

Number 24

Hunger Strikes

The law relating to hunger strikes has been brought in to sharp focus last month as a result of the Ian Brady case. He claimed to be entitled to starve himself to death. This was rejected by the staff at the Special Hospital where he was detained and their view was upheld by the judge.

Brady was convicted in 1966 of murdering three children. In the 1980's he was transferred out of the prison system to the secure Special Hospital at Ashworth as a result of a deterioration in his psychiatric condition, no doubt made worse by many years of solitary confinement.

He went on hunger strike in September 1999 to protest against the transfer to a different ward. The hospital authorities contended they were entitled to feed Brady without his consent. Brady contended that he was entitled to make the choice not to eat in order to die, which he said he preferred rather than stay in detention.

English law normally allows a competent adult to refuse all nutrition even if this is intended to lead to his or her death. A prisoner has been held to have the same right as any other citizen in this respect¹.

However, the legal position is different if the individual lacks the necessary mental capacity to make choices about his medical treatment. In such circumstances, the doctor responsible for the individual may provide treatment, including force feeding, if this is in accordance with the doctor's clinical judgment as being in the patients' best interests.

Brady's case was decided primarily based not on the fact that Brady lacked mental capacity to make a choice, but rather by reference to the well established principle set out in Section 63 of The Mental Health Act which states that the medical officer in charge of a patient's care may provide medical treatment to him for the mental disorder from which he is suffering without the patient's consent. It has been well established for many years that feeding a patient constitutes "medical treatment"² within the meaning of S.63 where the mental disorder manifests itself in the patient seeking to harm himself by not eating.

The Judge found that Brady suffers from a severe paranoid personality disorder which manifests itself in obsessive, ego-centric behaviour and a determination to control those with whom he comes into contact. His refusal to eat was said by the judge to be part of this illness.

The Judge therefore upheld the power for the hospital to force feed Brady pursuant to the powers set out in S.63 of the Mental Health Act despite his stated intention to die.

MENTAL HEALTH LAW

RadcliffesLeBrasseur
5 Great College Street
Westminster
London SW1P 3SJ

Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU

Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

info@rlb-law.com
www.rlb-law.com

¹ Home Department v. Robb.

² B v Croydon Health Authority, Riverside Mental Health NHS Trust v Fox

Comment

Although the provisions of Section 63 are well known and it is well established that compulsory feeding of those suffering from eating disorders may constitute medical treatment, the decision here does seem to go somewhat further. Patients suffering from eating disorders do not eat because of that illness. However, a conscious decision by a mentally capable patient seeking to die rather than be detained, does seem to be an extension of the principle and application of Section 63.

RadcliffesLeBrasseur

April 2000

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: andrew.parsons@radleb.com.

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.

Human Rights Act

Diary date : 13 September 2000

The Human Rights Act comes into force in October this year. Radcliffes will be running a seminar on the Act and its implications on 13 September. For further details and advance booking information please contact Sam Smith at Radcliffes on 0207 222 7040.