PART IV

PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS

Chapter 12

POWERS OF THE POLICE AND THE DECISION TO PROSECUTE

12.01 Introduction

The police are given a number of specific powers under the Mental Health Act which are useful to consider together in a single chapter. This chapter will consider the powers of the police to take a mentally disordered person into custody; the factors to be taken into account in the decision to prosecute a mentally disordered person; and the special arrangements which should be made when a mentally disordered person is being questioned by the police.

Persons in the custody of the police or prison authorities are entitled to the same right to psychiatric assessment and treatment as other citizens. Mentally disordered people in custody are vulnerable. The objective is to ensure that everyone in prison or police custody in need of mental health hospital treatment is admitted to an appropriate health facility. (Code of Practice, paras 3.1–3.2).

A. POWERS OF THE POLICE

12.02 Mentally Disordered Person Found in a Public Place

If a constable finds, in a place to which the public have access, a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may remove that person to a **place of safety**. The constable must think it necessary

to do so in the interests of the person or for the protection of other persons (s. 136(1)). (Note that s. 136 does not extend to the protection of property). A person removed to a place of safety may be detained there for a period not exceeding 72 hours[1] for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved social worker, and of making any necessary arrangements for his treatment and care (s. 136(2)).

The leading case is *Carter v. Commissioner of Police for the Metropolis*[2] where police officers were called to a place adjoining a flat at which the applicant lived. Purporting to act under section 136, the police took her away to a police station and, afterwards, to a mental hospital. At the hospital she was examined by doctors who sent her home. The applicant applied for leave, pursuant to section 141 of the 1959 Act (now s. 139, see paras. **21.25–21.32** *post*), to bring an action for false imprisonment. The affidavits before the High Court as to the applicant's behaviour at the time were conflicting, and leave to proceed was denied. Several matters of interpretation arise from section 136 which are examined below.

12.02.1 *"A Place to which the Public have Access"*

A "place to which the public have access" includes any place where the public can and do have access, such as a park or a railway station; it does not matter whether they come at the invitation of the occupier or merely with his permission, or whether some payment or performance of some formality is required before access can be had.[3] The Court of Appeal in *Carter* missed the opportunity to construe the phrase for the purposes of the Mental Health Act. The applicant stated that "I had stayed throughout by my front door",[4] and the police officer said she "came out of the doorway onto the balcony".[5] The flat had a communal staircase and balcony. Arguably communal property is restricted to landlord, tenants and their invitees and is not "a place to which the public have access."[6]

The use of section 136 is restricted to cases where the patient is found

---

[1] As to the time limits placed on re-capturing a patient who escapes, see s. 138(3) and para. **21.18.1** *post*).

[2] [1975] 2 All E.R. 33, [1975] 1 W.L.R. 507.

[3] *R. v. Kane* [1965] 1 All E.R. 705. There have been a number of constructions of "public place" for the purpose of other legislation. See, *e.g.*, *R. v. Edwards, R. v. Roberts* (1978) 67 Cr. App. R. 228. (The fact that the public can gain access to a private house through the front garden does not make the garden a public place). Arguably, the phrase "place to which the public have access" is wider than "public place", but there is no judicial guidance.

[4] [1975] 2 All E.R. at 35.

[5] [1975] 2 All E.R. at 36.

[6] See *R. v. Heffey* [1981] Crim. L. Rev. 111 (the third-floor landing of a block of council flats is not a public place). See discussion in Carson (1982) Detention of the Mentally-Disordered, *Local Gov't Rev.* vol. 146, p. 887.

in a place to which the public have access. Where it is necessary to obtain access to a mentally disordered person in a private place, and where access is denied, consideration should be given to invoking the powers of entry under section 135(1) or (2). See para. **21.16** *post*.

12.02.2 *"Appears to be Suffering from Mental Disorder and to be in Immediate Need of Care or Control"*

The person need not actually be mentally disordered but must only appear to the police to be so disordered. Research indicates that those dealt with under this section tend to come to police attention by threatening or unusual behaviour, including wandering, self-neglect, suicidal threats or attempts, verbal or physical aggression, expression of gross delusions, sexual misbehaviour and traffic disturbances.[1] Section 135 does not stipulate that an offence must have been committed, although in practice the behaviour could often be considered as an offence against public order such as occasioning a breach of the peace.

