

Which human rights are relevant?

Article 2 - Right to life

“Treatment that could prolong life may sometimes be withheld on the grounds of scarce resources. Whilst it is open to a patient to argue that economic factors should not be taken into consideration in making treatment decisions, any claim under Article 2 would need to show that failing to provide treatment would lead to a real, perhaps inevitable, and immediate risk of death and that providing treatment was likely to avert that risk. Even if this case could be made, for example with some new expensive drugs for cancer patients, public authorities are only required to take those steps to avoid death that are "appropriate" and it appears that a shortage of resources may be a valid constraint to providing life-prolonging treatment. In reaching policy decisions about the allocation of resources, Health Authorities, or other decision-making bodies, must be able to show that they have considered their patients' Article 2 right, and must be able to justify interfering with that right. Such decisions must be transparent, logical and able to withstand scrutiny. The decision must also be non-discriminatory; a blanket age restriction on treatment such as cardiopulmonary resuscitation, for example, is likely to contravene Article 14 .The court is unlikely to interfere in a particular case with a Health Authority's decisions on allocation of resources provided the appropriate procedures have been followed”.

<http://www.bma.org.uk/ap.nsf/650f3eec0dfb990fca25692100069854/b8427fd0e0995cd780256b53004c757a?OpenDocument>

BMA/Ethics/Human Rights/Impact of the Human Rights Act/which human rights are relevant/Article 2 – right to life:

Legal Issues

For a comprehensive account of the legal considerations surrounding resource allocation in healthcare see the relevant pages of the UK Clinical Ethics website: <http://www.ethics-network.org.uk/Ethics/eresource.htm>

Here is a summary of some key points:

Is there a right to medical treatment?

Article 2 of the European Convention on Human Rights states that there is a 'right to life'. There is a positive obligation upon the State to ensure that this right is respected. Does this mean that there is a right to medical treatment? The positive obligation under Article 2 must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. Therefore, although the State cannot be expected to fund every treatment, it must act reasonably in allocating resources.

Article 8 provides a right to respect for private and family life. This does not impose an obligation upon the State to provide medical treatment. Article 8(2) allows the state to restrict the right to respect for private and family life in the interests of the protection of health or morals, or the protection of the rights and freedoms of others. This requires a balance to be struck between the interests of the community and those of the individual.

A refusal to fund medical treatment because of the advanced age of the patient could be a breach of **Article 2** and **Article 14** (prohibition on discrimination). **Article 14** would also be relevant where resources are not allocated for treatment on the grounds of gender.

The attitude of the Courts to resource allocation

A patient who has been refused treatment may appeal to the court by way of judicial review. The court would decide whether the PCT has acted lawfully in refusing to fund treatment.

The NHS does have a statutory duty to provide medical treatment, but because resources are finite this cannot be a duty to provide all conceivable treatments in all circumstances.

If a decision about funding is made on irrational grounds (for instance taking into account irrelevant factors or not taking into account obviously relevant factors), then the court is likely to interfere.

If a decision not to fund treatment is based on factors that are relevant e.g. clinical effectiveness of treatment and is made as a result of an explicit and transparent process, then the refusal would probably be justifiable.

Courts are likely to regard PCTs as acting reasonably if they refuse to fund treatment where the cost is high and the prospects of success or benefit are limited.

See also the relevant pages of the BMA website:

The impact of the Human Rights Act 1998 on medical decision making

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