

Case Summary

PJ v A Local Health Board and Others [\[2015\] UKUT 480 \(AAC\) \(Charles J\)](#)

Issue

Mental Health Act 1983 – CTOs – Interface with MCA

Facts

PJ was a man on a Community Treatment Order (CTO) which required him to live at a care home and abide by the regime there. He had escorted and unescorted leave as part of his risk mitigation plan. PJ's responsible clinician stated that the conditions of his care plan were non-mandatory. PJ had expressed (a) a wish to have greater freedom to see his family and his girlfriend without restrictions and that these wishes had not been compiled with, and (b) the view that he was generally happy with the care home.

PJ sought discharge of the CTO on the basis that the arrangements for his care amounted to an unlawful deprivation of liberty in breach of Article 5. The Mental Health Review Tribunal (MHRT) refused the application holding that PJ was not deprived of his liberty.

Decision

In the Upper Tribunal, Charles J emphasised the different elements of the test for deprivation of liberty. He held that the MHRT had erred in its law: (1) in its approach to the assessment of the degree of supervision and control required; and (2) by divorcing that consideration from the freedom of PJ to leave. The MHRT had overlooked, and failed to take into account, the guidance given in *Cheshire West* that the reason or purpose of the relevant conditions was not relevant to the assessment of whether the objective element of a deprivation of liberty was satisfied.

Practice implications

Charles J made clear that in determining whether to discharge a patient on a CTO, the MHRT must take into account whether the implementation of the conditions of a CTO will or may create a breach of Article 5. Charles J gave a useful checklist of considerations for the First-tier Tribunal and MHRTs to navigate this difficult issue:

1. Whether implementation of the conditions will, on an objective assessment, result in a deprivation of the patient's liberty?
2. If there is or may be such a deprivation of liberty, whether the person does or does not have capacity to consent to the relevant conditions and care regime and the deprivation of liberty it creates?
3. If the patient does have that capacity, does his or her consent avoid a breach of Article 5?
4. If the patient does not have capacity, can any objectively assessed deprivation of liberty be authorised by the Court of Protection or under the DOLS in the Mental Capacity Act?
5. If the patient lacks capacity, can section 64D of the Mental Health Act be relied on to avoid a breach of Article 5?
6. How the conclusions on the above should be taken into account in the determination of whether there should be an adjournment and if not whether it should discharge or uphold the CTO?

The full version of this case report can be found [here](#). Further reports, articles and guidance notes can be found on our dedicated Mental Capacity Law Resources Page by [clicking here](#).