12.02.3 *"Place of Safety"*

A "place of safety" is defined in section 135(6) (see para. **21.16.1** *post*). The definition appears wide enough to include a private home where the householder agrees to give temporary shelter while arrangements are being made for the person's care. The Home Office advice to police is that a person removed under section 136 "should normally be taken direct to a hospital. If this is not practicable, the assistance of the [approved social worker] should be sought immediately".[2] The Department of Health has advised that a police station should be used only in exceptional circumstances. If a police station is used, the patient should remain there no longer than a few hours while an approved social worker makes arrangements for removal elsewhere, either informally or under Part II of the Act.[3] It appears that under the 1959 Act, despite official guidance, direct admission to hospital under section 136 by police outside of the London area was a rarity.[4]

12.02.4 *Powers of Removal and Detention*

It is to be observed that section 136(1) provides a constable with a power of **removal** to a place of safety. There are no specific provisions as to conveyance; however, it has been suggested that this authority extends to persons acting under the constable's directions,

---

[1] *The Report of the Committee on Mentally Abnormal Offenders* (1975; Lord Butler) Cmnd. 6244, HMSO, London, para. 9.11.

[2] *Home Office Consolidated Circular to the Police on Crime and Kindred Matters*, para. 28c.

[3] DHSS (1983) *Mental Health Act 1983: Memorandum*, para. 291.

[4] See *The Butler Report, op. cit.*, para. 9.8.

such as ambulance staff who are taking the person to hospital.[1] It should also be observed that the powers of detention for 72 hours given under section 136(2) are not conferred expressly on the police. It would therefore appear that the power to detain is given by implication to any person who is charged with supervision or care in the place of safety—for example, medical and nursing staff in the hospital, any constable or other person in charge of the person at a police station, or any householder who may have agreed to give temporary shelter. Arguably, the power of removal under section 136(1) is not exhausted until the person removed is accepted by the occupier of a place of safety (*e.g.*, a person acting on behalf of the managers of a hospital). If a police officer has called at a hospital which does not accept the person for the purposes of section 135(2), his powers of removal under section 136(1) probably would not, in the circumstances, have terminated.

12.02.5 *Medical Examination and Social Work Interview*

The person is detained in a place of safety under section 136(2) for specified purposes—*i.e.*, to be medically examined,[2] interviewed by an approved social worker and to make necessary arrangments for his treatment and care. A medical and social work assessment should take place as soon as possible after the person's arrival in a public place. Ideally, a joint assessment by an approved doctor and ASW would be conducted. Detention without any attempt to carry out these requirements would not be within the scope of section 136.

The role of the approved social worker includes contacting the detained person's family and ascertaining the relevant medical and social history. The social worker should explore the full range of alternatives to ensure that treatment is given in the most appropriate care setting. Once the purposes of confinement specified in section 136(2) have been achieved, the person must be released even if the 72 hour period has not yet expired. Thus, if a person has been examined and interviewed, and if no arrangements are being made for his treatment and care, the person cannot be detained further.

The doctor and ASW should consider if arrangements need to be made for the person's care and treatment either in hospital or in the community. If compulsory admission to hospital is indicated, an application under section 2 or 3 can be considered. Holding powers under section 5(2) or 5(4) are inappropriate. (Code of Practice, paras 10.17–10.18).

---

[1] *Ibid.*, para. 9.2.

[2] The doctor examining the patient should, wherever possible, be "approved".

12.02.6 *Hospital Managers have no Duty to Admit*

As in the case with any compulsory admission procedure, the hospital managers have no duty to admit patients brought to hospital under s. 136 (see further para. **3.03** *ante*).

12.02.7 *Comment*

Section 136 of the 1959 Act was subject to criticism[1] which was reflected in the Parliamentary debates.[2] The major points are that the police officer, who has insufficient training in mental health, is permitted to make a judgment as to whether a person appears to be mentally disordered. Further, there are substantial regional variations in the use of section 136, with the greatest use taking place within the four London Metropolitan regions.[3] The Percy Commission recommended that section 136 should be restricted to cases where the police would have the power of arrest,[4] but this was not implemented in the 1959 Act. There are also strong grounds for suggesting that the maximum period of detention should be reduced from 72 hours to, say, 24 hours or less, indicating the need for a short period of crisis intervention.

