

# Negligent medical treatment not sufficient to engage State responsibility under Article 2 ECHR

The recent judgment of *R (on the application of Maguire) v Her Majesty's Senior Coroner for Blackpool and Fylde* [2019] EWHC 1232 (Admin), reaffirms that individual acts of medical negligence are not sufficient to engage State responsibility under Article 2 ECHR.

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The recent judgment of *R (on the application of Maguire) v Her Majesty's Senior Coroner for Blackpool and Fylde* [2019] EWHC 1232 (Admin), reaffirms that individual acts of medical negligence are not sufficient to engage State responsibility under Article 2 ECHR.

## Background

JM was a 52-year-old woman with Down's syndrome and moderate learning disabilities who died in hospital of a perforated ulcer. JM, who had been deprived of her liberty under the Mental Capacity Act 2005, had been living in a care home and was dependent on care home staff for day to day care. It was alleged that there were a number of failures by JM's carers and healthcare providers in the days leading up to her death, including failures to triage properly, provide a full history and give adequate advice.

A jury inquest into JM's death was held on the basis that Article 2 was engaged. However, the Coroner reconsidered this position following the judgment of *R (Parkinson) v Kent Senior Coroner* [2018] EWHC 1501 (Admin), which gave guidance on the engagement of Article 2 in respect of deaths in hospital. The Coroner held that Article 2 was not engaged, as the allegations of individual negligence against JM's carers and healthcare providers fell outside the ambit of the State's Article 2 obligations.

JM's mother challenged the Coroner's conclusion by way of judicial review. Her application was dismissed.

## When does Article 2 apply?

The Court affirmed that where the State has made provision for securing high standards among health professionals to protect patients' lives, negligent medical treatment by individuals would not generally be sufficient to engage Article 2.

The Court further qualified that the positive duty under Article 2 would not always be engaged where a person dies in the care of the State, or where a person dies of natural causes but there is no reason to believe the State failed to protect their life. The kind of failure to protect a person's life for which the State would be responsible would be a failure to provide timely and appropriate medical care to a prisoner in obvious need. However, where there is no systemic or regulatory failure, and the State has not assumed specific responsibility for a particular person's safety, the State's obligation under Article 2 will not be engaged.

In this case, the failures identified were attributable to the individual actions of JM's carers, rather than any systemic or regulatory failure. In addition, the State had not assumed special and particular responsibility for JM. The Court therefore held that the State's positive duty under Article 2 was not engaged.

## What does this mean?

There is clear guidance that Article 2 will not be engaged by individual acts of negligent medical treatment alone. In medical cases, for the State's obligation under Article 2 to apply, there must be evidence that there were systemic failings or a specific assumption of responsibility by the State for the deceased.

In light of this, it is even more important for NHS Trusts to ensure that their systems and regulatory frameworks are in order.

## How we can help

When dealing with inquests, it may not always be clear if Article 2 is engaged. Our health team is experienced in advising on issues relating to Article 2 and representing NHS Trusts in inquests. If you need any advice or assistance, please do not hesitate to contact us.

## Contact



**Mark Hickson**

Head of Business Development

[onlineteaminbox@brownejacobson.com](mailto:onlineteaminbox@brownejacobson.com)

+44 (0)370 270 6000

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