RadcliffesLeBrasseur

BRIEFING

Number 57

# Seclusion – Human Rights Compliant?

MENTAL HEALTH LAW

The question has often been raised at one of our training sessions as to whether the use of seclusion complies with the Human Rights Act (in particular the Article 3 prohibition against Inhuman and Degrading Treatment). The Court has now had to consider this.[1]

**Facts**

The patient was detained at Ashworth Special Hospital under an Order made under Section 37 MHA 1983. Because of his behavioural problems, he was occasionally placed in seclusion. He challenged the legality of this.

The Mental Health Act does not itself make any reference to seclusion however, the Code of Practice, made pursuant to the Act [2] does make provision for the use of seclusion.[3] The procedures at the hospital provided for review of seclusion only once a day after the patient had been secluded for 3 days. A declaration was therefore issued by the High Court confirming the policy to be unlawful. The Court held that whilst the hospital did not have to comply rigidly with the Code, they ought to be reviewing seclusion twice a day. Accordingly, a new policy was prepared by the hospital providing for a review twice a day during the first seven days of detention, with a review four times over a seven day period thereafter.

The patient challenged this policy not on the basis that he was inappropriately placed in seclusion, but that the review was insufficiently frequent. He relied on a report by the Mental Health Act Commission stating that seclusion was unacceptable if it were not used in accordance with the Code of Practice.

The Secretary of State contended that it was acceptable to depart from the Code where good reasons were given and that they existed here because of the extreme behavioural problems exhibited by patients at this hospital. It was said that there was no benefit to patients on long term seclusion to have more frequent reviews.

**Decision**

The Court held that whilst the Act required the Secretary of State to publish a Code of Practice, and hospitals were obliged to have regard to it, they were not required to do more than that. The Code was no more than guidance. Where reasons had been provided to depart from it, the Court would only wish to overturn those reasons if they were so unreasonable as to be perverse. It could not be said here that the reasons for the policy were perverse and furthermore, the type of treatment that constituted seclusion in this case could not be said to amount to inhuman and degrading treatment under the Human Rights Act.

[1] R (on the application of M) –v- Secretary of State for Health [2002] All ER (D) 107
[2] Section 118
[3] Paragraph 19

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**Comment**

The patient in this case was expressly not arguing that he should not have been placed in seclusion. Nor was it said that all seclusion would amount to a breach of the Human Rights Act. This might however be different on the particular facts of any given case. The central issue was whether any seclusion policy had to comply slavishly with the Code of Practice in order to be valid. The Court held that this was not necessary if there were good reasons to depart from the guidance set out in the Code of Practice.

## UPDATE ON CHARGING FOR AFTERCARE

*Readers will be aware of the previous decision when it was confirmed that responsible aftercare bodies were not entitled to charge for the provision of aftercare services [1]. This decision was taken on appeal to the House of Lords who have now affirmed the previous decision of the Court of Appeal and restated that such services are not to be charged for.*

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[1] R-v- Richmond LBC ex parte Watson

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