Chapter 7

THE APPROVED SOCIAL WORKER

A. BACKGROUND

7.01 From Overseer of the Poor to the Duly Authorised Officer

The approved social worker can trace his ancestry back to the unpaid overseer of the poor appointed in 1601 under the Poor Relief

Act of Elizabeth I. Among his many duties towards the poor and needy in his parish the overseer could arrange for the impotent poor, including the pauper lunatic, to be placed in workhouses.[1] The overseer had a controlling function, somewhat akin to a constable. By the Vagrancy Act 1744 justices of the peace could by warrant direct the overseer, constable or churchwarden to apprehend and securely lock up the dangerous lunatic.

The functions of making application for compulsory admission and conveyance to hospital can be traced to the County Asylums Act 1808. Overseers could apply to the justices for the conveyance of any "lunatic, insane person or dangerous idiot who may be chargeable to such parish, to such asylum". An amending Act in 1815 required overseers to furnish returns of all lunatics and idiots within their parishes to the justices on request. This was intended to provide some assurance that overseers were carrying out their duties adequately.

From the enactment of the Poor Law Amendment Act 1834 the parish poorhouse was gradually superseded; there was also a gradual change of duties in relation to the pauper lunatic and these were undertaken by the relieving officer responsible to the parish or union of parishes. The relieving officer exercised his considerable powers when poverty and mental illness coincided. As his chief concern was with the poor, patients of unsound mind with means were until towards the end of the 19th century placed in private madhouses. By the Lunatics Act 1845 private patients could be detained upon petition stating the person's relationship (if any) or other connection with the patient in a prescribed form, together with two medical certificates, specifying the facts upon which they formed their opinion. A pauper lunatic could be detained upon petition signed by a justice or an officiating clergyman, and also by the relieving officer or overseer. The Act also specified that no medical practitioner with an interest in, or who attends, a hospital could sign a medical certificate. This is a forerunner of the 1983 Act (s. 12), although ironically the 1845 Act provided a stronger safeguard. The overseer was among those authorised to discharge the pauper patient.

The Lunacy Act 1890 extended the intervention of a justice from the Poor Law to the private sector. A reception order for non-pauper cases involved a near relative or other person stating his connection with the patient in making a statement before the justice, supported by two medical recommendations. The summary reception order was the normal method of admission for pauper patients. The initiative rested with the relieving officer or the police notifying a justice; one medical certificate was required. Further, the relieving officer or constable alone could remove a person wandering at large to a workhouse for three days or until proceedings could be taken. This was the predecessor to

[1] A more detailed account of the history, with references, is contained in chapter 1.

s. 136 in both the 1959 and 1983 Acts. It is of interest to observe that first the relieving officer, and then the local authority duly authorised officer, until 1959, had the power to detain a patient for up to three days on his own initiative. It is also of interest that the ancestors of the approved social worker had responsibilities only in relation to the poor insane; relatives or others with a close connection to the patient had responsibility for those with means.

The Mental Deficiency Act 1913 imposed new duties upon local authorities for the care of mentally defective persons. Specially authorised officers and social workers were usually appointed to deal with the mentally deficient, while the duties of the relieving officer persisted in relation to the mentally ill. The relieving officer became a "duly authorised officer" for all categories of patient by virtue of a change in terminology in the Mental Treatment Act 1930, but not by special appointment.

7.02 From Duly Authorised Officer to Mental Welfare Officer

Following the establishment of the National Health Service in 1948, many local authorities accepted that the office of duly authorised officer should be translated into mental welfare officer (MWO). In 1959 local authorities were required to appoint officers to act as MWOs for the purposes of the Mental Health Act.[1]

7.03 From Mental Welfare Officer to Approved Social Worker

There were a number of reasons why it was thought that there should be a system of approving social workers to act under the Mental Health Act:[2]

(*i*) **No statutory requirements as to qualification, etc.** There were no statutory restrictions upon the local authority in its choice of an officer to act as an MWO; some authorities authorised officers without due regard to their qualifications, training or experience in mental health.

(*ii*) **Variable quality of service.** The indiscriminate allocation of officers to act as MWOs meant that the quality of service available to the patient and the protection afforded to him was not consistently high. This would result in a reduction in the status

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[1] The 1959 Act (s. 6) was re-enacted in the Health Services and Public Health Act 1968 (s. 12(1)(*d*)), and again re-enacted by the National Health Service Act 1977 (s. 21, Sch. 8, para. 2(1)(*d*)). (all now repealed)

[2] See DHSS (1976) *A Review of the Mental Health Act 1959*, paras. 6.13–6.17; DHSS (1978) *Review of the Mental Health Act 1959*, Cmnd. 7320, HMSO, London, paras. **3.7–3.13**; Olsen (1983) A Critical Evaluation of the Proposals for Training ASWs, in *Approved Social Work—Principles and Practice* MIND, London.

of social workers acting in mental health cases and make it more difficult to exercise an independent professional judgment.

(*iii*) **Ambiguity of Role**—There was uncertainty as to the function of the MWO, which came to be regarded as administrative rather than professional. The Act did not specify any unique professional function for the MWO; he was not given any explicit statutory criteria (separate from the doctor or relative) upon which to base his decision. The absence of a distinctive role for the MWO is unsurprising when it is recognised that they were originally envisaged as a substitute for the nearest relative and not as professionals exercising an indispensable statutory function.[1] The 1959 Act made it difficult for the MWO to influence a situation in which he had so little standing.

7.03.1 *Brady's Case*

The decision to improve the competence and clarify the role of MWOs was influenced by *Brady's* case in which the local government Ombudsman criticised the action of a MWO who made an application for emergency admission under section 29 of the 1959 Act (now s. 4) without first ensuring that the practitioner giving the medical recommendation had first examined the patient.[2] (The G.P. had, in fact, signed a medical recommendation without having examined the patient.) The MWO was unqualified and had very little experience and training in social work. Ironically a parallel report by the Health Service Commissioner said that the doctor's actions were outside of the Commissioner's terms of reference.[3] Similar evidence of untrained MWOs exercising functions without due regard to the statutory procedures has come to light.[4]

7.03.2 *Proposals for an Approved Social Worker*

Both MIND[5] and BASW[6] recommended that there should be a statutory requirement for approval of social workers to exercise statutory mental health functions, and to specify the unique role of the specialist social worker. Parliament accepted the need for approval of

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[1] *Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency, 1954–1957* (1957; Chairman: Lord Percy) Cmnd. 169, paras. 403–404.

[2] Report of the Local Government Commissioner on a complaint made by MIND, no. INV 411/H/80, September 8, 1981 against Isle of Wight County Council.

[3] Case number WII/80–81.

[4] P. Bean (1980) *Compulsory Admissions to Mental Hospitals*, John Wiley, Chichester.

[5] L. Gostin (1975; vol. 1) *A Human Condition*, MIND, London, pp. 36–37.

[6] BASW (1977; Chairman: Olsen) *Mental Health Crisis Services—A New Philosophy*, paras. 3.1–3.6.

social workers, but specifically rejected amendments for the social worker to displace entirely the functions of the nearest relative.[1]

B. SOURCE OF AUTHORITY

7.04 Definition of Approved Social Worker

The approved social worker (ASW) was created by the Mental Health (Amendment) Act 1982 (s. 61) which was consolidated into the 1983 Act. An approved social worker (ASW) is an officer of a local social services authority appointed to act as an approved social worker for the purposes of the Act (s. 145(1)). The duty to appoint a sufficient number of ASWs for the purpose of discharging the functions conferred on them by the Act is placed on the local social services authority (s. 114(1)). The authority can approve social workers only if they demonstrate "appropriate competence in dealing with persons who are suffering from mental disorder" (s. 114(2)). In approving a person for appointment as an ASW the authority must comply with directions given by the Secretary of State for Social Services (s. 114(3)).

7.05 Approval and Re-approval

7.05.1 *Background*

In June 1983, section 114 came into force, Local Authority Circular (83)7 laid down directions by the Secretary of State that any social worker approved to carry out statutory duties under the Act must have received appropriate training and must have succeeded in a system of assessment based upon an examination set by the Central Council for Education and Training in Social Work (CCETSW). The National and Local Government Officers Association (NALGO) was concerned with the system of assesment and instructed its members not to sit the examination set by CCETSW. Accordingly, there was a low take-up of assessment places and an insufficient number of candidates completed the assessment by the commencement date for section 114 (October 28, 1984).