12.03 Assistance from the Police to Retake Patients or to Remove Them to a Place of Safety

12.03.1 *Warrant to Enter Premises*

Section 135 authorises a justice of the peace to issue a warrant to search for and remove patients who are refusing access to premises. Section 135(1) applies to neglected patients, and must be based upon information laid by an approved social worker. The warrant is issued authorising a constable to enter premises, if necessary by force. When a constable executes a warrant he must be accompanied by a doctor and an approved social worker (s. 135(4)). The doctor and ASW will advise whether the patient should be removed to a place of safety pending an application under Part II of the Act.

Section 135(2) provides for the issue of a warrant to take or retake a patient who has escaped or who is absent without leave. When a constable executes the warrant he may be accompanied by a doctor or any other person who is already authorised to retake the patient (s. 135(4)). The person who is authorised to retake the patient should normally accompany the constable and then take the patient direct to

---

[1] See *e.g.*, L. Gostin (vol. 1; 1975) *A Human Condition*, MIND, London, pp. 31–33.

[2] T. Davis (Oct. 18, 1982) *H. C. Debs.*, vol. 29, paras. 90–103 (amendments to reduce period of detention to 24 hours and to require a written record of the use of s. 136 defeated).

[3] K. Clarke (March 24, 1983) Written Answer, *H. C. Debs.*

[4] *Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency 1954–57* (1957; Lord Percy) Cmnd. 169, HMSO, London, para. 412.

the hospital or place where he is required to live. (See further para. **21.16** *post*).

12.03.2 *Retaking Patients*

Police constables are included among those who are authorised to retake patients who are absent from the hospital where they are liable to be detained, or from the place they are required to live by their guardian (s. 18). They are also included among those authorised to retake patients who escape while being conveyed from one place to another, or who escape from a place of safety or custody under the Act (s. 138). (See further paras. **21.17–21.18** *post*).

The scope of authority of constables to retake patients who are absent from hospital was discussed by the House of Lords in ***D'Souza v. Director of Public Prosecutions***.[1] In that case, police constables forcibly entered the premises of a patient who was absent from hospital without leave being granted under section 17 of the 1983 Act. The question arose whether the constables had authority under section 17(1)(*d*) of the Police and Criminal Evidence Act 1984 to enter the house by force without a warrant for the purpose of recapturing the patient who was liable to be detained for assessment under the Mental Health Act.

Section 17(1)(*d*) of the 1984 Act justifies forcible entry for the purpose of recapturing persons who are "unlawfully at large" and whom the police are "pursuing." The House of Lords held that a person who absconds from lawful detention under the Mental Health Act without leave of absence, and is liable by virtue of section 18(1) of the 1983 Act to be taken into custody and returned to the hospital, is "unlawfully at large" within the meaning of section 17(1)(*d*) of the 1984 Act. However, a police constable cannot exercise the power of entry and search of the premises for the purpose of recapturing a person who is unlawfully at large and whom he is pursuing unless the pursuit is almost contemporaneous with the entry into the premises. Thus, there has to be a pursuit, or chase, however short in time and distance, before the power of forcible entry can be exercised.

Staff are advised to call for police assistance only where it is clearly necessary. The police must be informed immediately of the escape or absence without leave of a dangerous patient or a patient subject to restrictions on discharge.[2]

---

[1] [1992] 4 All ER 545, [1992] 1 WLR 1073, 96 Cr App R 278, 10 BMLR 139.
[2] DHSS (1983) *The Mental Health Act 1983: Memorandum*, para. 289.

THIS PAGE IS DELIBERATELY LEFT BLANK

B. THE DECISION TO PROSECUTE

12.04 The Decision to Take a Mentally Disordered Person into Police Custody and to Prosecute

12.04.1 *Criteria for Determining Whether Prosecution is in the Public's Interest*

Whether a mentally disordered person who has committed an anti-social act will be brought to the notice of the police, charged and taken before a court involves a great deal of chance. Yet these decisions directly influence the whole course of the person's future care and treatment, including whether he will reside in prison, hospital or the community. The Crown Prosecution Service[1] and the police have discretion whether to initiate, and continue a prosecution. The police do not have a uniform set of criteria which they apply to determine whether to prosecute a mentally disordered person. The factors used by the CPS include the gravity of the offence; whether, and for how long, the person has been under psychiatric treatment; his mental condition at the time of the alleged offence; and his present mental state of mind and whether it would be detrimental for him to be involved in criminal proceedings. The Butler Committee urged caution before deciding to prosecute a mentally disordered person. Where any person is clearly in urgent need of psychiatric treatment and there is no question of risk to members of the public the question should always be asked whether any useful public purpose would be served by prosecution. The presumption against prosecution should particularly apply to patients already in hospital. Wherever possible such patients should be spared the ordeal of court appearances and the stigma of conviction. Prosecution should be seen as a last resort, and should not be embarked upon where it is not clearly in the interests of the patient or the community.[2]

