

Number 49

Unit Closures – A Reason for Challenge?

To what extent does the Human Rights Act affect a Trust's decision to close a community mental health unit which the Trust intends to refurbish and use as a rehabilitation unit for acute patients from another hospital? The potential restriction on NHS administration could be significant and has recently been the subject of a judicial review¹.

The Claimants' Case

The Claimants argued that the Trust's decision to close down the hospital and to require them to move was unlawful because:

- They claimed that there had been no prior consultation process.
- The Trust's decision was not reached, they said, by reference to any assessments of the patients' needs, including whether the impact of an enforced move on them accorded with the Claimants' best interests. It was claimed that the Trust had failed to undertake a balancing exercise in reaching its decision.
- The Claimants argued that they had a legitimate expectation of a home for life having lived together in the unit as a "family unit". At the time of the hearing, only four patients remained at the hospital. The unit, although legally a hospital, had a homely quality, comprising of a living room, kitchen and garden as well as the patients' rooms. It was claimed that if the Trust were to move the residents from the existing unit then they should place them together in a similar "home". The Trust had failed to take account of the Claimants' expectation of a home for life in the decision making process.

¹ R (on application of Claimant and Others) -v- Brent Kensington & Chelsea and Westminster Mental Health NHS Trust: RadcliffesLeBrasseur acted for the successful NHS Trust

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- It was claimed that the Trust's decision was taken without consideration of the patients' rights under the Human Rights Act 1998 and, in particular, without any consideration of their right to respect for their home, private and family life and for their psychological and physical integrity as guaranteed by Article 8. Further arguments were raised, although not actively pursued at the hearing, that the decision to move the patients was contrary to Article 3 (the right not to be treated in an inhuman or degrading manner) since it was claimed to be against the interests of the patients.

The Trust's Defence

Crucial to the Trust's defence of the claim was its position that no assurance nor representation of a promise had been made to the Claimants that the unit in which they resided would be a "home for life" when they had been transferred to that property. It had always been intended as an interim facility for the purposes of accommodating, in particular, patients who had been transferred from Shenley Hospital following its closure in around 1999. Even if there had been such a promise, it would be neither unreasonable nor unfair for the Trust to resile from such a promise. It was the professional judgement of the psychiatric staff that the Claimants would benefit from moving to alternative accommodation.

The Trust contended that the Claimants had had opportunities to discuss their futures. However, the Trust had an obligation to consider the needs of *all* of its patients, not just the four patients who had brought this claim. The planned refurbishment and change of role of the hospital was intended to benefit patients and achieve an efficient use of limited resources.

Although it was contended by the Trust that it was not under a duty to consult with the Claimants regarding the proposed refurbishment of the unit, the Trust maintained it had kept the Claimants informed of the proposals for refurbishment and consequent transfer of the patients to other placements at all stages.

In response to the Article 8 claim, the Trust emphasised the qualified nature of that right. The Trust submitted that the Court would have to consider whether the Trust had struck a fair balance between any interference with the rights of the Claimants to remain at the hospital and the requirements of other patients for whom the Trust was responsible. The Trust considered that it was in the best interests of the Claimants to move to alternative accommodation and that such a move would secure for them an increase in dependence and thus enhance their rights under Article 8. Furthermore, the proposed refurbishment would allow better patient rehabilitation and also free beds for other patients in need of inpatient care. Accordingly, the reallocation of resources would benefit the wider patient population for which the Trust had responsibility. In these circumstances, any interference with the Claimants' rights under Article 8 was justified.

The Decision

The Claimants' applications for judicial review were dismissed.

- **Legitimate Expectation – “The home for life” issue**

Whilst the Judge acknowledged that in the context of the provision of Mental Health care it was appropriate for health authorities to regard the accommodation it provided for patients as a home, the meaning and character of such accommodation as a home was circumscribed by the obligations which the health authority had to discharge in respect of the mental care of the patients who, at any time, resided there. He distinguished the present case from previous cases (such as ex parte Coughlan) where there had been no dispute that a *promise* had been made to the residents of the relevant authority accommodation that they would have a "home for life". The Judge was not satisfied that the evidence demonstrated that such assurances had been made in this case and it was very unclear how the Claimants could have been under any impression other than that the hospital had been intended as an interim solution.

- **The Alleged Duty to Consult**

The Judge considered that since the placement of these patients was only on an interim basis, the arguments regarding the duty to consult were difficult to sustain. There was no dispute that care planning meetings had taken place in which the future placements of the Claimants were discussed. The Trust had also written to each of the patients notifying them of the decision to proceed with the refurbishment. Accordingly, the Judge rejected the claim that the Trust was under an obligation to undertake a consultation exercise.

- **Allegations that the Trust failed to carry out proper assessments**

The Judge held that on the evidence the Claimants had received careful, individual assessments in relation to their clinical needs and the decision to move the patients from the current accommodation was based on considerations of those patients' best interests.

- **Alleged Interference with the Claimants' rights under Article 8**

The Judge recognised that Article 8 included a "person's physical and psychological integrity" and as such a health authority having the responsibility for the long term care of psychiatric patients and their placement in appropriate accommodation was required to act compatibly with Article 8. The Trust, in accordance with the principle of proportionality, had to strike a fair balance between the interference with the Claimants' convention rights and the requirements of other patients for who the Trust had responsibility in relation to the

proposed closure and refurbishment of the hospital. The Trust needed to involve the Claimants in the process of making the decision. In striking the balance, the Judge held that consideration of the Claimants' rights required considerable weight to be given to the Claimants' clinical needs.

The proposed move of the Claimants from the present accommodation and placement in alternative accommodation was regarded by the Trust to be desirable for the benefit of the Claimants. The proposed refurbishment of the unit would confer benefits on other members of the community to whom the Trust owed a duty and who also enjoyed rights and freedoms which the Trust was required to respect. The Trust had carried out assessments and had involved the Claimants in discussions about their future placements. The Judge held that the Trust had acted throughout honestly, reasonably and in an attempt to provide suitable accommodation and a suitable package of care for each of the Claimants.

Comment

Care is needed to avoid promises of a “home for life”. The comments made by the Judge nevertheless emphasise the importance of assessing the clinical needs of patients and involving patients in the decision making process where they are to be moved between units. However, where the proper procedures are correctly followed², the Human Rights Act does not place unreasonable restrictions on NHS administration.

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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.

Previous editions of the Mental Health Law Briefings are available free of charge from RadcliffesLeBrasseur. Future editions can be received by email. Please contact Gareth Stapleton on 020 7227 7388 or e-mail: gareth.stapleton@radleb.com.

² Advice on the appropriate steps and a checklist of matters to consider is available from RadcliffesLeBrasseur.