In August 1984 the Secretary of State issued Local Authority Circular (84)17 which contained transitional arrangements for the appointment of ASWs to ensure that local social service authorities had a sufficient number of ASWs to carry out their statutory duties under the Act. At that time the Secretary of State announced his intention to move forward to directions designed to secure a fully trained and assessed staff group for work under the Mental Health Act.

Discussions continued between the parties involved and agreement was reached on arrangements for appointing ASWs. These arrange-

[1] Baroness Faithful (Jan. 19, 1982) *H. L. Debs.*, vol. 426, cols. 556–63. See also Lord Wallace (Feb. 1, 1982) *H. L. Debs.*, vol. 426, cols. 1152–67 (social work qualifications); Baroness Faithful, *id.* at cols. 1168–69 (social work role). See further para. **7.18** below.

ments were set out out on November 24, 1986 in Local Authority Circular (86)15 (see Appendix C, *post*). Because of the time needed to implement the new directions, the transitional arrangements continued until 27 October 1988.

Social workers who have gained full approval under LAC (83)7 or LAC (84)17 can continue their existing appointments. Those staff who have been transitionally approved can be considered for renewal, but no transitional appointments could continue beyond 27 October 1988.

7.05.2 *Directions of the Secretary of State*

The Secretary of State has directed that in approving a person for appointment as an ASW, local social service authorities must have regard to the concern of Parliament that high standards should be set and maintained. (LAC(86)15).

7.05.3 *Approval*

In approving a person for appointment as an ASW, local social services authorities must have regard to the need to ensure (except in the case of "transitional approval"—see para. **7.05.4** below) that each of the following conditions are met:

(*i*) (s)he holds the Certificate of Qualification in Social Work, **or** a qualification recognised by CCETSW as equivalent **or** (s)he was warranted as a Mental Welfare Officer in post on 28 October 1982 (the date on which the Mental Health (Amendment) Act 1982 was passed); **or** (s)he gained substantial experience as a warranted Mental Welfare Officer during the period 1 January 1975 to 27 October 1982; **and**

(*ii*) (s)he has completed training at a course approved by CCETSW, **or** (s)he has succeeded in an assessment organised by CCETSW in accordance with its rules up until 1 April 1987, **or** (s)he has received appropriate training which commenced prior to 1 April 1987 in carrying out the duties of an ASW; **and**

(*iii*) (s)he has had appropriate experience and has shown an appropriate level of professional competence.

It is for the social service authority to make appointments of ASWs, but no such appointment should be made (other than "transitional" appointments) unless the three foregoing critera are met. This does not imply that the authority is obliged to appoint any person who has fulfilled these criteria.

The procedures for formal approval are matters for local decision. However, responsibility for the organisation and functioning of machinery for approval should be held by a senior officer in the Social Services department. This officer should also be responsible for maintaining clear individual records of the training and approval of ASWs.

The approval given by a local authority can be given for a period not to exceed five years. Social workers may be re-approved at the end of that period after appropriate re-appraisal by the authority. Appointments of ASWs shall be kept regularly under review. An employing authority has the right to withdraw its approval from any social worker no longer needed or suited to carry out the required duties, but reappraisal is not intended to replace normal consultative arrangements preceding a possible change of duties, and it is not intended to be a disciplinary measure.

7.05.4 *"Transitional approval"*

The revised directions on statutory approvals provided for "transitional approvals" only until 27 October 1988. No transitional approval could extend beyond that date.

Where there are not enough persons available for approval in accordance with para. **7.05.3** above to enable the authority to carry out its statutory duties "transitional approvals" given to other persons should be given with a view to appointing only those who meet each of the following four conditions:

(*i*) either hold the Certificate of Qualification in Social Work or a qualification recognised by CCETSW as equivalent or were warranted as a Mental Welfare Officer in post on 28 October 1982, or gained substantial experience as a warranted Mental Welfare Officer during the period 1 January 1975 to 27 October 1982; **and**

(*ii*) have had at least two years experience as a social worker; **and**

(*iii*) have either carried out the statutory duties of a Mental Welfare Officer, or have acted under the direct supervision of an ASW when the latter has been carrying out statutory duties under the Act; **and**

(*iv*) have received appropriate training in carrying out the duties of an ASW under the Act.

No transitional approval is valid beyond 27 October 1988.

7.05.5 *Movement of ASW to another authority*

Social workers moving from one employing authority to another must be re-approved by the new authority, which must be satisfied that such persons have met the requirements laid down by the Secretary of State. Where an ASW moves from one authority to another the new authority should enquire of the old as to satisfactory performance of duties; the new social services authority should also satisfy itself that the transferred social worker has sufficient knowledge of local resources and organisation.

7.06 Training

It is for social services authorities to ensure that sufficient training, provided either locally or by shared arrangements, is available to meet the requirements in each locality. There are no national requirements as to content or form of training; however, guidelines are to be issued from time to time by CCETSW.[1] The Secretary of State expects authorities to co-operate with their neighbours and CCETSW in order to share the use of educational resources and to make available any facilities for the practical part of the training programmes to students from authorities other than their own. It may be useful for groups of authorities to establish collaborative machinery involving representatives of social services authorities, health authorities, educational bodies and voluntary mental health organisations. Adequate arrangements should also be made for "refresher" training to continually maintain a high standard among ASWs.

7.07 Selection of ASWs

The criteria laid down by the Secretary of State for approval and transitional approval of ASWs are set out in paras. **7.05.3** and **7.05.4** above.

Statutory work should be planned and carried out as an integral part of the mental health services provided by the authority. Accordingly, the Secretary of State has recommended that social workers to be put forward for approval should be selected from those engaged in the wide range of mental health work in their departments. It is for authorities to establish how many staff are needed to fit their local conditions—*e.g.* out of hours arrangements—and offer training and approval to those who want to develop and use the special expertise alongside a general professional interest in mental health. In determining numbers full allowance should be made for the time these trained and experienced mental health social workers need to spend on preventive work which avoids the need for compulsion.

7.08 Role of ASWs

Approved social workers have a role wider than reacting to requests for admission to hospital, making necessary arrangements and ensuring compliance with the law. (See further paras. **7.26–7.27** below). They should have specialist knowledge and skills to make appropriate decisions for patients and relatives; they must be familiar with the day to day working of an integrated mental health service, and be able

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[1] It was initially expected that there would be a comprehensive system of training planned on a national basis to avoid "completely separate bodies of practice established in isolated areas of the country", Lord Elton (Feb. 1, 1982) *H. L. Debs.*, vol. 426, cols. 1159–61. See CCETSW (March 1983) *Assessment and Training of Social Workers to be Considered for Approval under the Mental Health (Amendment) Act 1982—Guidance for Local Authorities*: Paper 19.1. See also *Revised Guidance*, Papers, 19.14, 19.16.

to assess and mobilise other services. They should have access to, consultation with and supervision from qualified and experienced senior officers. Their role is to prevent the necessity for compulsory admission to hospital, wherever possible.

7.08.1 *Cooperation with other services*

The Secretary of State encourages social services authorities to make arrangements for the approval and deployment of social workers to ensure the best service, particularly crisis intervention services. It is particularly important to coordinate personal social services with health services, housing services and voluntary organisations.

7.09 Transitional Arrangements

Approved social workers did not replace mental welfare officers until October 28, 1984 (s. 148, Sch. 5, para. 4(1)(*a*)). Between September 30, 1983 (the commencement date for most of the provisions of the 1983 Act) and October 28, 1984, MWOs carried out the functions of ASWs under the Act. The changeover on October 28, 1984 did not affect anything carried out by a MWO before that date whether or not he became approved. Anything in the process of being done on that date could be continued by an ASW (Sch. 5, para. 4(2)).

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C. STATUTORY FUNCTIONS

7.10 Introduction

The appointment as an ASW imparts the necessary authorisation to perform the statutory functions set out below and summarised in the Table at section E below. (The functions which can be performed by social workers who are not approved are specified in the text—see *e.g.* s. 14.) The ASW should receive a formal authorisation as evidence of the appointment. For example, section 115 requires the production (if requested) of "some duly authenticated document" showing he is approved, in connection with entry and inspection of premises; and in other circumstances, such as in making an application under Part II or in obtaining a warrant to search for and remove patients under section 135, the ASW requires some evidential form of authority.

