

# Mental Health Law Briefing

Number 124

## Patient Suicide: Compensation Claims under the Human Rights Act

Suicide and attempted suicide by psychiatric patients is an issue well appreciated by all mental health care providers. The court has recently considered the extent to which a claim may be brought against hospitals based on the Human Rights Act.<sup>1</sup>

### The Facts

The Claimant's mother committed suicide after absconding from a hospital managed by the Defendant NHS Foundation Trust. She had been detained under Section 3 MHA, having suffered mental health problems over many years.

The patient's daughter claimed damages from the Trust under the Human Rights Act on the basis that as the Trust was a public authority it was liable for a breach of her mother's right to life under Article 2. She alleged that the Trust had been negligent in failing to take reasonable steps to prevent suicide and in particular in failing to undertake a proper risk assessment in respect of the risk of her mother absconding.

### Legal Argument

The question arose as to the appropriate legal basis upon which such a claim should be considered. At first instance the court agreed with the Trust that it was necessary to establish gross negligence in order to maintain a claim under Article 2. The court rejected the patient's daughter's assertion that it was sufficient simply to establish negligence, or even less than that.

### The Court's Decision

The Court of Appeal held that it was not necessary to establish either gross negligence or something more serious in order for the patient's daughter to pursue a claim against the Trust for a breach of Article 2. The Court said that the position of a psychiatric patient detained by the State under Section 3 MHA was similar to the position of a person detained in prison. In the circumstances the relevant legal test was the same as that established in previous case law relating to prisoners.<sup>2</sup> The Court therefore held that in order to succeed with the claim under Article 2, the Claimant had only to show that

<sup>1</sup> Savage –v- South Essex Partnership NHS Foundation Trust, Court of Appeal 20 December 2007.

<sup>2</sup> The Court referred in particular to the case of Osman–v- United Kingdom (23452/94) [1999] 1FLR193.

at the material time the Trust knew or ought to have known of the existence of a real and immediate risk to

her mother's life from self-harm and that it had failed to

take measures that were within its powers to take and which it might reasonably have been expected to take to avoid that risk.

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## **Stalking by Patients**

It has been reported<sup>1</sup> that more than one in ten psychiatrists have been stalked by patients and one in three have suffered harassment.

The Protection from Harassment Act affords protection to psychiatrists and other staff who are being harassed by patients or their associates. In our experience the Courts have been very willing to grant injunctions to provide protections to health sector staff in such circumstances. Ultimately, non-compliance with such an order may lead to imprisonment of any stalker or an individual pursuing a course of harassment by conduct, correspondence or email.

Staff who feel they are being harassed should not hesitate to seek legal advice so that appropriate steps may be taken to protect them.

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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