



## Healthcare Briefing

June 2010

### The Right to a Good Death

The courts have regularly been called on to decide life or death issues, be it under their inherent jurisdiction or now under the Mental Capacity Act 2005.

Where the Court has to be involved, treatment decisions are often difficult cases. Despite the statutory framework provided by the Mental Capacity Act, such cases are still not always straightforward. The Mental Capacity Act had sought to codify the approach to such cases by providing a definition of incapacity, a test for incapacity and principles to apply in approaching capacity issues.

However, a recent case has demonstrated that it can still be difficult to determine such issues.

#### Background

The patient suffered from treatment resistant schizophrenia. She had previously been detained under the Mental Health Act although was currently a voluntary patient in a psychiatric unit. She was a chronic smoker and also suffered from either peripheral vascular disease or "trench foot". Diagnosis was difficult as the patient suffered from delusions and would not allow anyone to see or touch her feet, nor to discuss her problems. A number of her toes had auto-amputated but she believed that these would either re-grow or could be re-attached.

The clinical team caring for the patient were concerned that the patient's condition could progress to gangrene of the leg, septicaemia or uncontrollable pain, all of which could give rise to the need for amputation on an elective or life saving basis.

However, the patient lacked capacity to make decisions about her healthcare and the difficult clinical decision that therefore arose was whether she should undergo amputation on a life saving basis or alternatively whether she should receive palliative care, thereby allowing her life to come to an end. There was no doubt that she had no understanding of the clinical issues that confronted her nor would she be able to understand the reasons for treatment if that became necessary.

#### Court Decision

The court was asked to decide whether it was in the patient's best interests to have an amputation (should the need for this arise) or not. The case for amputation was that it would be a life saving treatment. However, the alternative view was that in this particular case, such treatment would not be in the patient's best interests. She would not understand nor co-operate with the treatment and thus everything would have to be done under sedation and compulsion. The prospects of a successful procedure and post-operative care were therefore low.

The court received competing views from different experts and thus had to resolve the issue as to whether treatment would or would not be in the patient's best interests.

In addressing this issue the court clearly took account of the concept of a "good death":

"We must accept that all life comes to an end, and how it ends is important in terms of quality".

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Although the court will normally take decisions on the basis of maintaining life, in this case the Judge held that if the need for a life saving amputation arose, it would be lawful to reject the option of treatment by amputation and instead to effect palliative care. The court felt it would not be in the patient's best interests to proceed with an amputation where she was unable and unwilling to co-operate with the various clinical processes inherent in this. It also took account of the fact that there may be an unwillingness in the treating team to see through the processes, particularly if sustained sedation and compulsion were required which put the patient under great stress.

### Comment

Some may find this decision surprising. However the Judge had the benefit of evidence from the treating clinicians and two independent experts. The clinical team were of the view that forcing the patient to undergo an operation that she would not understand, and that would probably leave her completely dependent on her carers, was not right. Applying the principles of the Mental Capacity Act the Judge was clear that a decision had to be taken that reflected the patient's best interests. However, it is of note that the Judge also acknowledged that it is an important function of the Court of Protection to provide professional clinical teams, who often feel vulnerable, with a shield in the form of a Court declaration when they make controversial decisions.

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June 2010

### Redundancy Guide

RadcliffesLeBrasseur have now produced an employers' guide to redundancy. To obtain copies please email [sam.hovey@rlb-law.com](mailto:sam.hovey@rlb-law.com).

### Disclaimer

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