7.11 Applications under Part II

The specific requirements as to applications for compulsory admission to hospital and reception into guardianship under Part II of the Mental Health Act are described later in relation to the particular sections of the Act involved (see Chapter 11); here it is necessary only to present a broad overview. Part II provides for admission to hospital for assessment (s. 2), treatment (s. 3) and in an emergency (s. 4), or for reception into guardianship (s. 7). Compulsory admission or reception into guardianship results from an application supported by two medical recommendations (one for an emergency admission), addressed to the hospital managers or to the local social services authority as the case may be (s. 11(2)). The application is made by the ASW or nearest relative, and every application must specify the person's qualification to make the application (s. 11(1)). The procedure for applications and the forms to be used are contained in the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983.[1]

An application for admission duly completed constitutes authority for the applicant, or any person authorised by him, to convey the patient to hospital within the specified period of time; and the admission of the patient gives the managers authority to detain the person in accordance with the provisions of the Act (s. 6).[2] A guardianship application, duly completed, forwarded to, and accepted by, the local social services authority, confers on the authority or person named as guardian specified powers (s. 8). An application for admission of a patient can be made under Part II, notwithstanding that he is already an in-patient in hospital (s. 5(1)). An application which appears to be duly made and to be founded upon the necessary recommendations may be acted upon without further proof of the signature or qualification of the applicant or of any fact or opinion stated in it (ss. 6(3), 8(3)). Provision is also made for the rectification of certain faults in the application if discovered within fourteen days of the admission (s. 15); faults which cannot be corrected are those where the document cannot properly be

[1] S.I. 1983 No. 893, regs. 4, 5, Sch. 1.
[2] See summary of procedures, Appendix E, *post*.

regarded as an application, for example, if it is not signed at all or if it is signed by a person who is not authorised to make the application under the Act.[1] In *R v South Western Hospital Managers, ex parte M* Laws J said that section 15(1) cannot cure a defect which arises because a necessary event in the procedural chain leading to the detention has not taken place at all. It is essentially concerned with correction of errors on the face of the document.[2]

An ASW is the preferred person to make an application for admission because of his knowledge of the law and services, and because of the potential adverse effect on the family relationship if the nearest relative makes the application. Nearest relatives should not be forced to make an application because an ASW is not available to attend. Accordingly, local authorities must appoint a sufficient number of ASWs to carry out the functions under the Act (see para. **4.10.1** *ante*). Resources permitting, local authorities should provide a 24-hour ASW service, with continuity of care and assessment. Social workers should pass on information to professional colleagues who are next on duty to establish a clear line of communication. For example, when an application for admission is not immediately necessary but might be in the future, arrangements should be made to have fully informed ASWs in attendance. (Code of Practice, paras. 2.32, 2.34).

The ASW has overall responsibility for co-ordinating the process of assessment and, where he decides to make an application, for implementing that decision. The ASW should, at the start of his assessment, identify himself to the patient and relevant family members, friends and professionals; explain clearly his role; and ensure other professionals explain their roles. When the ASW has decided whether to make an application he should inform, and give reasons to, the patient, nearest relative, and doctors (Code of Practice, paras. 2.10, 2.17).

7.12 Duty to Inform or Consult Nearest Relative

An ASW who makes an application for admission to hospital for **assessment** must take such steps as are practicable to inform the person appearing to be the person's nearest relative that an application has been or is about to be made, and of the power of the nearest relative to order the discharge of the patient under section 23(2)(*a*) (s. 11(3)). In the case of an application for admission to hospital for **treatment** or for reception into **guardianship** the ASW must, before making the application, consult with the person appearing to be the nearest relative, unless it appears to the ASW that such consultation is not reasonably practicable or would involve unreasonable delay.[3] Such an application

[1] DHSS (1983) *Mental Health Act 1983: Memorandum on Parts I to VI, VIII and X*, para. 52. See further para. **6.05** *ante*.

[2] [1994] 1 All E.R. 161 at 177.

[3] The Act does not require a chronological sequence of events with respect to the ASW interview of the patient and the ASW consultation with the nearest relative. Consequently, the consultation with the nearest relative does not have to occur after the ASW interviews the patient. *Whitbread v. Kingston and District NHS Trust and another*, *The Times* 14 July 1997 (Transcript: Smith Bernal), C.A. (Civil Division).

cannot be made by the ASW if the nearest relative objects (s. 11(4)). The only proper course where the nearest relative unreasonably objects to the making of an application for treatment or for reception into guardianship is to apply to the county court for an order displacing the nearest relative (s. 29). (See para. **8.05** *post*).

7.13 The "Liberty Interest" and Monitoring the Statutory Procedure

The statutory functions of the ASW relate primarily (but not exclusively) to matters which affect the individual's liberty. The general justification for compulsion is the presence of mental disorder; and the person's need to receive medical treatment or assessment for his own health or safety or for the protection of others. In each case where liberty is restrained, whether for reasons of prevention of physical harm or the patient's health, the statutory procedure must be strictly adhered to. This is the responsibility of the ASW in acting as a statutory officer under the Act. Protecting a patient's "liberty interest" is particularly important because the use of compulsory powers under Part II of the Act does not require judicial scrutiny prior to admission.

There are generally three ways in which applications for compulsory admission can be reviewed to ensure they comply with the correct statutory procedure, which are all examined further elsewhere in this text:

(*i*) **The hospital managers** receive applications for compulsory admission (s. 11(2)), which implies a duty to ensure their legality. (See para. **6.04** *ante*).

(*ii*) **The Mental Health Act Commission**, on behalf of the Secretary of State (s. 121(2)(*b*)), must keep under review the exercise of the powers and duties conferred by the Act relating to the detention of patients (s. 120(1)). These powers and duties include a general oversight function to ensure the lawfulness of applications for compulsory admission (see para. **22.09** *post*).

(*iii*) **The Courts**—Generally, no person's liberty may be restrained in any way except upon grounds and procedures prescribed by law. Anyone so restrained otherwise than in accordance with the law may be freed by a **writ of habeas corpus**; and he may sue the person who restrained him for battery or for false imprisonment. Thus the courts will intervene where the social worker had no lawful authority to proceed (*e.g.* if his approval by the authority was faulty); if the statutory procedures were not properly fulfilled; or if the application was made in bad faith or in an arbitrary manner.[1]

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[1] As to *habeas corpus*, see para. **17.07** *post*; as to false imprisonment and battery, see para. **21.02** *post*. It is likely that *habeas corpus* would lie, even if the statutory procedures were complied with, if the ASW acted in bad faith or in an arbitrary manner. See Gostin (1982) Human Rights, Judicial Review and the Mentally Disordered Offender, *Crim L. Rev.* 779.

In addition to acting lawfully, the ASW also has a duty of care towards the prospective patient. It follows that the ASW should exercise his judgment with a reasonable understanding of the professional skills prevalent among ASWs and the statutory grounds and procedures. Failure to exercise such skills may result in an **action for negligence**.[1]

Consistent with these requirements (*i.e.* to act lawfully, in good faith and with the reasonable care expectant of an ASW) the judgment as to whether to make an application rests with the ASW alone, and will not be impugned by a court substituting its discretion for that of the ASW.

7.14 Duty to Make Application

A **duty** is imposed on the ASW to make an application under Part II of the Act in respect of a patient **within the area** of the local social services authority by which that officer is appointed in any case, **where he is satisfied** that such an application ought to be made, and is **of the opinion**, having regard to any wishes expressed by the patient's relative or any other relevant circumstances that **it is necessary or proper** for the application to be made by him (s. 13).

7.14.1 *Territorial limitation*

The words "in respect of a patient within the **area of the local authority** by whom that officer is appointed" indicate a territorial limitation upon the ASW's **duty** (but not his **power**, see para. **7.15** below). Thus the duty to make an application arises where a patient is at the moment, physically in the area of the employing authority; the patient's ordinary residence appears to be immaterial.

7.14.2 *Satisfaction as to the statutory criteria*

The ASW's duty is to make an application "**where he is satisfied**" that an application ought to be made. The statute does not fetter the exercise of the professional judgment of the ASW. What amounts to satisfaction is not easy to assess—this is a matter for him to decide in the circumstances of the individual case. The somewhat old cases of *Thompson v. Schmidt*[2] and *Harward v. Hackney Union and Frost*[3] illustrate, but only by analogy, the great discretion indicated in the concept of "satisfaction". The former relieving officer, constable or overseer under the Lunacy Act 1890, s. 20 had to be "satisfied that it

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[1] See *Harnett v. Fisher* [1927] A.C. 573 (See further para. **21.04.1** *post*). Note that an action against an ASW for false imprisonment or negligence would be subject to s. 139, requiring a showing of bad faith or lack of reasonable care. However, s. 139 would not apply to a writ of *habeas corpus*. See further para. **21.31** *post*.

[2] (1891) 56 J.P. 212.

