



## PROLONGED FOOD REFUSAL

### General principles

The general rule is that the will of a person of full capacity should be respected. For such a person the principle of self-determination normally overrides the principle of sanctity of life. If an adult of sound mind refuses consent to treatment then those responsible for his care must respect his wishes even if they do not regard them as being in his best interests (as established in the case of *Airdaile NHS Trust v Bland*). In fact conversely where an attempt is made to force feed/treat such a person in these circumstances it could amount to a claim for breach of Human Rights (Art 3 and Art 8) as well as an assault and battery under the domestic law of tort.

These principles apply to those in prison service custody, although the cases of *Keenan* and *Reeves* established that where the Prison Service has custody of a prisoner then they have assumed a duty of care towards them, and there is an obligation to take all measures to diminish opportunities for self harm without infringing personal autonomy. The more vulnerable the prisoner then the greater the measures which must be taken. Thus all reasonable steps should be taken to prevent suicide including making available food, water and medical care for the hunger striker. The Prison Service should ascertain whether the person is suffering from a mental disorder/lacks capacity and check that he has not changed his mind (such checks should be made at regular intervals)

Generally where a hunger striker no longer has capacity to make a decision as to whether or not to eat or drink then – in the absence of a clearly expressed instruction by him at a time when he had full capacity – a doctor acting upon the doctrine of necessity could provide food/fluids certainly until he regains consciousness/capacity to make a decision as to whether to continue to refuse treatment. However, where a person with full capacity decides he does not want medical treatment then his wishes must be respected even if subsequently he loses consciousness. It is therefore crucial to ensure that the procedures for establishing whether a person has full capacity at the time they make their decision are robust and followed to the letter. There should also be regular reviews with the person concerned.



Where there is any doubt about capacity (which is notoriously difficult to assess because every case varies to a large extent) at any stage, then more is required and it may then be appropriate to apply to the High Court Family Division for a declaration as to what is in the prisoner's best interests.

But it should always be remembered that, as a matter of policy, this is an option which is always open to the Prison Service even if the evidence suggests that a prisoner has taken a decision to starve to death and had the capacity to do so at the relevant time. Much depends on the circumstances of each case but in certain cases it may be that our duty of care and the importance of preserving life suggests an independent assessment by a court is the wisest course.

Treasury Solicitors should be involved in such cases so as to arrange representation. The Official Solicitor should always be informed in case he wants to intervene. And the prisoner's solicitors and/or family may want to take this action themselves or in conjunction with us or the Official Solicitor.

### **Current Policy**

Where a prisoner wishes to refuse treatment then they should be asked to sign an advanced directive form which is important because it fulfils a number of requirements. The form advises the prisoner to seek legal advice. It makes it clear that they are aware of the risks of refusing treatment and gives them the option as to whether they wish to have treatment should they lose consciousness. Importantly, the form requires the directive to be witnessed by two persons and that, where possible, two psychiatric assessments as to the prisoner's capacity are obtained (ideally by consultant psychiatrists). One of these must be a witness to the directive.