

Number 18

Wrongful Imprisonment

Wrongful imprisonment usually arises where a person is detained in police custody or prison without justification. However, it also arises in the mental health context if a person is detained without lawful authority. The Mental Health Act sets out the grounds under which a person may be detained compulsorily. In each case it is essential to satisfy the procedural requirements laid down by the Act. If the basis set out in that Act for any detention is not established, there will probably be no lawful detention. If the appropriate administrative procedures have not been complied with on admission to Hospital for compulsory detention (or on renewal) then a claim for damages for wrongful imprisonment may be made. This will be well known to most mental health practitioners. However, what is less well known is how a patient may seek to prove a case and what the amount of compensation may be where wrongful imprisonment is proved.

Potential Causes of action

Confining a person to hospital without lawful justification will amount to wrongful imprisonment. Equally, continuation of what began as a lawful detention will constitute wrongful imprisonment if that detention is continued (or renewed) without completing the necessary legal and administrative arrangements. There may also be a claim for trespass to the person (if, for example, treatment was administered without consent in reliance on Section 63 of the Act).

The burden of proof is on the patient to prove that he was confined, but once this has been established the burden will then shift to the detaining hospital authority to prove that they had lawful grounds for the detention.

Damages

If wrongful imprisonment is established, the patient will be entitled to damages. Perhaps surprisingly, there are no English court cases establishing the quantum of compensation for unlawful imprisonment in a psychiatric hospital. Some Claimants will seek to rely as comparable authority on cases regarding compensation paid for wrongful detention by the police, but it is arguable that these are not in fact proper comparables as the circumstances are wholly different. Nevertheless, compensation awards for wrongful imprisonment by the police or in prison have ranged from £500 for the first hour to £3,000 for 24 hours¹.

In addition, aggravated damages may be awarded where the circumstances have been particularly humiliating, insulting or oppressive with compensation starting probably at around £1,000.

Exemplary damages may also be claimed where the imprisoning conduct includes oppressive or arbitrary behaviour.

¹ Commissioner of the Police for the Metropolis –v- Thomson and Hsu 1997 2 All ER 762

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Longer periods of detention have given rise to awards of £5,000 for 59 days² and £17,500 for 53 days³.

Assistance may also be drawn from cases before the European Court of Human Rights. There have been several challenges to the powers of various European States to detain patients in psychiatric hospitals. The European Court's awards of damages have been considerably less than awards by the English Courts for wrongful imprisonment by police or prison authorities. These have ranged from £4,600 for 6 months⁴ to £10,000 for a period of delayed discharge of 3½ years⁵.

Until the English Courts have to rule on a case, there is no firm guidance on the level of damages. The quantum in the Evans case is perhaps likely to be at the higher end of the range (i.e £2,500 per month). However, the Court rules permit a jury trial in claims of wrongful imprisonment. Awards of damages by juries have historically been higher than those awarded by Judges and if an appropriate case is brought before the English Courts with a jury, a higher award is quite possible.

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October 1999

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Out of office 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.

² R –v- Governor of Brockhill Prison Ex Parte Evans No 2 (1998) The Times 7th June

³ R –v- Torbay Justices Ex Parte Pope 1992 CLY 389

⁴ Van der Leer –v- The Netherlands

⁵ Johnson –v- The UK