12.05 Interrogation of Mentally Disordered People in Police Custody

12.05.1 *Maximum periods of detention*

If a decision is made to take a mentally disordered person into police custody the question arises whether he is entitled to any special protection or safeguards while being held and questioned. A mentally disordered person, particularly if mentally handicapped, may be vulnerable and highly suggestible, even to the point of incriminating himself where he is not in fact guilty of the offence charged.[3] In England and Wales the police are permitted to interrogate persons in custody

---

[1] See Prosecution of Offences Act 1985.

[2] *The Report of the Committee on Mentally Abnormal Offenders* (1975) Cmnd. 6244, HMSO, London, para. 9.16–9.25.

[3] See the *Report of an Inquiry by the Hon. Sir Henry Fisher into the Circumstances leading to the Trial of Three Persons on Charges Arising out of the Death of Maxwell Confait* (1977) HMSO, London, paras. 2.7–2.28.

on suspicion of having committed offences, up to the point when they are charged or told that they will be charged.[1] Under the Police and Criminal Evidence Act 1984 they can be detained for a maximum of 96 hours before charge.[2] The initial detention is for up to 24 hours (s. 41); detention for up to 36 hours can be authorised by a police officer of the rank of superintendent or above (s. 42); and detention for a total of 96 hours can be authorised by a magistrate.

The Code of Practice issued in pursuance of the Police and Criminal Evidence Act 1984 provides for special safeguards for mentally ill and mentally handicapped people brought into detention. These safeguards are reviewed in para. **12.05.4** below.

12.05.2 *Right to have someone informed when arrested*

Where a person has been arrested and is being held in police custody he is entitled, if he so requests, to have a friend, relative or other person who is known to him or who is likely to take an interest in his welfare (such as a social worker) told as soon as practicable (s. 56).[3] Children or young persons have additional rights under section 34(2) of the Children and Young Persons Act 1933 (substituted by s. 57 of the Police and Criminal Evidence Act 1984). In such cases all steps as are practicable **must** be taken to ascertain the identity of a person responsible for his welfare who must be informed of the arrest.

12.05.3 *Confessions*

A relevant confession may be given in evidence in any proceedings unless it is excluded by the court (s. 76(1)). The court has a **mandatory duty**[4] to exclude a confession obtained (*a*) by oppression; or (*b*) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render the confession unreliable, notwithstanding that it may be true. The prosecution has the burden to prove beyond a reasonable doubt that the confession was not obtained by oppression or unreliably (s. 76(2)).

The term "**oppression**" was construed in *R. v. Fulling*.[5] Oppression means something beyond what is inherently oppressive in police custody and imports some oppression actively applied in an improper manner by the police. The word "oppression" is given its ordinary dictionary meaning of the exercise of authority or power in a burdensome, harsh, or wrongful manner, unjust or cruel treatment or unjust burdens.

---

[1] *Conway v. Hotten* (1976) 63 Cr. App. R. 11.

[2] Unless otherwise specified references to sections in this para' are to the 1984 Act.

[3] Delay is permitted under s. 56(1) only in cases of serious arrestable offences when authorised by an officer of at least the rank of superintendant.

[4] *R. v. McGovern* (1990) 92 Cr. App. Rep. 228.

[5] [1987] 2 W.L.R. 923. See *R. v. Prager* [1972] C.L.Y. 629, 1 All E.R. 1114 at 1119 and s. 76(8) of the 1984 Act.

The meaning of the term "**unreliable**" in section 76(2) was discussed by the Court of Appeal in *R. v. Cox*.[1] A mentally handicapped defendant admitted during the voire dire determining the admissibility of a confession that he in fact committed the offences charged. The trial judge held that the confession was admissible because the defendant was "clearly telling the truth." The Court of Appeal overturned the trial court decision. The Court of Appeal held that the question was not whether the confession was untrue, but whether it was obtained in a way that was likely to render it unreliable. The prosecution has the burden to prove beyond a reasonable doubt that the confession was not obtained unreliably.