[3] (1898) 62 J.P. 227.

is necessary for the public safety or the welfare" of a patient "with regard to whom it was his duty to take proceedings under this Act". In *Thompson's* case, Lord Esher, M.R. said the "sole responsibility was upon the relieving officer and he has to act upon his own responsibility"; and Lopes, L.J. construed section 20 as vesting "an absolute discretion" with regard to the duty imposed. How the ASW arrives at his decision is another matter. Lopes, L.J. (again relevant only by analogy) said the relieving officer "may inform his mind in any proper way"; this view is the one likely to be adopted by a modern court in preference to Hawkins, J. in *Harward's* case where the word "satisfaction" "did not make it incumbent on [the relieving officer] to take reasonable care to satisfy himself" as to the statutory criteria. Clearly, under section 13(1) of the 1983 Act the ASW must take reasonable care to inform himself as to any wishes expressed by relatives of the patient, or any other relevant circumstances (s. 13(1)). (See further para. **7.14.4** below). It is suggested, therefore, that the discretion of the ASW is subject only to the need to have regard to accepted professional practice and to all relevant circumstances.

7.14.3 *Personal and independent responsibility*

The ASW has an independent and personal responsibility in the exercise of his statutory duty. The Code of Practice (para. 2.2) states that doctors and social workers have distinct roles to play, and should arrive at their own independent decisions. However, assessment should be carried out jointly unless good reasons prevent it (although it may be advantageous for each professional to interview the patient alone).

The ASW can be regarded as having a duty to **consider** making an application, which he must actually make only **if he is satisfied** that the statutory criteria are fulfilled; if he is so satisfied then, and only then, has he a duty to make an application. The burden of responsibility suggests that liability for negligence or battery rests personally on the ASW.[1] (see para. **7.13** above).

The burden of personal responsibility suggests also that he must exercise an independent judgment.[2] Recognition of the authority's general policy and of medical and other professional opinions are important matters to be observed in he exercise of the ASW's functions. (Where such functions may result in loss of liberty compliance with the best professional practice applies *a fortiori*.) Yet, the ASW must not

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[1] Again, subject to section 139. See further paras. **21.25–21.33** *post*.

[2] See legal advice of the DHSS in *Bull. Roy'l Col. Psychiats.* (Jan. 1, 1982), vol. 6, p. 15: Section 54(1) (now s. 13(1)) requires a MWO to exercise an independent judgment. His functions "are wider than merely ensuring that the [statutory requirements are complied with] but include the exercise of his judgment, having regard to all the circumstances. . . . [He] must accept the diagnosis . . . set out in the medical recommendations; but he is entitled to take the view . . . that it is not appropriate to make an application".

be unduly influenced in the exercise of his judgment, which rests with him alone. Parliament expressly decided that there should be an application, to be made under particular statutory criteria (see s. 13(2)), which would be separate from the supporting medical recommendations; the ASW's duties and power in section 13 would not have been enacted by Parliament if it had been intended that medical opinion alone should authorise detention under Part II. The Percy Commission observed that "medical and non-medical opinions should supplement each other; each person should be expected to contribute to the final decision only what is appropriate to his own knowledge or experience or to his relationship with the patient".[1] Mental health legislation has for some time recognised that mental disorder alone does not render a person liable to detention; the patient's social situation and community-based alternatives to hospital care must also be taken into account, and this is the ASW's primary claim to a professional as distinct from a purely procedural role. A responsibility, then, rests on the ASW to ensure independence and impartiality in assessing a patient's needs in relation to his family and social situation, and the care and support that can be provided within the community; account should also be taken of the authority's policy, the safety of the public and of expressed medical opinion.

7.14.3A *Factors to be taken into account*

The Code of Practice (paras. 2.5–2.6) states the objectives and factors to be taken into account in assessment prior to possible admission under the Act. The objectives are to consider all relevant information; consider and, where possible, implement alternatives to compulsory admission; and comply with the legal requirements.

In the circular accompanying the original version of the Code of Practice in 1990 (EL (90) P185, LASSL (90) 5, WHC (90) 38) the Department of Health and the Welsh Office refer to the debate in Parliament on the original Code where the criticism was raised that it did not make it sufficiently clear that a mentally disordered patient could be detained in the interests of his or her own health or safety or for the protection of others. The 1993 amendment emphasises that only one of these grounds needs to be satisfied in addition to those relating to the patient's mental disorder but lays equal emphasis on the point that a patient may only be admitted under section 3 if the treatment cannot be provided without detaining him or her.

The factors to be taken into account at assessment include; the patient's wishes and view of his own needs; his social and family circumstances; the risk of making assumptions based on a person's sex, social and cultural background or ethnic origin; the possibility of misunder-

[1] *Report of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency 1954–1957* (Lord Percy, 1957) Cmnd. 169, para. 390.

standings which may be caused by other medical/health conditions, including deafness; the nature of the illness; reliability of the views of relatives, friends, and professionals; less restrictive forms of care in the community, as an out-patient, or informal admission; needs of, and burdens on, the family and others with whom the patient lives; the safety of others; impact on the patient's life after he is discharged from detention; and the appropriateness of guardianship.

7.14.4 *Evidence to be taken into account*

The requirement that an ASW must form his opinion having regard to any **wishes expressed by the patient's relatives** or **any other relevant circumstances** gives an indication of the evidence the ASW must use to form his opinion. In the previous sub-paragraph it was suggested that the law does not fetter the exercise of professional judgment of the ASW; he must satisfy himself that an application ought to be made. However, the law does require the ASW to hear and have regard to the wishes of the patient's relatives (s. 13(1)). Wilful or negligent disregard of any relevant information is unlawful. This does not require the ASW to seek the views of every relative. However, he must take practicable steps to consider the views of relatives wishing to provide evidence. He must also pursue any reasonable line of enquiry in order to obtain relevant information. It is good practice to consult with and to involve the nearest relative and other members of the patient's family or neighbours who could provide relevant information concerning social circumstances. To the extent that this advisable professional practice becomes a statutory obligation depends on the circumstances of the individual case. The general test one might offer is whether no reasonable ASW exercising skills and judgments similar to those prevailing in the authority could have disregarded particular information or a line of enquiry.

It is clear that, notwithstanding his general duty to consider making an application, an ASW must comply with the provisions of section 11(4) (s. 13(5)). (See para. **7.12** above).

7.14.5 *"Canvassing" opinions*

The concept that it must be **necessary or proper** for the application to be made **by him**, presumes that, although an application ought to be made, the ASW may be of the opinion that it should be made by another person. The Act is not explicit as to whether, if the ASW decides not to make an application, another officer approved by the authority can make the application. It would undoubtedly be against the spirit of the Act for an authority to "canvass" a number of opinions until the desired result was obtained; indeed authorities could reasonably specify that the decision of an ASW should not, in practice, be reviewed by the authority or another ASW unless new evidence or

circumstances warrant this or there was some material irregularity in the way in which the ASW arrived at his decision.

7.14.6 *Implications of a decision not to make an application*

There may be occasions when, having considered the social factors, the needs of the individual and the safety of others, the ASW considers that no action on his part is necessary, despite medical opinion to the contrary. In a case where the nearest relative had earlier declined to take responsibility, the refusal of the ASW would not debar the relative from reconsidering and proceeding to make the application. In any case where the ASW considers it necessary to decline to make an application on the grounds that he has no positive duty to perform, it is good practice to make a written record of the circumstances and his reasons for the decision.

The ASW, wherever appropriate, should provide an alternative framework of care and/or treatment. Thus, the ASW must seek to implement those actions, if any, which his assessment indicates are necessary to meet the needs of the patient. Mental health professionals, particularly a Community Psychiatric Nurse (CPN), concerned with the patient's care should be fully involved in formulating an alternative plan for care.

The ASW must discuss with the nearest relative the reasons for not making an application. The ASW should[1] inform the nearest relative of his right under the Act to make an application for admission. (Code of Practice, paras. 2.3, 2.26, 2.27)

7.15 Power to Make Application

The Mental Health Act 1959 was silent as to the power of a mental welfare officer to act outside of the area of his employing authority. However, such a power was often regarded as implicit in his appointment "to act as a mental welfare officer for the purpose of the Act".[2] Much of the ambiguity is removed by section 13(3) of the 1983 Act, which specifically provides that an application by an ASW "may be made outside the area of the social services authority by which he is appointed".

