, the hospital would need to give 28 days' written notice (s5(1A) of the Protection from Eviction Act 1977) and then a court order for possession before being able to evict them.

To succeed, the hospital patient would have to prove that they were occupying their bed/room "*as a dwelling*". Such an argument is unlikely to succeed.

First, it is difficult to see how a hospital bed/room, or even the hospital, could be described as a "*dwelling*" for a hospital patient. The definition of a "*dwelling*" requires some objective content, not just a subjective belief that a room/bed is your home. As such, I would have thought, at the very least, that a "*dwelling*" must have residency as one of its main purposes and the building or room must be fitted and fixed so as to come across as a "*dwelling*". A hospital bed/room would fall foul of that.

Second, this appears to be the result following the decision of the Supreme Court in *R (on the application of ZH and CN) v London Borough of Newham* [2015] AC 1259. That case involved the question of whether those provided temporary accommodation under s188 of the Housing Act 1996, whilst the Council conducted homelessness enquiries, occupied their accommodation as a "*dwelling*". The Supreme Court's answer (with Lord Neuberger and Lady Hale dissenting) was "no". In that case, Lord Hodge found:

a. One must look at the purpose for which the licence was entered into – and the terms of that licence – rather than the use of the premises by the occupier: paras. 24 and 30;

b. "*Dwelling*" suggests a greater degree of settled occupation than "*residence*": para. 26;

c. The policy consequence of requiring a possession order in this situation was a factor: para. 35;

d. In terms of an Article 8 ECHR argument, recovery of possession was proportionate without requiring a court order for possession: para. 68;

It seems to me that a hospital patient is in a weaker position than those being accommodated under s188 of the Housing Act 1996. This is because:

a. As with those being accommodated under s188 of the Housing Act 1996, hospital patients are taken in on the understanding that their stay will be temporally limited; and,

b. Unlike those being accommodated under s188 of the Housing Act 1996, however, the purpose of a hospital patient's stay is not accommodation. The purpose is to treat the patient until they are well enough to be discharged. Accordingly, the policy justifications for not allowing a hospital patient to insist on a possession order are that much greater.

As a result, it seems as though a hospital patient is unlikely to fall within the provisions of the Protection from Eviction Act 1977 meaning that court proceedings are not necessary.

The practical consequence of this is that, apart from a notice that the patient's licence to be on hospital premises is being removed after a reasonable amount of time, the hospital can, as a matter of law, simply lock the patient out of the room/hospital.

Circumstances in which sensible to obtain a possession order

Notwithstanding the above, it may sometimes make sense for a hospital to embark on court proceedings. Indeed, I am aware of many cases of hospitals seeking possession orders against patients. The most obvious example of where this may be necessary is if a patient is physically refusing to leave his/her bed/room. In those circumstances, locking the door is not going to have the desired effect and court proceedings is likely the best course of option.

YAASER VANDERMAN

Landmark Chambers

25 July 2017