



Prolonged food refusal by prisoners – key human rights considerations

QUICK REFERENCE

Which Articles from the ECHR might I need to consider?

Absolute

- Article 3 – Prohibition of torture

Qualified

- Article 8 – Right to respect for private and family life

What is the relevant case law?

- *Airedale NHS Trust v. Bland*
- *Keenan v. The United Kingdom*
- *Commissioner for the Police for the Metropolis v. Reeves*

This guidance is aimed at CJS staff responsible for the custody of individuals who have gone on hunger strike. Unless the individual does not have the capacity to make a decision about whether or not to accept food, their wishes must be respected and there is a duty on staff to protect them from starvation.

What rights might I need to consider when managing a prisoner on hunger strike?

If you attempt to force feed / treat a prisoner on hunger strike then it could amount to a breach of Articles 2 and 8 of the ECHR (as well as an assault and battery under domestic laws).

The general rule is that the **will of a person of full capacity should be respected**. 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 (see *Airedale NHS Trust v. Bland*).

What practical steps should I take?

The Prison Service has a duty of care to a prisoner in their custody and there is an obligation to take all measures to diminish opportunities for self harm without infringing personal autonomy (see *Keenan v The United Kingdom* and *Commissioner for the Metropolis v*



Reeves). In relation to a hunger striker all reasonable steps should be taken to prevent suicide including making available food, water and medical care.

Where a person with full capacity decides that s/he does not want medical treatment then these wishes must be respected even if subsequently s/he loses consciousness.

It is crucial to ensure that it is properly established whether a person is suffering from a mental disorder or lacks capacity at the time they make their decision. Where a person is deemed to be in full capacity regular checks should be made to ensure that s/he has not changed his/her mind.

Should the hunger striker have not clearly expressed an instruction at a time when s/he had full capacity, when s/he no longer has the capacity to make a decision whether or not to eat or drink, then a doctor, acting upon the doctrine of necessity could certainly provide food / fluids until s/he regains consciousness / capacity to make a decision as to whether to continue to refuse treatment.

To ensure that as far as possible an expressed instruction is received when the individual has full capacity the current policy is that a prisoner wishing to refuse treatment is asked to sign an **Advanced Directive** form (see below). This form fulfills a number of requirements:

- Advises the prisoner to seek legal advice.
- Makes it clear that they are aware of the risks of refusing treatment.
- Gives them the option as to whether they wish to have treatment should they lose consciousness.

Importantly the directive needs to be witnessed by two persons and that, where possible, two psychiatric assessments as to the prisoner's capacity are obtained. One of these **must** be a witness to the directive.

What if there is doubt over the capacity of the individual to make a decision whether to accept food / fluids?

There is always the option 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 time) to **apply to the High Court Family Division for a declaration as to what is in the prisoner's best interests.**

Much depends on the circumstances of each case but in certain cases it may be that the duty of care and the importance of preserving life suggest an independent assessment by a court is the wisest course.

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

Further information

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More detailed information can be found in the document 'Human Rights and hunger strikes' that can be accessed via CJS online.



ADVANCE DIRECTIVE

I, [*name*] of [*address*], prisoner number [], wish to state the following:

1. [I do not intend to eat].
2. [I do not intend to drink or otherwise receive fluids].
3. I do not wish to receive any treatment.
4. I do not consent to the administration of nutrition or hydration or any form of medical treatment whether resuscitation or otherwise designed to keep me alive, in the event that there is a deterioration in my condition
 - [unless there is a loss in consciousness] [and/or in the event of a loss of consciousness]
 - [unless I sustain any injury to my person howsoever caused]
5. I do/do not consent to any medical or nursing care designed to keep me comfortable and free from pain in the event of serious deterioration in my condition [*If there is consent to some care, give details of any particular care that is offered and accepted by the prisoner*].
6. It has been explained to me that if I refuse treatment in this manner, that my medical condition could deteriorate, that I could be in a great deal of pain, that I could lose consciousness and that I could die as a result of the refusal to consent to treatment.
7. I have read and had the contents of this directive read over to me [in [*language*], a language I understand] and I fully understand its contents and its effects.
8. I have been advised to take legal advice from an independent legal adviser on the contents and effect of this Directive. I have carefully reflected on the terms of this Directive, and have been advised to discuss its terms with my next of kin before signing it.
9. I am aware that I can change my mind and revoke this Directive at any time if I remain capable of making decisions about my medical treatment.

Signed

Date of Birth

Witness A - Name
Signature
Address



Witness B - Name
Signature
Address

[It is essential that, where possible, two psychiatric assessments are made as to the prisoner's capacity. These assessments should be made ideally by consultant psychiatrists. One of these consultant psychiatrists must be one of the witnesses to this advance directive.]