

Number 37

## Compensation for unlawful detention in a Psychiatric Hospital

MENTAL HEALTH LAW

A previous Briefing Note<sup>1</sup> dealt with wrongful imprisonment of psychiatric patients, namely seeking to detain a patient under the Mental Health Act where the appropriate formalities of the Act have not been properly complied with.

The quantum of compensation payable in such cases has never previously been decided by the English Courts. Although there have been cases of wrongful imprisonment by the Police, detention in a psychiatric hospital is clearly a different matter.

However, as the result of a recent Court decision<sup>2</sup> guidance on the appropriate level of compensation is now available.

### The Facts

Mr H was a patient of Riverside Mental Health NHS Trust at Horton Hospital in Epsom between 22 June – 24 October 1996. He was initially detained for assessment under Section 2 Mental Health Act in the Southend area on 13 June. On 22 June he was admitted to Horton and on 17 July the status of his detention was changed so that from that date he was detained under Section 3 for treatment.

On 30 July, following a barring Order by the RMO, the hospital managers reviewed his detention at a hearing and decided to continue this. On 24 October 1996 a Mental Health Review Tribunal decided that Mr H's mental illness did not warrant further detention and he was therefore discharged from hospital. He was subsequently detained again under the Mental Health Act by the Southend Services.

The decision of the hospital managers at Horton Hospital was subject to Judicial Review on the basis that they had incorrectly applied the technical legal test to decide whether or not to continue Mr H's detention in July. The Court held, in a decision which clarified this point of mental health law for the first time, that they had applied the wrong test and that his detention was therefore technically unlawful<sup>3</sup>. Mr H was permitted to continue an action against the Trust for damages by way of compensation for the period of unlawful detention between 30 July – 24 October 1996.

Various attempts to settle the litigation were unsuccessful and the level of compensation therefore had to be fixed by the Court.

There is no previous decided English case authority on the quantum of compensation for wrongful imprisonment in a psychiatric hospital. There is, however, previous authority from the European Court of Human Rights on which the Trust relied in order to seek to value the compensation due to Mr H.

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

<sup>1</sup> Mental Health Law Briefing No. 18

<sup>2</sup> Radcliffes acted for the Trust

<sup>3</sup> See Mental Health Law Briefing Note No. 3

### Compensation

The Claimant was awarded £24,000 compensatory damages and £2,000 aggravated damages by way of compensation for his 87 day detention, around £300 per day. This compensation was set by a jury and seems to reflect the fact that the unit was a medium secure unit, and that he was detained with fellow patients in circumstances where his treatment and period of detention were being questioned by him. His detention had also been subject to publicity in the press.

Aggravated damages were sought relating to alleged assaults, non-approval of the Report to the Managers by the RMO in advance of it being submitted to the Managers meeting, and the patient's inability to see his terminally ill mother. Which aspects attracted the award are unclear but the most likely element was probably the difficulty in seeing his mother.

### Comment

This guidance is welcome. It makes it clear that there are facets of normal psychiatric practice that can lead to awards of damages where wrongful imprisonment arises. It should also be noted that this award relates to a medium secure unit, and a patient who had already been lawfully detained immediately before the period of unlawful detention.

### RadcliffesLeBrasseur

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For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, 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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