



Human rights

A briefing from our Health and Social Care team - May 2010

Human rights and the provision of care

The case of *Savage v South Essex Partnership NHS Foundation Trust* is a significant human rights case which confirms that there is a duty on health authorities under Article 2 of the European Convention on Human Rights to take all reasonable measures to prevent mental health patients from committing suicide. It is an important decision in connection to the effect of Article 2 in relation to the provision of care and the circumstances in which the Court will decide whether there has been an interference in the right to life where an untoward death occurs. The reach of Article 2 was decided as a preliminary point by the House of Lords.

The daughter of a woman suffering from mental illness has been awarded £10,000 by the High Court after her mother absconded from hospital and committed suicide.

Carol Savage suffered from a schizophrenic-type condition and had been detained under section 3 of the Mental Health Act 1983. She had made a number of expressions of suicidal intent and absconded on a number of occasions. In July 2004 she left Runwell Hospital and made her way to a nearby station where she threw herself under a train. Her daughter brought a claim under the Human Rights Act 1998, claiming that the Defendant NHS Trust had breached her mother's right to life under Article 2 of the European Convention on Human Rights.

Before the case could be heard, the House of Lords had been asked to make a preliminary ruling on whether the Defendant had a duty under Article 2 to prevent suicide in a patient detained under the Mental Health Act 1983. It was held that where there is a real and immediate risk of suicide, the hospital authority has

an operational obligation to do all that can reasonably be expected to prevent it. The duty arises only if members of staff knew or ought to have known that the particular patient presented a suicide risk, and in judging what could reasonably be expected the court had to take the hospital's resources into account.

The High Court held that, following the decision in the House of Lords, there were two elements to consider. The first decision was whether the Defendant had, or should have had, the knowledge that there was a real and immediate risk to the life of Mrs Savage. In considering this, the relevant knowledge was that held by the hospital at the time, not what was understood with the benefit of hindsight. If this test was met, the second decision was whether the Defendant failed to do all that could reasonably be expected of it to avoid or prevent the risk.

The Court held that the Defendant, through its staff, either had or ought to have had knowledge of the risk to Mrs Savage. She had been assessed as a suicide risk during an earlier stay in hospital and had absconded on several occasions during her current stay. However, only one nurse was familiar with these facts. Other staff members, including a Consultant Psychiatrist, were not aware as they had not studied Mrs Savage's history, although the notes were available. A Consultant Psychiatrist at the hospital considered that at the relevant time Mrs Savage was impulsive and felt persecuted and terrified, and was experiencing unpredictable psychotic thoughts. He agreed with the assessment that as far as she was concerned 'anything could happen at any moment'. Despite this, during her stay in Runwell Hospital there had been no proper risk assessment or proper consideration of the appropriate level of observation of Mrs Savage. In addition, there had been no review of her circumstances after two expressions of suicidal thoughts and four attempts to abscond. The Court held that the Defendant had not done all that could reasonably have been expected of it to prevent the risk to Mrs Savage. In particular, it was likely that all that was required to give Mrs Savage a real prospect of survival was a higher level of observation, which would not have been an unreasonable or onerous step.

In assessing the amount of the award to the Claimant, the Court considered the Claimant's statement that she had not brought the case for financial reward. It noted that nothing could compensate the Claimant for the loss of her mother and that any award given would be symbolic. The sum of £10,000 was considered just in these circumstances.

Health authorities are under an extensive obligation under Article 2 to protect the lives of patients in their hospitals. This duty must mean that health authorities must ensure that staff are competent and compliant with professional standards and there are effective systems of work in place which are being followed. Article 2 will not be breached if staff are competent, highly trained and comply with systems of work which protect the lives of patients. Health Authorities however can still be vicariously liable for the negligent treatment of patients, even if they employed a competent member of staff who was trained to professional standards. NHS bodies will be required to consider both issues of negligence and human rights breaches in the provision of care to patients.

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