

Judicial Communications Office

22 October 2021

COURT REJECTS CHALLENGE TO REGULATION AND INSPECTION OF COMMUNITY MENTAL HEALTH SERVICES

Summary of Judgment

Mr Justice Colton today dismissed an application for leave to apply for a judicial review of the arrangements for the regulation and inspection of community mental health services.

The applicant, a man in his 50s, has a long history of very serious mental health illness which has resulted in regular admissions to mental health hospitals. Since 2017 he has been receiving mental health treatment in the community. The applicant contended that since the beginning of the restrictions imposed as a result of the Covid-19 pandemic he has struggled with the Home Treatment Crisis Response Team (“HTCR”) which provides intensive home treatment and support to those experiencing severe mental health problems who would otherwise have no option but to be admitted to hospital. He claimed that he has had to make repeated admissions to a mental health institution as an in-patient because he considers the treatment is receiving through the community does not adequately meet his individual treatments.

The applicant met representatives of the Trust and reviewed all his referrals to the HTCR in the previous six months. The Director of Mental Health and Disability Services in the Trust undertook a review of calls made by the applicant. He addressed a number of issues at the meeting and apologised for the distress that one incident caused to the applicant. The applicant sought to bring a judicial review focussing on an allegation that the Trust had failed to make adequate arrangements for an independent inspection of the HTCR and his dissatisfaction with the response he received to complaints he raised with the Trust. He based his claim on alleged breaches of Articles 2 and 3 of the European Convention on Human Rights (“ECHR”) and separately Article 14 ECHR in conjunction with Articles 2 and 3.

In its judgment, the court outlined the structure for the provision of health care in Northern Ireland and the key statutory provisions. It also considered the current arrangements for the regulation and inspection of community mental health services, the formal complaints mechanisms, and the role of the Regulation Quality Improvement Authority (“RQIA”).

Articles 2 and 3 ECHR

It is well established in both European case law and domestic law that a sufficient evidential threshold is required before an applicant’s rights under Articles 2 or 3 can be engaged or breached. Article 2(1) places a positive obligation on States to ensure that there are in force suitable laws for the protection of human life and to provide the necessary means of enforcing those laws. Article 3 provides protection against inhuman or degrading treatment. The court commented that context is essential in assessing each case.

In relation to Article 2, the applicant contended that his medical condition is such that he is a suicidal risk and that that State has an obligation to provide ongoing medical care and treatment. It was also argued that the State is required to put in place a system of regulation and supervision of that care.

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The court held, however, that it could not be argued that the State had failed to provide these. It said the applicant's affidavit evidence fell well short of that sufficient to establish a real and immediate risk to his life as a result of failure to regulate or inspect mental health treatment provision by Health and Social Care Trusts.

In terms of Article 3, the court cited case-law on the types of "treatment" which it said must be of sufficient severity to constitute inhuman or degrading treatment. It said the matters claimed by the applicant fell well short of the minimum level of severity which is required to establish a breach of Article 3.

Given its view on Articles 2 and 3 the question of Article 14 did not really arise, but for the sake of completeness the court said it would deal with the argument. In order to establish a breach of Article 14 in conjunction with another Convention right an applicant must establish four steps:

- the treatment must be in the ambit of substantive right;
- the difference in treatment must be on grounds of status;
- an analogous situation must exist;
- there is a lawful justification for the difference in treatment.

The court considered the applicant's case fell down on both the second and third questions. The applicant had put forward as his status that he was resident in Northern Ireland and was to be contrasted with residents in England and Wales. The court said that those residing in England and Wales were not in an analogous situation in this context:

"The [Department of Health] has no role whatsoever in the regulation or inspection of provision in any other part of the UK and therefore cannot discriminate on how it carries out such regulation or inspection across different jurisdictions. Differences arising from different approaches to similar matters by different devolved governments is itself a function of devolution and not a proper basis for a discrimination claim."

The court said the applicant forcefully argued that there is a public interest in the court conducting a review of the adequacy of the regulation and inspection of mental health services in the community given the high prevalence of mental illness in the UK, and Northern Ireland in particular. It was suggested that the general issue of the regulation of mental health treatment in Northern Ireland was of "elevated importance" because of public concern about the adequacy of such treatment. The court concluded, however, that the case was not arguable and has no reasonable prospects of success on the basis of the evidence submitted by the applicant. It fully recognised the importance of the matter, the plight of the applicant and the difficulties that arise from his very serious medical condition but said this was classically a matter of macro-policy and not one which is suitable for intervention or review by the court:

"It is clear from the information set out in this judgment that there is in place a system of supervision and regulation of mental health services in the community. [The submissions on behalf of the applicant] indicate that a credible case can be made for an improvement in and strengthening of those arrangements. No doubt that is something that will be considered in the impending review of arrangements. However, the court has concluded that the applicant has not established an arguable case that the existing

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arrangements are unlawful or that the court has a role to play in intervening by way of declaration or mandatory order.”

The court refused the application for leave to apply for judicial review.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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