

Number 10

## Liability for Psychiatric Patients in the Community - Latest Cases

It is well known that if a doctor is negligent and a patient suffers harm as a result, the patient is entitled to compensation. The Courts have recently considered the extent of the liability in psychiatric cases both for injury to the patient and for injury caused by the patient to others.

### A. Injury to the Patient

If a patient commits or attempts suicide, to what extent is this the responsibility of the clinical team? Suicide is after all an act by the patient rather than the doctor.

In Drake -v- Pontefract Health Authority<sup>1</sup> the patient left the hospital where she had been admitted voluntarily as an inpatient and attempted suicide. The results of this left her suffering serious injury and permanent disablement. The Court held that the hospital was negligent in failing to treat the Plaintiff's depressive illness and to evaluate the high risk of suicide. The Court held that if the patient had remained in the hospital, on the balance of probabilities, she would not have been able to attempt suicide.

This result was however, somewhat different from the approach taken by the Court in Clunis -v- Camden and Islington Health Authority<sup>2</sup> Mr Clunis had a history of mental disorder and serious violent behaviour. He was admitted under Section 3 of the Mental Health Act 1983 and subsequently discharged. He moved into the area covered by the Defendant Health Authority. In a sudden and unprovoked attack he stabbed Jonathan Zito to death. He was later convicted of manslaughter, having pleaded guilty.

Clunis issued proceedings against the Defendant Authority for damages alleging that it had negligently failed to treat him with reasonable professional care and skill. The allegations included that the RMO had failed to ensure that he was properly assessed; had he been so, he claimed he would not have committed manslaughter. Given that Clunis had been discharged from hospital at the relevant time, it was alleged that the Health Authority's duty of care arose from its statutory duties under Section 117 of the Mental Health Act 1983.

The court rejected Mr Clunis' claim on the basis that:-

1. The Plaintiff's plea of manslaughter on the grounds of diminished responsibility prevented the court from finding that he did not know the nature and quality of his act or what he was doing was wrong. He was thus to be regarded as being liable for the criminal act, albeit with diminished responsibility. Public policy dictated that a Plaintiff should not benefit from his crime and hence he was prevented from recovering damages.
2. The court rejected the Plaintiff's contentions that Section 117 of the Mental Health Act 1983 gave rise to a private law remedy against the Defendant Health Authority, by which Mr Clunis could recover damages.

<sup>1</sup> [1998] Lloyd's Rep. Med 425

<sup>2</sup> [1998] 3 A11 ER 180

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The court distinguished the Health Authority's duty of care under Section 117 from the duty of care "owed by a doctor to a patient whom he is treating and for whose lack of care in the course of such treatment the [hospital] may be liable". This was the situation in Drake and was why the Court held that the hospital was liable. Thus, it is clear that if Mr Clunis had injured himself he may have had a potential action against the Health Authority if he could establish a breach of duty in negligence under the common law.

## **B. Patient causing injury to members of the public**

If a psychiatric patient in the community injures a member of the public, to what extent can that member of the public make a claim against a hospital responsible for the patient? If Mr Zito had survived, could he have sued the Health Authority? A recent decision would suggest not.

In Palmer -v- Tees Health Authority<sup>3</sup> the Plaintiff brought proceedings for damages on behalf of herself and the Estate of her daughter, who was abducted, sexually abused and murdered by Saun Armstrong in 1994. Mr Armstrong had been an in-patient in June 1993, thereafter remaining under the care of the hospital as an out-patient. It was alleged that the Health Authority who had had responsibility for the care of Mr Armstrong had never provided him with appropriate treatment that would have substantially reduced or possibly eliminated the risk of his committing such offences and/or would have ensured that he was detained during such periods of risk. The Plaintiff suffered post-traumatic stress disorder which she claimed was attributable to the abduction and murder of her daughter.

The court rejected the Plaintiff's claim both on her own behalf and for her daughter. It held that there was insufficient proximity between the Plaintiff and the Defendant Authority to establish a duty of care. The court stated that it must be shown that the victim fell within a "special or exceptional or distinctive category of risk". It was not sufficient to be a member of the general public. Thus, the Plaintiff was unsuccessful in her arguments that the fact that Armstrong lived reasonably close to the child's family was sufficient to provide the necessary proximity between the Plaintiff and the Defendant Authority to establish a duty of care. A situation in which such a "special risk" might arise is where the hospital becomes aware of a patient making threats against a particular individual.

The Plaintiff also failed in her claim for PTSD as the court considered she was not sufficiently proximate to the events in question as she had not witnessed the abduction.

In considering the existence of a duty of care the Court will look at whether it is fair, just and reasonable to impose a duty of care in the circumstances. The court was not required to address this issue in Palmer having found against the Plaintiff on the proximity issue, but the Judge did make some interesting comments. He considered that if the court were to hold that such a duty of care existed this would considerably widen the category of potential claimants and lead to an increase in claims needing to be investigated by Health Authorities. This would result in a "significant diversion of manpower ... from Health Authorities" primary function of caring for patients".

If courts continue to adopt such an approach, it would appear that the doors are closed to such litigation by those injured by patients in the community unless the risk to a specific individual(s) is identifiable.

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<sup>3</sup> [1998] Lloyd's Law Reports page 447