

Case Summary

R (Ferreira) v HM Senior Coroner for Inner South London and others [\[2017\]](#) [EWCA Civ 31](#) (Arden and McFarlane LJJ, Cranston J)

Issue

Article 5 – Deprivation of liberty procedure

Facts

Maria Ferreira, a woman with Down’s syndrome, died in an intensive care unit after she dislodged a tube with her mittened hand. An inquest was to be held but whether a jury was required depended upon whether she died in “state detention” under sections 7 and 48 of the Coroners and Justice Act 2009. A key issue, therefore, was whether “state detention” equated to “deprivation of liberty” under Article 5(1) ECHR and the relevance of the Supreme Court’s decision in *Cheshire West*.

Decision

The Court of Appeal concluded Ms Ferreira was not in state detention for three alternative reasons:
(1) *Cheshire West* did not apply: Ms Ferreira was not deprived of her liberty because she was being treated for a physical illness and the same treatment would have been administered to a person who did not have her mental impairment.

(2) If *Cheshire West* did apply, she was free to leave: there was no evidence to suggest that the hospital would have refused a proper request to remove Maria, and her inability to leave stemmed from her physical illness.

(3) Unlike MCA s 64(5), the CJA 2009 does not expressly require consideration of Article 5 and ICU is not state detention.

The Court of Appeal also held that paragraph 66 of the Chief Coroner’s Guidance No 16, [Deprivation of Liberty Safeguards](#), which stated that “[t]he person is not ‘in state detention’ for these purposes until the DoL is authorised” misstated the law.

Practice implications

The fact that the court found the primary answer in Article 5 means that it is likely to have significant consequences, not least in ICUs to which, in 2014/15, there were 163,000 admissions in England and Wales. The judgment is likely to be applied in other analogous care settings, such as palliative care, because, typically, the person is receiving the same physical treatment as that given to a person of “sound mind. Permission to appeal the judgment to the Supreme Court has been sought.

The Chief Coroner’s Guidance will be replaced shortly, to take account of the amendments to the Coroners and Justice Act 2009 coming into effect later in 2017 so as to remove deaths occurring where a person is deprived under DoLS or Court of Protection authorisations/applications from the definition of deaths in state detention, thereby automatically requiring an inquest.

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