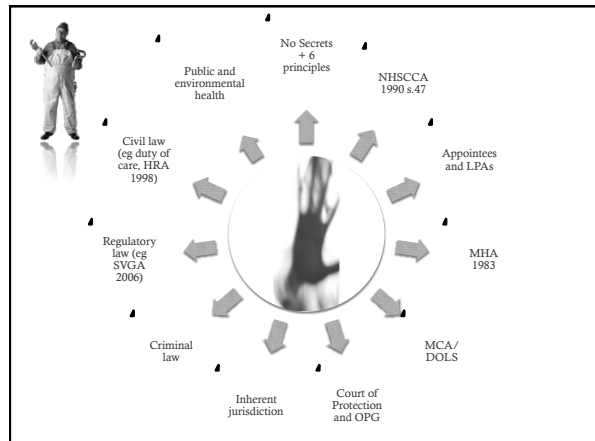


CRIMINAL CARE

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ILL TREATMENT AND WILFUL NEGLECT

“CRIMINAL”?

D. Galpin and J. Parker, 'Adult protection in mental health and inpatient settings' (2007) 9(2) *Journal of Adult Protection* 6:

'Appropriate use of adult protection procedures should ensure that, just as any other citizen, a vulnerable adult has access to the criminal justice system. Otherwise, practice that results in only 'welfare' based responses to adult abuse decriminalises acts that in any other walk of life would be deemed a criminal offence and serves to justify oppressive and discriminatory responses on the part of organisations and practitioners.'

CRIMINAL CARE?

Ill treatment:

- ☞ *R v Hall, Bailey and others* [2007] EWCA Crim 1406
 - ☞ "You bitch, why did you do that?" – 2 months.
 - ☞ Encouraged patients to insult and abuse each other – 6 months.

Wilful neglect:

- ☞ *R v Salisu* [2009] EWCA Crim 2702
 - ☞ Failed to ensure one-to-one attendance as per care plan.
 - ☞ Not simply an objective failure to meet proper standards but subjective recklessness – conditionally discharged.

ILL TREATMENT AND WILFUL NEGLECT

<p style="text-align: center;"><u>MHA s.127</u></p> <p>(1) It shall be an offence for any person who is an officer on the staff of or otherwise employed in, or who is one of the managers of, a hospital, independent hospital or care home</p> <p>(a) to ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or</p> <p>(b) to ill-treat or wilfully to neglect, on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.</p> <p>(2) It shall be an offence for any individual to ill-treat or wilfully to neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).</p>	<p style="text-align: center;"><u>MCA s.44</u></p> <p>(1) Subsection (2) applies if a person ("D") —</p> <p>(a) has the care of a person ("P") who lacks, or whom D reasonably believes to lack, capacity,</p> <p>(b) is the donee of a lasting power of attorney, or an enduring power of attorney (within the meaning of Schedule 4), created by P, or</p> <p>(c) is a deputy appointed by the court for P.</p> <p>(2) D is guilty of an offence if he ill-treats or wilfully neglects P.</p>
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DIAGNOSTIC GATEWAYS

MHA s.127

Any disorder or disability of the mind – eg

- Affective disorders
- Schizophrenia and delusional disorders
- Neurotic, stress-related and somatoform disorders
- Organic mental disorders
- Personality and behavioural changes caused by brain injury or damage
- Personality disorders
- Mental and behavioural disorders caused by psychoactive substance use
- Eating disorders, non-organic sleep disorders and non-organic sexual disorders
- Learning disabilities
- Autistic spectrum disorders
- Behavioural and emotional disorders of children and adolescents.

MCA s.44

Temporary or permanent impairment or disturbance affecting the functioning of the mind or brain which causes inability to make a decision –

- Eg Mental illness, dementia, LD, brain damage, physical or medical conditions causing confusion, drowsiness or loss of consciousness, delirium, intoxication
- *R v Hopkins* [2011] EWCA Crim 1513 - 'Unconstrained by authority, this court would be minded to accept the submission ... that Section 44(1)(a), read together with Section 2(1) of the Mental Capacity Act 2005, is so vague that it fails the test of sufficient certainty at common law and under Article 7.1, ECHR. However this court has made a decision upon Section 44 of the Act which binds this court.
- *R v Dunn* [2010] EWCA Crim 2395 - decisions concerning own care

SCOPE OF THE OFFENCES

☞ MHA:

- ☞ Patient need not be detained.
- ☞ Managers can be prosecuted.
- ☞ Either LA or CPS prosecute with consent of DPP

☞ MCA:

- ☞ P lacks or is reasonably believed to lack capacity
- ☞ P can be under 16 years old (unlike rest of MCA)
- ☞ CPS prosecute

Both carry a maximum of 5 years imprisonment and unlimited fine.

