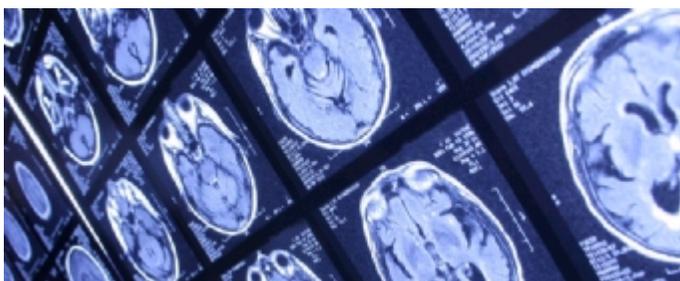


Human Rights and Voluntary Patients :

The decision in *Rabone v Pennine Care Trust*

The decision in *Savage v South Essex Partnership NHS Trust* [1] established that hospitals have an obligation, under the Human Rights Act, to take steps to protect the life of a detained patient who presents a 'real and immediate risk' of suicide. In the recent case of *Rabone v Pennine Care Trust* [2], the High Court considered whether the same obligation might extend to an informal patient.

The case concerned a 24 year old woman who had been treated in hospital, on an informal basis, for depression following several suicide attempts. Following an apparent improvement in her condition, she was granted two days' leave and during this leave, she committed suicide. Her parents, who brought the claim, contended that the decision in *Savage* should be extended to an informal patient with suicidal inclinations, or on the basis that her daughter was so ill that she should have been regarded as a detained patient.



Mr Justice Simon, who delivered the judgment, dismissed all the claims brought by the claimants. In his judgment, he considered the following points:

Did the Trust have an operational obligation under Article 2 of the European Convention on Human Rights?

The Claimants argued that, whilst the patient was not formally detained, aspects of her care 'effectively' deprived her of her liberty. For example, she was under regular observations and, on this basis, her requests for time out were sometimes refused. However, the Judge did not consider that these restrictions were equivalent to formal detention. Formal detention constituted complete control over care and movements, and the operational obligation to prevent suicide was confined to formally detained patients. The Judge had specific regard to the fact that the patient had capacity to consent to treatment at the time that leave was granted.

Had there been a 'systemic' breach of Article 2?

The Claimants argued that the risk assessment had not been properly documented, and that this was 'serious negligence'. The Judge found that the investigatory obligation imposed by Article 2 on the State had been satisfied as there had been an inquest into the patient's death. He also said that where a Trust has implemented an appropriate system for assessing the risk of suicide, there will not be a breach of Article 2.

Had the SUI investigations been carried out improperly?

The Claimants criticised the SUI investigation and report produced by the Trust. They focused in particular on the Trust's failure to record different views about the patient's fitness to leave.

The Judge found that the Trust was not under an Article 2 investigative obligation to provide statements from staff or medical records to the Coroner. It was for the Coroner to call for such material as would assist in the Inquest.

Were the Claimants 'victims'?

Only 'victims' may bring claims under the Human Rights Act. This was a particular issue in this case as the Claimants had accepted a civil settlement prior to bringing their Human Rights Act claim. A claim should only be brought under the Human Rights Act where there is no other remedy available. The Judge found that there was no absolute bar to bringing an Article 2 claim where part of the original claim had settled. But in this case, as the claim for a breach of substantive obligations had failed, and the Trust had admitted their failure to provide reasonable care and apologised to the parents, the Claimants could not be considered 'victims'.

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Footnotes

1. 2008 UKHL 74
2. 2009 EWHC 1827 QB

Conclusion

The decision in *Rabone* is significant because it provides confirmation that a hospital's operational obligations under Article 2 as outlined in the *Savage* case are limited to detained patients. It also provides guidance on the extent of a hospital's obligations when carrying out risk assessments and preparing SUI reports. Finally, the decision provides that, when considering the legitimacy of a claim under the Human Rights Act, the alternative forms of redress the claimant has received will be taken into account.

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