The question arises as to whether it is reasonable for an ASW to act in the area of another authority which has not appointed him specifically

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[1] Originally the Code provided that this duty applied "where necessary". See statement by Baroness Blatch on behalf of the Government during the debate on the Code of Practice in the House of Lords on 29 January 1990, *Hansard* Cols. 68–86; Department of Health and Welsh Office, Code of Practice: Section 118 of the Mental Health Act 1983, EL (90) P(85)/ LASSL (90) 5/ WHC (90) 38, May 1990. The words "where necessary" have now been deleted.

[2] National Health Service Act 1977, s. 21, Sch. 8, para. 2(1)(*d*).

for the purpose and which has a duty to appoint a sufficient number of its own officers for the purpose of applications under the Act (see s. 114). It may be reasonable where two social services authorities share an "out of hours" service;[1] or where an ASW continues an action properly begun in the area of the employing authority in an area of another authority. For example, a patient from area A is sent to hospital in adjoining area B informally or under s. 4, and subsequently requires an application under s. 2 or 3; it may be desirable for the social worker who knew the patient best to make the application for admission. A further example of a reasonable action might be a patient leaving area A to go into neighbouring area B after an application has been started but not yet completed.

Apart from limited circumstances where it may be reasonable to act in the area of a neighbouring authority, does section 13(3) confer on the ASW an open authority to exercise his power to make an application wherever he chooses? The answer under the Act appears to be yes, because nowhere does it limit the power of the ASW to make an application; nor does the Act specify a particular territorial limitation on the exercise of the power (see *e.g.*, s. 11(1)). Section 13(5) provides further that nothing in s. 13 shall be construed as "restricting the power of an approved social worker to make any application under this Act". This suggests that the territorial limitation on the exercise of the duty under sub-section 1 does not impose any similar territorial limitation in the exercise of the power.[2]

There may, however, be strong reasons for limiting, in practice, the making of an application outside of the area unless it is clearly reasonable to do so. Authorities could set policy guidelines as to the exercise of the **powers** of their employees. To disregard the instructions of the authority without good cause may not be unlawful, but there is no reason why it should not provide grounds for disciplinary action.

7.16 Duty to Interview Before Making Application

Before making an application for admission to hospital an ASW has a duty to "interview the patient in a suitable manner and satisfy himself that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need" (s. 13(2)).

The patient should ordinarily be given the opportunity of speaking with the ASW alone, but if the ASW has reason to fear physical harm he could insist that another professional sees the patient with him. If the patient would like a friend or another person with him during the

[1] DHSS (1983) *Mental Health Act 1983: Memorandum on Parts I to VI, VIII and X*, para. 39.

[2] Note the express territorial limitation in s. 115 (power of entry and inspection); and the limitation possibly implied in s. 29 (county court appointment of nearest relative).

interview, ordinarily the ASW should accede to this request (Code of Practice, para. 7).

The explicit duty to interview applies only to ASWs and to applications for admission to hospital, and not reception into guardianship; but a duty to interview would be implied from the ASW's general responsibility to exercise due professional care and diligence when making a guardianship application. The ASW must **interview** the patient which means he must speak with the prospective patient in person.[1] It is insufficient for him to accept information solely from an indirect or second-hand source, for example the doctor, without speaking to the patient face-to-face.

7.16.1 *"In a suitable manner"*

It is a mark of the concern of Parliament that it placed a statutory requirement to fulfil one of the most basic professional social work responsibilities. The duty to interview the patient "in a suitable manner" requires the ASW to seek relevant information using all of the professional knowledge and skills normally expected of ASWs. This would require the interview to be conducted at a level which is comprehensible to the patient, and with sensitivity to his social/cultural/ethnic/linguistic background, as well as any sight/hearing/learning or other disabilities which could hinder his communication skills.

The Code of Practice (para. 2.11) provides detailed guidance on the requirement to interview in a suitable manner: (*a*) a professional interpreter should be used where there is difficulty in communication arising from differences in language and culture;[2] (*b*) consideration should be given to requesting another ASW to carry out, or assist in, the assessment if he has a better understanding of the patient's language and culture; (*c*) an ASW with appropriate communication skills should carry out, or assist in, the assessment where the patient has difficulty in hearing[3] or speaking; (*d*) the ASW should bear in mind the potential disadvantages of the relative being asked to interpret. Where possible a trained interpreter shall be used in preference to a relative, neighbour or friend; (*e*) the ASW should ordinarily wait until the effects of sedative medication or the short-term effects of drugs or alcohol have abated before interviewing the patient, unless immediate assessment is urgently necessary because of the patient's disturbed behaviour.

Difficulties arise if the patient refuses to co-operate or is unable or unwilling to speak. If a patient locks himself in his room, and a personal

[1] *R. v Managers of South Western Hospital, ex parte Mulcahy* (1992) 12 BMLR 151.

[2] Local and health authorities and NHS trusts should ensure that ASWs and doctors receive sufficient guidance on the use of interpreters, and should make arrangements for an easily accessible pool of professional interpreters. (Code of Practice, para. 2.35.)

[3] The phrase "in a suitable manner" was inserted in the Mental Health (Amendment) Bill at third reading in the House of Commons to meet the needs of people with hearing disabilities. G. Finsberg (Under Secretary of State) (Oct. 18, 1982) H.C. Debs., vol. 29, cols. 145–6.

interview is impossible, it may be argued that talking (without response) through the door is an interview in a suitable manner. However, the more likely view is that no interview can take place in these circumstances, and therefore no application can be made. The proper course, if the statutory criteria are fulfilled, is for the ASW to apply to a justice for a warrant to search for and remove the person (s. 135(1)). (See further para. **21.16.1** *post*) If a person is unconscious, again no interview can take place and an application would have to wait until the person is interviewable. Common law powers would have to be used so that a medical practitioner could treat the patient until he is in a fit state for the interview to be conducted. If a person refuses to speak or is mute, the ASW must use his best professional efforts to communicate. The ASW must then decide whether the failure to speak was due to a mental disorder and whether there is clearly sufficient evidence to warrant making an application. It is important to observe that an application is made not only on the basis of an interview but upon a host of other social factors. (See para. **7.26** below).

7.16.2 *"Most appropriate way of providing care"*

The ASW must satisfy himself that in **all the circumstances of the case** hospital admission is the **most appropriate way of providing the care and medical treatment which the patient stands in need.** The circumstances of the case will include the past history of the patient, his present condition and the social, familial and personal factors bearing on it, and the wishes of the patient and his relatives; medical diagnosis is not the responsibility of the ASW, although he must take account of medical opinion, and must be aware of the significance of a person's feelings, behaviour and social environment. The requirement to make a decision in light of all the circumstances requires the ASW to consult all those personally and professionally involved. Hospital admission must be the "**most appropriate way**" of providing care and treatment. The "most appropriate" care from the patient's perspective would include the least restrictive alternative to hospital admission. Thus, if treatment and care can be given as, or more, effectively in a community setting it is to be preferred to compulsory hospital admission. In order to assess the available alternatives the ASW will have to inform himself thoroughly as to the availability and suitability of other means of giving care, treatment and support—for example, treatment as an informal patient, day care, out-patient treatment, psychiatric nursing support, crisis intervention and accompanying services, primary health care support, local authority social services provision, and support from friends, relatives and voluntary organisations.[1] Where

[1] See DHSS (1983) *Mental Health Act 1983: Memorandum on Parts I–VI, VIII and X*, para. 38. As to the importance of crisis management and community alternatives, see *e.g.*., Quillitch (1975) A Comparison of Three Staff Management Procedures, *J. Applied Beh. Anal.*, 8, 59–66; H. R. Olsen (ed., 1979) *The Care of the Mentally Disordered: An Examination of Some Alternatives to Hospital Care*. BASW, Birmingham.

some compulsory powers are needed within the community, reception into guardianship can also be considered.

7.17 Duty of Social Services Authority to Direct an ASW to Consider Making an Application

It is the duty of a local social services authority—if so required by the nearest relative of a patient residing in its area—to direct an ASW as soon as practicable to consider making an application for compulsory admission to hospital (s. 13(4)). The ASW must consider an application as if he had a duty to do so under section 13(1), and the reader is referred to all the considerations put forward in paragraph **7.14** above. This provision presupposes that the nearest relative may sometimes prefer an application to be made by an ASW; it lays a duty on the authority to ensure, only if requested by the nearest relative, that an ASW considers making an application. It would be unlikely for the ASW to make an emergency application in these circumstances as there would seldom be a situation of urgent necessity. However the Act does not preclude this course of action. It does not matter how the ASW came to consider making an application; he must make his decision on the facts before him at the time.