The confession in *Cox* was obtained in the absence of an appropriate adult in violation of the Code of Practice (see **12.05.4** below). The Court of Appeal held that the Judge should have directed his mind to whether the absence of an appropriate adult would be likely to result in the confession being unreliable, not whether the confession was actually true.

A confession found to be unrealiable may taint subsequent confessions and render them inadmissible as well. In *R. v. McGovern*[2] an initial interview was conducted without a solicitor present, despite her request for one in violation of section 58. The Court of Appeal held that the first interview in which she confessed to the offence was unreliable and therefore inadmissible. The defendant reiterated the confession in a second interview which was conducted in accordance with the Act and the Code of Practice. The Court of Appeal held "that the earlier breaches of the Act and of the Code render the contents of the second interview inadmissible also . . . When an accused person has made a series of admissions as to his or her complicity in a crime at a first interview, the very fact that those admissions have been made are likely to have an effect upon her during the course of the second interview."

Even if a confession is not obtained by oppression or unreliably, the court retains *discretion* to exclude the evidence. The court must find that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have an adverse effect on the fairness of the proceedings (s. 78). The court may exercise that discretion notwithstanding that the accused may have been in an irrational state of mind when he made the confession. In *R. v. Miller (A.R.)*,[3] the accused, a paranoid schizophrenic, made an oral and written confession to killing his girlfriend, which he then sought to retract. The Court of Appeal held that the judge had weighed very carefully the exercise of his discretion, and it could not be said that he had erred in its exercise. The trial judge

[1] [1991] Crim. L. Rev. 276 (Transcript: Marten Walsh Cherer).
[2] (1990) 92 Cr. App. Rep. 228.
[3] [1986] 1 W.L.R. 1191, C.A.

considered that the jury would be able to separate out the factual material from the delusions.

If a **mentally handicapped**[1] person makes a confession which was not in the presence of an independent person,[2] the court must warn the jury that there is a special need for caution before convicting him in reliance on the confession (s. 77(1)).[3] For example, in *R. v. Bailey*,[4] the defendant confessed to an arson which resulted in a death; she was convicted of manslaughter and sentenced to life imprisonment. The Court of Appeal quashed the conviction and ordered a retrial because the judge had failed to provide the jury with a special warning about the potential unreliability of confessions made by a mentally handicapped person not in the presence of an independent (*i.e.*, non-police) person. Sometimes, even this warning may be insufficient. The Court of Appeal, in *R. v. Dutton*[5] quashed the conviction of a mentally handicapped man when the only evidence in his case was procured during a police interrogation conducted without the presence of a responsible adult in breach of the Code of Practice (see para. **12.05.4** below).

12.05.4 *Home Office Guidelines*

Under the Police and Criminal Evidence Act 1984 (s. 66, 67), the Home Secretary must issue codes of practice in connection with the detention and questioning of persons by police officers. The Home Secretary must lay draft codes of practice before both Houses of Parliament and then he may bring the codes into operation by statutory instrument. The codes of practice include guidelines in relation to questioning persons at risk—*i.e.*, arrested juveniles, mentally ill and mentally handicapped people.[6]

The code of practice on questioning of suspects takes the place of the Judges' Rules and Administrative Directions which have continued

---

[1] Mental handicap is defined as a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning (s. 77(3)). Even if a defendant is not "technically mentally handicapped", his low intelligence is a critical factor to be considered in assessing the reliability of his confession. *R. v. Moss* (1990) 91 Cr. App. Rep. 371.

[2] An "independent person" does not include a police officer or a person engaged in police purposes (s. 77(3)).

[3] For a study of this subject see B. Tully and D. Cahill (1984) *Police Interviewing of the Mentally Handicapped: An Experimental Study*, London, Police Foundation.

[4] The Times, 26 January 1995 (Transcript: John Larking) Court of Appeal (Crim. Div.).

[5] 11 November 1988, C.C.A., per Glidewell L J, (Transcript Marten Walsh Cherer).

[6] The codes of practice are:—

(a) Code of Practice for the Exercise by Police Officers of Statutory Powers of Stop and Search;

(b) Code of Practice for the Searching of Premises by Police Officers and the Seizure of Property found by Police Officers on Persons or Premises;

(c) Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers;

(d) Code of Practice for the Identification of Persons by Police Officers.

and were brought into operation on 1st January 1986 by the Police and Criminal Evidence Act 1984 (Codes of Practice) (No. 2) Order 1990. S.I. No 2580.

in non-statutory form since 1912. A failure to observe any provision of the code of practice issued under the Police and Criminal Evidence Act 1984 does not render the person liable to any criminal or civil proceedings; but in all criminal and civil proceedings the code is admissable in evidence. Further a police officer is liable to disciplinary proceedings for a failure to observe any provision of the code, unless disciplinary proceedings are precluded under the 1984 Act because the matter has already been the subject of criminal proceedings against him.

