

# Mental Health Law Briefing

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## Duty to prevent suicide

We previously reported the Court of Appeal decision on compensation claims under the Human Rights Act following patient suicides.<sup>1</sup> The House of Lords has now given judgment in the appeal, dismissing this and commenting on the obligations of health authorities under Article 2 of the European Convention of Human Rights.<sup>2</sup>

The case related to a patient detained under Section 3 of the Mental Health Act in an NHS hospital. Having previously tried to leave the hospital, she finally managed to abscond and then committed suicide. A claim for damages was brought on the basis that her right to life under Article 2 of the European Convention on Human Rights had been violated. This Article requires the state to refrain from intentional and lawful taking of life but also in certain circumstances to take appropriate action to safeguard life. It had previously been held that where the state knew or ought to have known that prisoners were at a real and immediate risk of suicide, the state was under a duty to take all reasonable steps to prevent that risk. The issue that arose was the extent to which this duty applied to a patient detained under the Mental Health Act.

The Court held that where there is a “real and immediate risk to life” about which the hospital authority knew or ought to have known at the time, the duty to do all that reasonably could have been expected to prevent that risk

would be triggered. The Court held that the steps taken must be proportionate and stated:

*“Developing a patient’s capacity to make sensible choices for herself and providing her with as good a quality of life as possible, are important components in protecting her mental health. Keeping her absolutely safe from physical harm, by secluding or restraining her, or even by keeping her on a locked ward, may do more harm to her mental health. In judging what can reasonably be expected, the Court has also taken into account the problem of resources. The facilities available to looking after people with serious mental illnesses are not unlimited and the healthcare professionals have to make the best use they can of what they have”.*<sup>3</sup>

The House of Lords held that Article 2 imposes a duty on health authorities and their staff to adopt a framework of general measures to protect detained patients from the risk of suicide. It also held that there is an operational duty to try to prevent a particular patient from committing suicide if the hospital knew or ought to have known that there is a real and immediate risk of this. Arguably this duty extends to those who are not detained under the Mental Health Act.

Explaining the extent of this duty, the Court held that the duty to protect the lives of patients requires the employment of competent staff that are trained to a high

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<sup>1</sup> See RadcliffesLeBrasseur *Mental Health Law Briefing* No.124 available at [www.rlb-law.com](http://www.rlb-law.com)

<sup>2</sup> *Savage v South East Essex NHS Foundation Trust* [2008] UKHL74

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<sup>3</sup> Baroness Hale

professional standard. The authorities must also ensure that hospitals adopt systems of work which will protect the lives of patients. An example was given that if there

was a failure to ensure that a proper system for supervising mentally patients was put in place and as a result a patient was able to commit suicide, this will have violated Article 2.

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