If the ASW decides not to make an application he must inform the nearest relative of his reasons in writing. The written document should contain sufficient details to enable the nearest relative to understand the decision, while preserving the patient's right to confidentiality. (Code of Practice, para. 2.27).

Local social services authorities should: (*a*) issue ASWs with guidance on what amounts to a "request" from a nearest relative; (*b*) have explicit policies on how to respond to repeated requests for assessment where the condition of the patient has not changed significantly; and (*c*) give guidance to ASWs as to whether nearest relative requests can be accepted by way of general practitioners or other professionals. (Such requests should certainly be accepted if the professional has been authorised by the nearest relative). (Code of Practice, para. 2.32).

7.18 Social Reports

The Mental Health Act 1959 was criticised for showing a preference for applications made by the nearest relative (see *e.g.*, s. 11(4)); MIND and BASW both proposed that an ASW should make the application in every case. (See further para. **7.03.2** above) Parliament did not go so far but did seek to ensure that a social work report was available to the hospital managers in most cases. Where a patient is compulsorily admitted to hospital under an application (other than an emergency application—s. 4)[1] made under Part II by his nearest rela-

[1] As to the reasons why emergency applications were excluded see G. Finsberg (Oct. 18, 1982) *H. C. Debs.*, vol. 29, cols. 39–55.

tive, the managers must as soon as practicable give notice to the social services authority for the area in which the patient resided immediately before his admission. The authority must then as soon as practicable arrange for a social worker of the social services department to interview the patient and to provide the managers with a report on his social circumstances (s. 14).

It is significant that the authority can direct any social worker within the social services department to interview the patient; the social worker need **not** be approved under s. 114. This was an intentional decision reflecting the view that the social worker concerned should be a person who is available to, and works with, the patient's family. It emphasises the importance of having a social worker with a continuing responsibility for the patient and his family.

Section 14 does not specify the information required in the social report, and it is therefore to be expected that the reports will vary in quality. It is suggested that the reports, wherever possible, should provide full information of the patient's social and family history, and the after-care services that the authority will make available. One of the primary purposes of such reports is to provide the managers with sufficient information so they can responsibly consider the exercise of their power of discharge (s. 23(2)(*a*)).

7.19 Displacement of Nearest Relative

The duty of the ASW to make an application under Part II should be construed as a positive requirement fully to investigate any case referred to him. Occasionally the circumstances of a case may be such that consideration should be given as to whether an application ought to be made by an ASW to the County Court for a direction vesting the rights of the nearest relative in the social services authority (s. 29). In such cases reference should be made to the authority's legal advisers and to paragraphs **8.05–8.06** *post*.

7.20 Displacement of Guardian

An ASW may apply to the County Court for an order that guardianship of the patient be transferred to the local social services authority or to any other person approved by that authority. The County Court must find that a guardian (other than a local social services authority) has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient (s. 10(3)). As to guardianship see para. **11.09** *post*.

7.21 Application by Approved Social Worker based in a Hospital

There are sometimes uncertainties as to whether an approved social worker based in a hospital should make an application for

compulsory admission. The law does not specifically prohibit an ASW based at the hospital to which a patient is to be admitted from making an application under Part II. However some local authorities do not allow this in practice. Safeguards under the Act are founded upon a system of assessments made by two doctors, an applicant and the hospital represented by the managers; these assessments should be made independently, and not be seen to unduly influence each other. Parliament made provision for securing the independence of doctors providing medical recommendations; section 12(3) specifies that, subject to limited exceptions, only one recommendation may be given by a practitioner on the staff of the receiving hospital. When the 1959 Act was framed, hospital social workers were appointed by hospitals and were separate from the local authority, which was empowered to appoint mental welfare officers. The local authority social worker, who was independent of the hospital, was authorised to make an application for compulsory admission. Questions about the independence of social workers, therefore, did not arise. However, post-Seebohm[1] local authority social workers are in a different position; they are, at the same time, attached to a particular hospital and employed by the local authority. The social worker will necessarily have a close day-to-day working association with the hospital, making it more difficult to exercise an independent judgment. These factors may make it inadvisable for an application to be made from an approved social worker attached to the multidisciplinary team from which one of the medical recommendations has probably already been provided.

Arguments to be presented on the other side include the fact that approved social workers based in hospitals sometimes have the greatest mental health expertise or may know the patient best; and, particularly in rural locations, there may not be a sufficient number of ASWs in the community to make applications in all cases.

The following advice from the Department of Health and Social Security was commended by the Law Panel of the British Association of Social Workers: it is important that a social worker "not only should be, but should appear to be, in a position in which he or she can exercise a completely independent judgment when assuming the responsibility of making an application. . . . If in any case the hospital social worker feels she cannot act truly independently, or she feels that it might be thought . . . that she could not do so, she should seek advice from her superior officer as to whether it would be advisable for another officer to act in her stead."[2]

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[1] *Report of the Committee on Local Authority and Allied Personal Social Services* (1968) Cmnd. 3703, HMSO, London (The principal recommendation was that the personal social services be redesigned so that needs are met "on the basis of the total requirements of the individual or family, rather than on the basis of a limited set of symptoms" (para. 111)). This was incorporated into the Local Authority Social Services Act 1970.

[2] DHSS (April 16, 1974) Circular letter, ref. F/M119/1.

7.22 Restraint or Trespass Before an Application is Duly Completed

In order to carry out an interview and to make an application the ASW will require access to the person. If the person is unwilling to be interviewed this may sometimes require forcible entry into premises occupied by the person and/or restraining him while a personal interview can take place. The only authority[1] suggests that the duty to make an application does not clothe the applicant, police or doctor with statutory power to act in contravention of the criminal or civil law; nor does the existence of a situation of "urgent necessity" in the context of a s. 4 application provide an additional source of statutory authority. Thus such a person cannot commit trespass or unlawful physical restraint for the purpose of an application or medical recommendation under Part II of the Act. The ASW's function is to make an application, not to make an arrest. The proper procedure (if the statutory criteria are fulfilled) available to the ASW to search for and remove a person believed to be suffering from mental disorder is by application to a justice of the peace under section 135(1). (See para. **21.16.1** *post*). The ASW should not rely upon his powers under s. 115 which are for the purposes of entry and inspection at reasonable times, as distinct from interview, restraint or removal. (See para. **4.09.1** *ante*).

7.23 Conveyance to Hospital after an Application is Duly Completed

A duly completed application is sufficient authority for the applicant, or any person authorised by him, to take the patient and convey him to hospital.[2] The ASW may restrain the patient for these purposes or authorise, for example, a police officer to do so. If the patient escapes before his admission to hospital he can be retaken by the person who had legal custody immediately before the escape or by any constable or ASW (s. 138(1)). (See further para. **21.14** *post*). These powers expire if the patient has not been admitted to hospital within fourteen days from the date the patient was last examined by the doctor giving a recommendation or, in the case of an emergency application, 24 hours from the date of the application or medical recommendation, whichever is earlier (s. 6(1)). The extent of the ASW's lawful authority to use reasonable restraint is discussed at length in Chapter 21.

When an ASW makes an application he has a professional responsibility to ensure that all necessary arrangements are made for the patient to be conveyed to the hospital. The ASW is advised to assist the nearest relative, and good practice requires him to do so when requested. (Code of Practice, para. 11.2). The ASW is permitted to delegate the task of conveyance to another person. Such a person might be another social worker (not necessarily approved), an ambulance worker, or police officer. The person delegated should be provided with written

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[1] *Townley v. Rushworth* (1964) 62 L.G.R. 95. See further paras. **21.13.2** *post*.

[2] The hospital managers must first agree to admit the patient. See para. **3.03** *ante*.

authority, particularly if the patient may be unwilling to co-operate. The ASW, however, retains ultimate responsibility to ensure the conveyance is performed in a lawful and humane manner.

The ASW has a professional duty to convey the patient to hospital in the most humane and least threatening manner, while ensuring that no harm comes to the patient or others. This requires showing respect for the patient and, whenever possible, protecting his privacy—e.g. avoiding loud scenes in front of the patient's family and friends. Thus, the ASW should listen to the views of patient and those concerned with his welfare, and pay attention to the impact that any particular means of conveyance will have on his relationships in the community.

Transport to hospital often comes within the power of district health authorities which can provide ambulance services. The ASW should consider whether to accompany the patient in the ambulance and/or to allow another professional or trusted relative or friend to escort the patient. The patient should not be transported by car if it would present a risk to the patient or others. There must be an escort for the patient other than the driver of the car. A patient who has been sedated should be escorted by a nurse, a doctor, or a suitably trained ambulance person experienced in the management of such patients.

