

## **Supreme Court rules that hospitals must take appropriate steps to prevent voluntary psychiatric patients from taking their own lives**

### **Background to the case**

The Supreme Court's judgment in the case of *Rabone and another –v- Pennine Care NHS Foundation Trust* was given on 8 February 2012 following a hearing in November 2011. The case arose from the death of a twenty-four year old woman, Melanie Rabone, who hanged herself after having been given two days' home leave from a hospital at which she was being treated for a depressive illness. Ms Rabone was an 'informal' patient, i.e. she had not been detained under the Mental Health Act 1983 ('the MHA').

Ms Rabone had attempted suicide shortly prior to being admitted and had been assessed as being at high risk of making a further attempt. Ms Rabone agreed to go into hospital but subsequently expressed a desire to be allowed home on leave. This was agreed by a doctor at the hospital despite her parents expressing concern.

### **The 'right to life'**

Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention') has been interpreted as imposing various duties on the state including an obligation, in certain circumstances, to take positive measures to protect individuals whose life may be at risk. Cases prior to *Rabone* had determined that the state was under a duty to take reasonable steps to prevent prisoners and others detained by the state (e.g. under the MHA) from taking their own lives.

One of the questions in *Rabone* was whether this duty also applies to patients who had not been detained and could be said to be in hospital 'voluntarily'. In the Supreme Court's leading judgment, Lord Dyson said that the differences between the two "are in many ways more apparent than real", observing that informal patients may be treated in a secure environment and require medication which could affect their ability to decide to

remain in hospital. Their capacity to make a rational decision as to whether to take their own life could also be impaired.

The Supreme Court found that the hospital trust was indeed under a duty to Ms Rabone to take reasonable steps to protect her from the real and immediate risk of suicide that she presented. They emphasised that Ms Rabone was extremely vulnerable and that the risk of suicide was the very reason she was admitted to hospital in the first place. This risk was ongoing at the time the decision was made to allow her home leave and the Court concluded that the trust was aware of this risk and had failed to do all they reasonably could have done to prevent suicide occurring.

### **What does this mean for the families of someone who may have taken their own life in these circumstances?**

Ms Rabone's parents had already settled a claim for compensation arising from her death after the trust admitted that its staff had been negligent. However, they continued with the claim based on the alleged breach of article 2 of the Convention (which the trust denied), claiming that they were victims of the state's unlawful act.

In her judgment on the case, Lady Hale queried (rhetorically) why the case had proceeded to this stage when compensation had already been paid in relation to Ms Rabone's death. She answered as follows; *"We are here because the ordinary law of tort does not recognise or compensate the anguish suffered by parents who are deprived of the life of their adult child"*. In ordinary personal injury or clinical negligence claims relating to the death of an adult, their parents will not be entitled to claim bereavement damages.

Neither Mr nor Mrs Rabone had received compensation directly as a result of the negligence claim; the compensation had instead gone into Ms Rabone's estate and would be passed on in accordance with any will or the rules of intestacy. This case makes it clear that, where someone takes their own life whilst undergoing hospital treatment for a mental illness, parents and other family members may be able to bring a claim in their own right under the Human Rights Act 1998, whether or not the deceased was formally detained.

This case may also affect the scope of any coroner's inquest into the death. In usual circumstances, a coroner will not attribute blame to any person or organisation which may have been involved in someone's death. However, if there was potentially a breach of article 2 of the Convention, the state must carry out a thorough investigation to

establish the cause of death and will delve further into who or what is responsible for this. If they fail to do so, e.g. by making appropriate inquiries at the inquest, this can itself be a breach of article 2.

It is important to be aware that the courts have distinguished between individual acts of negligence and more generalised failings on the part of a hospital. Even in an 'article 2' inquest, the coroner will still not cast blame on a specific person in their verdict. Nevertheless, it is open to the coroner to find that the death was caused or contributed to by neglect (in its particular legal sense) on the part of the hospital. There is now increased scope for arguing this, or at least for arguing that it should be considered by the coroner, where a person died in circumstances similar to those in *Rabone*.

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