

Number 70

Treatment without Consent: Breach of the Human Rights Act?

MENTAL HEALTH LAW

The Human Rights Act prohibits inhuman or degrading treatment. It has been argued that treatment without consent constitutes such treatment. This issue has recently been addressed by the Court.¹

The Facts

The Patient was detained under Section 37 of the Mental Health Act. He had capacity to make treatment decisions and refused certain medication. The RMO and SOAD took the view that it was appropriate for the medication to be administered and indeed the patient's mental health had previously improved when he had taken the drug in question. There was evidence however that he suffered side effects of drowsiness and weight gain.

The patient contended that as he had capacity to make decisions, and did not consent, that notwithstanding Section 63 and Section 58 of the Mental Health Act, treatment without his consent infringed Article 3 of the Human Rights Act².

Court Decision

The Court refused the patient's claim. The Judge held that there would only be a breach of Article 3 if treatment were given to a patient without his consent where:

- 1 The proposed treatment reached a minimum level of severity such as to amount to ill treatment (taking account of both the positive and adverse mental and physical consequences, the nature and context of the treatment, manner and method of its execution, duration and if relevant the sex, age and health of the patient);

and;
- 2 If the medical or therapeutic necessity for the treatment had not been shown to exist.

In this particular case, although the patient had capacity to consent and did not consent (for reasons including the fact that this would be contrary to his religious beliefs), the administration of the medication in this case did not reach the minimum level of severity required to engage Article 3. This was particularly because of the possible benefits to him and the limited adverse side affects.

The Judge further held that there was no basis to conclude that objections such as those put forward by the patient would inevitably override other issues (save to the extent that others would be adversely affected if the medication was not administered).

¹ R(on the application of PS) v Responsible Medical Officer [2003] EWHC 2335

² The prohibition of inhuman and degrading treatment

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Comment

The Court's comments on the application of Article 3 of the Human Rights Act to cases where the patient does not consent to treatment are very helpful.

It is now clear that treatment without consent will not automatically give rise to a suggestion that this is a breach of Article 3. In particular, a contention that treatment is inhuman and degrading can only arise where the treatment reaches a minimum level of severity.

Even then, where it can be said that this level of severity has been met, allegations of inhuman and degrading treatment can be defended if it can be demonstrated that there is a medical or therapeutic necessity for the treatment.

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December 2003

MENTAL HEALTH LAW

New Mental Health Act

Once again the Queen's Speech does not include the Mental Health Bill. However, a press release shortly after has confirmed that the government is still intending to reform this area of the law and will be bringing forward a revised Bill for pre-legislative scrutiny. No time scale was given but it would seem that there will still be quite a time before any new Act is in force

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Out of office emergency advice available 24hrs on 07802 506 306.
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