There is no specific provision in the Act rendering evidence, including confessions, obtained in breach of the Code of Practice inadmissible, but it is well established that the court may rule such evidence inadmissable if it would have an adverse effect on the fairness of the proceedings (ss. 76, 78).[1] (See further para. **12.05.3** above). If evidence is sought to be excluded because of a breach of the Code of Practice, counsel should note an objection before the evidence is given so that the court can rule before the evidence is put before the jury.[2]

The code of practice provides special safeguards for mentally ill and mentally handicapped persons who are detained and interviewed. An officer should treat a person as mentally ill or mentally handicapped if he has any suspicion of the fact, is told it in good faith, or if the person cannot understand the significance of questions put to him.[3] The "appropriate adult" is the person recognised as providing protection for the mentally ill or mentally handicapped person. The appropriate adult is a relative, guardian or another person responsible for his care; a person experienced in dealing with mental illness or mental handicap; or some other responsible adult. The code of practice states that it would be more satisfactory if an experienced and detached person act as the appropriate adult, but would respect the mentally ill or mentally handicapped person's preference for a relative. A note to the code stipulates that a solicitor who is present at the station in a professional capacity may not act as the appropriate adult.[4] The appropriate adult is not expected to act simply as an observer, but to actively advise the person and facilitate communication.

The appropriate adult must be informed of a mentally ill or mentally handicapped person's detention as soon as possible. All relevant information must be given to the person detained in the presence of the appropriate adult. No interview should take place or statement signed in the absence of the appropriate adult unless an officer of the rank of superintendent or above considers that delay will result in an immediate risk of personal harm or damage to property. A record must be made of the grounds for a decision to interview the person in the absence of

---

[1] *R. v. Dutton* (1988) 11 November 1988, C.C.A.

[2] *Ibid.*

[3] In *R. v. Cox* [1991] Crim. L. Rev. 276 the Court of Appeal rejected the testimony of a police officer who said he did not suspect the defendant was mentally handicapped. The defendant's IQ was measured at 58.

[4] *Director of Public Prosecutions v. Cornish, The Times* 27 February 1997, CO/1272/96 (Transcript: Smith Bernal), Q.B.D. (C.O. List).

an appropriate adult. The appropriate adult has certain rights including the right to request access to legal advice, to make representations about the need for continuing detention, and to receive written notice of the charge.

Interviewing a mentally handicapped person without the presence of an appropriate adult is a serious breach of the Code and could well result in exclusion of the evidence.[1] So for example, in *R. v. Aspinall*,[2] evidence of an interview conducted without an appropriate adult with a schizophrenic adult who was taking regular medication and who, although evidencing anxiety was lucid, was excluded. It was held that the recorder had failed to take sufficient note of the role of the appropriate adult and that he had wrongly assessed the medical evidence when he reached the conclusion that evidence of the interview could be admitted.

12.06 Uncorroborated Evidence of a Mentally Disordered Witness

When the prosecution evidence consists solely of the testimony of witnesses who are "suspect" because of their mental disorder and past criminal record, the judge must warn the jury of the danger of acting on their uncorroborated evidence. In *R. v. Spencer*; *R. v. Smails*,[3] nurses at Rampton Hospital were convicted of ill treating their patients based solely upon the evidence of patients or former patients. The judge directed the jury to approach the evidence with great caution. The House of Lords held that the judge was required to warn the jury that it would be dangerous to convict without corroboration; however, the judge's directions had been adequate and fair, and the appeal based upon those grounds would be dismissed.

---

[1] *Ibid.* In *R. v. Ham*, 36 BMLR 169 (1 December 1995), the Court of Appeal quashed a conviction, ruling that a confession obtained from a mentally handicapped individual in the absence of an appropriate adult should have been excluded from evidence.

[2] [1999] 2 Cr. App. R 115.

[3] [1986] 2 All E.R. 928, H.L.

POWERS OF THE POLICE AND THE DECISION TO PROSECUTE

ISSUE No. 18