Social workers are not trained to use force and this is not usually considered part of their professional function. Where physical restraint is necessary, the ASW is advised to seek the assistance of a constable.

The professional responsibility of the ASW for arranging admission to hospital requires good communication and record keeping. Thus, the ASW should inform the hospital in advance of the time of arrival and ensure that all admission documents arrive in a timely manner. The ASW should, wherever possible, be present at the hospital when the patient arrives to assist him and hospital staff. (Code of Practice, paras. 11.1–11.12).

7.24 Reports for Tribunals

The Mental Health Review Tribunal Rules 1983[1] require the responsible authority,[2] in so far as it is reasonably practicable, to send a statement to the tribunal which must contain, *inter alia*, an up-to-date social circumstances report including reports on the patient's home and family circumstances, including the attitude of the nearest relative; opportunities for employment or occupation and the housing facilities which would be available if the patient were discharged; availability of

[1] S.I. 1983 No. 942, rule 6, Sch. 1. Any reference in this paragraph to the Rules refers to these Rules.

[2] The "responsible authority" means, in relation to a patient liable to be detained, the managers of the hospital or home (s. 145(1)); and, in relation to a person subject to guardianship, the responsible social services authority (s. 34(3)). Rule 2(1).

community support and relevant medical facilities; and the financial circumstances of the patient.

The responsibility for such reports is, in practice, delegated to the local social services authority and, in particular, to the social worker with the most knowledge of, and experience with, the patient. The importance of the report cannot be over-emphasised since the tribunal cannot adequately assess the case for discharge unless it is adequately apprised of the social and family circumstances of the patient within the community. The authority need only provide information which is reasonably practicable. However, it cannot provide less complete information because of its own assessment of the prospects for discharge in the individual case. Not only does this impede the chances of discharge for the patient, but it prejudges a decision which is for the tribunal to make.

The information required to be given in a report to the tribunal should be regarded as a minimal requirement; in each case the social worker preparing the report should present the tribunal with all relevant details of a patient's social and family circumstances and after-care arrangements. The social worker should bear in mind the authority's duty to provide after-care (s. 117) and other services. He should also bear in mind the fact that the responsible authority can be required to give further information to the tribunal (rules 13 and 15); the tribunal can subpoena the social worker to appear before it or to produce any documents, and to give evidence under oath (rule 14); and the patient's representative is entitled to commission a social enquiry report for a full independent examination of social and family circumstances and the feasibility of after-care arrangements.[1]

7.24.1 *Disclosure of Report to Patient*

As to the Rules regarding disclosure of information in the reports to the Tribunal see Rules 6 and 12, and para. **18.22.5** *post.*

7.25 After-Care and Other Local Authority Services and Miscellaneous Functions

In carrying out his statutory duties and functions—for example to ensure that hospital admission is the most appropriate form of care and treatment (s. 13(2)) or in providing social reports for managers (s. 14) or tribunals (rule 6, Sch. 1)—the ASW should have regard to his authority's duties to provide after-care (s. 117) and other services for mentally disordered people. (See further paras. **4.05–4.08** *ante*) Approved social workers and local social services authorities also have other functions in the Act which are described elsewhere. These include a power given

[1] See generally L. Gostin and P. Fennell (1992) *Mental Health: Tribunal Procedure*, Longman, London.

to ASWs to enter and inspect premises;[1] a duty laid upon the social services authority to arrange for certain patients in hospital to be visited—for example, children and young persons in its care or patients subject to its guardianship;[2] the function of an ASW to interview a mentally disordered person after he is taken by a constable to a place of safety.[3] In addition the Act makes it an offence for any officer on the staff of, or otherwise employed in, or is one of the managers of, a hospital or mental nursing home to ill-treat or wilfully neglect an in-patient, or an out-patient on the premises of the hospital or home (s. 127(1)); or for a person to ill-treat or wilfully neglect a patient subject to his guardianship or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise) (s. 127(2)). A local social services authority may institute proceedings for any such offence.[4]

7.25A Social Supervision and After-Care of Conditionally Discharged Restricted Patients

The Home Office and Department of Health and Social Security have issued guidance for social workers and probation officers who act as social supervisor to a restricted patient who is conditionally discharged from hospital either by the Home Secretary or Mental Health Review Tribunal (see para **15.17.1** *post*). The social supervisor has the responsibility to report to the Home Office on the progress of such a patient.

Conditions of discharge of a restricted patient can be set either by the Home Secretary or by a Tribunal. The conditions usually are those of residence at a stated address, supervision by a local social worker or probation officer, and psychiatric supervision. The purpose of formal supervision is to maintain the mental health of the patient and to protect the public in two ways. First, the social supervisor should assist the patient's successful reintegration into the community. The patient has to adjust to community living after what may have been a long period of detention in hospital under conditions of security. The patient has to try to re-establish family and social relationships, continue with treatment, maintain a home and an ability to earn an income. Second, the social supervisor must closely monitor the patient's progress to help prevent, or at least, be able to detect a deterioration of his mental condition, leading to potential danger to himself, a family member or the public.

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[1] See s. 115; and para. **4.09** *ante*.
[2] See s. 116; and para. **4.10.2** *ante*.
[3] See s. 136; and para. **12.02.5** *post*.
[4] See s. 130; and para. **25.03** *post*.

7.25A.1 *Arrangements by the discharging hospital*

It is the responsibility of the multi-disciplinary team not only to treat the patient, but also to seek to understand the relationship, if any, between the patient's mental condition and his behaviour. The hospital multidisciplinary team should prepare an individual plan of treatment and rehabilitation. This should include the patient's personal preparation for life outside the hospital such as suitable accommodation, employment or other day time occupation. A social supervisor (social worker or probation officer) and psychiatric supervisor should be appointed. It is essential that these pre-discharge plans are discussed with the prospective social supervisor, who should spend time with the staff and patient in hospital before discharge. The hospital team should also prepare an informative written record of the patient and his treatment plan for the social supervisor.

7.25A.2 *Post-discharge procedures*

Social supervisors should have a positive, instructive approach towards the patient's social rehabilitation, rather than simply monitoring progress. The focus should be on achieving goals of personal, occupational, familial and social achievement. The supervisor should give careful consideration to any signficant change in circumstances or deterioration in relation to a new job, home, relationships, financial matters or holiday. Close personal contact and understanding of the patient is important. When the social supervisor is absent from the post for even a short period, responsibility should be delegated to a colleague. (Any temporary or permanent change of supervisor can be upsetting and care should be taken to ease the transition).

7.25A.3 *Disclosure of information*

The social worker/patient relationship is one which requires trust and confidentiality. The social supervisor will have detailed personal information about the patient. Clearly the stigma attached to previous detention in a special hospital and his legal status mean that the patient will be concerned to keep this information confidential. Yet, information about the patient's background may be relevant to hostel staff, landlords, employers, those providing voluntary work and, in some circumstances, girlfriends. Disclosure of this information should generally be made only with the full knowledge and agreement of the patient. Information should be given against his wishes only when there are compelling overriding reasons. This would include cases where there was a possible direct and serious threat to others – e.g. a patient with a history of offending against children working in an unsupervised capacity with children.

7.25A.4 *Liaison with other professionals and reports to the Home Office*

Close liaison with the supervising psychiatrist and others responsible for the patient's care is important. The Home Office also requests reports on the patient's progress one month after conditional discharge and every three months thereafter.

7.25A.5 *Recall to Hospital*

The social and psychiatric supervisors must report to the Home Office if there is an apparent risk to the public; contact with the patient is lost or the patient does not cooperate with his supervisor; the patient's mental condition or behavior requires further in-patient treatment; or the patient is charged with an offence.

The conditionally discharged patient can be admitted to hospital on an informal or compulsory basis under Part II of the Act for a short period. The supervising psychiatrist, moreover, can recommend recall to hospital. Where a patient is recalled he must be given prompt and clear reasons according to the judgment of the European Court of Human Rights in *X v. The United Kingdom* (see further para **15.16.3** *post*).