“ILL TREATMENT”

R v Newington (1990) 91 Cr App R 247 -

1. Deliberate conduct which can properly be described as ill-treatment, irrespective of whether it damages, or threatens to damage, the victim's health; AND
2. A guilty mind involving either an appreciation that she is inexcusably ill-treating the person or recklessness as to whether she is doing so.

Examples:

- ☞ Kneeling on patient to force-feed medicine (Penelope Rees, Steffan Spedding).
- ☞ Using soiled bathwater to brush teeth (Nine Strange).
- ☞ Using patients as targets for football practice (Jay Williams).
- ☞ Excessive sedative medication (Isla Irving).
- ☞ Slapping dementia sufferer once on the hand whilst feeding him (Brian Payne).
- ☞ Cleaning bedsores with scissors, wearing gloves just used to remove faeces from bed sheets (Souren Ramdoo).

Excusable?:

- ☞ Violence necessarily used to reasonably control a patient.
- ☞ Genuine belief in best interests.

“WILFUL NEGLECT”

- ☞ Neglect relates to a failure to provide nourishment, fluid, shelter, warmth or medical attention to a dependent person (*R v Humberstone and Scunthorpe Coroner, ex parte Jamieson* [1994] 3 All ER 972, 990-991).

- ☞ Its wilfulness depends upon the extent to which the accused refrains from acting, consciously knowing or not caring whether the person might be at risk as a result (*R v Sheppard* [1981] AC 394).

Examples:

- ☞ Leaving men in a hot car for over 3 hours whilst in the bookies (Chris Williams and Agnes Price).
- ☞ Ignoring patients on college bus who needed constant care, sitting elsewhere, leaving a student nurse in charge (Eulalee Hall).
- ☞ Failing to investigate the student nurse's complaint (Diane Butler).
- ☞ Leaving a resident on his own in a sensory room for too long (2½ hours) without necessary one-to-one supervision (Jennifer Lennon).

A ROUTE TO VERDICT

R v Hopkins [2011] EWCA Crim 1513:

- ☞ Resident's pressure mattress was set too high; no nursing assessment; soiled pad; hoist but its suitability not assessed; inappropriate bed; supported when lying down with risk of choking; no eating assessment; given solids despite needing liquidised diet; catheter found wrapped around her leg; grade 2 bed sores.
- ☞ Margaret Priest (manager) and Annette Hopkins (owner) had supervision and management responsibilities rather than hands-on care.
 1. Lack of care?
 2. Amounting to neglect?
 3. Defendant either
 - a) Knew of the lack of care and deliberately or recklessly neglected to act? or
 - b) Was unaware of the lack of care and deliberately or recklessly closed their mind to the obvious?

MANAGEMENT IN THE DOCK

Successful MHA/MCA prosecutions against care home managers (eg Diane Baxter, Clare Dunn, Diane Butler) and care home owners (eg Kathleen Vitturini, Souren Ramdoo, Donald Lee, Susan Newington, Francis and Mark Vanner).

☞ MCA s.44: 'a person [who] has the care of a person'.

☞ MHA s.127: 'any individual [with a patient] subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise)'.

The duty not to cause harm to individuals is not in fact a public law duty. It is the common duty of care which is owed by every person or body to individuals for whose wellbeing they are responsible. (*R (Watts) v Wolverhampton City Council* [2009] EWCA Civ 1168)

What about registration authorities?!

It might be fair and reasonable to conclude that the [registration] authority did owe a common law duty of care to the residents of a nursing home, or a care home, if conditions at the home warranting the exercise of the [registration] authority's statutory powers had come to the authority's attention but nothing had been done. (*Jain and another v Trent Strategic Health Authority* [2009] 1 AC 853, 863)

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