D. IMPLICATIONS FOR SOCIAL WORK PRACTICE

7.26 The Compulsory Admission Decision

The ASW has an essential professional role to play in the compulsory admission decision which must be separate and distinct from the function performed by medical practitioners. The ASW is a trained and experienced mental health social worker who derives his position from his particular understanding of family and social functioning and his knowledge of support services and resources in the community. His decision to invoke compulsory procedures must be based upon this unique professional competence. The judgment must therefore be autonomous and determined not primarily by his assessment of the medical condition and treatment needs, but by his assessment of social and family circumstances, and the availability of community services. As there is no judicial oversight of the admission decision, it is essential that there is effective consideration of the social factors in each case to complement the medical judgments made. The role of the ASW in relation to the making of applications[1] can be summarised as:

(*i*) **the investigation of the patient's social situation**—to identify, in consultation with other professionals, the extent to which social and environmental pressures have contributed to the patient's behaviour (this includes the duty to interview the patient and to take account of the views of relatives);

(*ii*) **crisis intervention**—to prevent, wherever possible, the need for compulsory admission by using professional skills and appropriate services to help resolve any social or environmental difficulty;[2]

(*iii*) **the least restrictive alternative**—to search for community and family-based alternatives to hospital, and to mobilise support, care and treatment services to provide the "most appropriate" care-setting for the patient;[3]

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[1] See BASW (Olsen, 1977) *Mental Health Crisis Services—A New Philosophy*, paras. 3.1–3.6.

[2] See Olsen (1979) A model of emergency management, in M. Meacher, ed. *New Methods of Mental Health Care*, Pergamon, Oxford.

[3] In seeking resources for a mentally disordered person, the ASW should bear in mind the mandatory duties of the local authority to provide specified services. See paras. **4.05–4.08** *ante*.

(*iv*) **the duty to make an application**—to have full knowledge of the statutory criteria and procedures for making an application for compulsory admission as a final resort in obtaining appropriate care and treatment for the patient;

(*v*) **advocacy**—the ASW should help inform the patient and family of their rights in law and provide help to secure those rights.

7.26A ASW Assessment of Persons in Police or Prison Custody

ASWs may be called upon to assess persons in police or prison custody, for example, with a view to making an application under section 2 or 3. The ASW must be given ample time and facilities for interviewing the prisoner. The ASW should be given access to the social inquiry report and any other relevant information concerning the person's social circumstances and alternative care options in the community. (Code of Practice, para. 3.12).

7.27 Conclusion

It would be wrong for the role of the ASW to be relegated to that of a statutory officer exercising a purely administrative/legal responsibility. Rather the ASW should be concerned with all the aspects of professional social work practice in mental health. He should have the specialist knowledge and skills to make appropriate decisions in respect of clients and their families, and to gain the confidence of colleagues in the health services. He must be familiar with the health and social services provided within an integrated mental health service and the statutory powers and duties of authorities to provide those services.[1] His primary responsibility is to prevent the necessity for compulsory admission to hospital by sensitive assessment and support, and by arranging crisis intervention and other services within a family and community setting.

E. SUMMARY OF STATUTORY DUTIES AND FUNCTIONS OF SOCIAL WORKERS AND SOCIAL SERVICES AUTHORITIES

DUTY OR FUNCTION AND STATUTORY AUTHORITY	DESCRIPTION
Appointment of ASWs (s. 114) (See paras. **7.04–7.08**)	ASW must be approved by his employing authority as having appropriate competence in dealing with mentally disordered people

[1] LAC(83)7, para. 12.

DUTY OR FUNCTION AND STATUTORY AUTHORITY	DESCRIPTION
Application for compulsory admission to hospital or reception into guardianship (Part II) (See Chapter 11)	**Types of application**: emergency (s. 4); assessment (s. 2); treatment (s. 3); reception into guardianship (s. 7). Application in each case by ASW **or** nearest relative **Procedural requirements**: See Appendix E *post*. **Procedure and forms to be used**: See Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983, regs. 4 & 5, Sch. 1
Duty to make application (s. 13(1)) (See para. **7.14**)	ASW has a **duty** to make an application in respect of any patient in the area covered by the authority which appointed him
Power to make application (s. 13(3)) (See para. **7.15**)	ASW has the **power** to make an application outside the area of the authority which appointed him
Duty to direct ASW to make an application (s. 13(4)) (See para. **7.17**)	If so requested by nearest relative, local authority must direct ASW to consider making an application; should ASW decide not to make an application he must give nearest relative reasons in writing
Duty to consult nearest relative (s. 11) (See para. **7.12**)	No application for treatment or guardianship can be made if nearest relative objects (s. 11(4)); in the case of an application for assessment, ASW must inform nearest relative that he has power to discharge patient (s. 11(3))
Social reports (s. 14) (See para. **7.18**)	When a nearest relative makes an application, the local authority must direct a social worker (not necessarily approved) to prepare a social report; does not apply in the case of an emergency application

DUTY OR FUNCTION AND STATUTORY AUTHORITY	DESCRIPTION
Duty to interview (s. 13(2)) (See para. **7.16**)	Before making an application for compulsory admission under Part II, ASW must interview patient. Interview must be conducted in a suitable manner and ASW must satisfy himself that detention in hospital is in all the circumstances the most appropriate way of providing the care and treatment the patient needs
Rectification of applications (s. 15) (See para. **6.05**)	If hospital managers agree, faulty application can be rectified within 14 days of admission
Conveyance of patient to hospital (ss. 6(1) and 40(1)) (See paras. **7.23** and **21.14**)	Duly completed application under Part II gives applicant, or person authorised by him, power to convey patient to hospital within 14 days of date of last medical examination (or in the case of emergency applications within 24 hours of application or medical examination, whichever is shorter) (s. 6(1)). Hospital order gives ASW, constable or any other person directed by the court power to convey patient to hospital within 28 days of order (s. 40(1))
Guardianship (s. 8) (See para. **11.07**)	When duly completed application is forwarded to and accepted by local authority within 14 days of date of last medical examination, specific powers are conferred on guardian. (For guardianship orders made by the courts see s. 40(2) and para. **15.22**)
Transfer of guardianship in case of death, incapacity etc. of guardian (s. 10) (See para. **11.09**)	Guardianship can be transferred to local authority or person approved by authority
Consent to treatment (Part IV) (See Chapter 20)	Social worker (not necessarily approved) may be called upon to give second opinions (s. 57(2)); or may be consulted ((ss. 57(3) and 58(4))

DUTY OR FUNCTION AND STATUTORY AUTHORITY	DESCRIPTION
Duty of managers to provide information to patients (s. 132) and to inform nearest relative of discharge (s. 133) (See paras. **6.07–6.08**)	Social worker (not necessarily approved) may be asked by managers to undertake either of these duties
After-care reports for Mental Health Review Tribunals (Rule 6, Sch. 1) (See para. **7.24**)	Responsible authority, in so far as it is reasonably practicable, must prepare after-care report for MHRT
Renewal of authority to detain (s. 20) (See para. **11.06.5**)	Social worker (not necessarily approved) may be called upon for consultation (s. 20(5))
After-care and other services (s. 117) (See paras. **4.05–4.08**)	Local authority and DHA have a duty to provide after-care services for patients admitted for treatment (s. 3) or under hospital order or transfer direction (ss. 37, 47 or 48) and then discharged
Application to County Court (ss. 29 or 10(3)) (See paras. **7.19**, **8.05** and **11.09**)	ASW can apply to County Court to displace nearest relative (s. 29), or to displace guardian (s. 10(3))
Warrant to search for and remove patients (s. 135(1)) (See paras. **12.03.1** and **21.16.1**)	ASW can apply to Justice of the Peace for warrant to search for and remove patients believed to be neglected or ill-treated
Powers of entry and inspection (s. 115) (See para. **4.09**)	ASW can enter and inspect premises (other than a hospital) if there is reasonable cause to believe that a mentally disordered patient is not receiving proper care
Mentally disordered person found in public place (s. 136) (See para. **12.02**)	A constable can take a mentally disordered person found in a public place to place of safety so that he can be examined by doctor and interviewed by ASW
Removal and return of patients within UK (Part VI) (See paras. **19.01–19.06**)	Patient can be taken or retaken, *inter alia*, by ASW (see s. 138)
Absence without leave (s. 18) and escape (s. 138) (See paras. **11.14** and **21.18**)	Patient can be taken or retaken by ASW

DUTY OR FUNCTION AND STATUTORY AUTHORITY	DESCRIPTION
Welfare of hospital patients (s. 116) (See para. **4.10.2**)	Local authority has a duty to arrange for certain patients in hospital (*e.g.* children in its care or patients under its guardianship) to be visited
Offences (Part IX) (See paras. **25.02–25.05**)	It is an offence for a person on the staff of a hospital or nursing home or a guardian to ill-treat or wilfully neglect a patient (s. 127); or to refuse to allow a patient to be visited or interviewed or to otherwise obstruct person authorised by the Act in the exercise of his duties (s. 129). Local authority may institute proceedings for any such offence (s. 130)