

# Mental Health Law Briefing

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## Publication of mental health reports – Michael Stone

The publication of mental health reports to the public inevitably leads to concern, especially where such reports include personal medical information belonging to former or current patients. Disclosure of such personal medical information is protected by both the Human Rights Act 1998 and the Data Protection Act 1998. However, as the recent Judgment in the case of *R (on the application of Stone) –v- South East Coast Strategic Health Authority and others*<sup>1</sup> shows, there will be occasions when disclosure of such reports, in full, may be deemed to be in the public interest.

The case concerned an application by Michael Stone who was convicted for the murder of Lin and Megan Russell and attempted murder of Josie Russell in the mid 1990's. However, following Mr Stone's conviction Social Health and Probation Services commissioned an independent inquiry into the care, treatment and supervision of Mr Stone, who had regularly engaged with mental health services prior to the murders. Mr Stone applied to prevent the publication of the report which contained extensive citations from his medical records. It was Michael Stone's contention that, although the report could be published in full to relevant health professionals, he did not accept that the full report should be disclosed to the public without first redacting the sensitive medical information. It was his assertion that disclosure of that information to the public at large would breach his Article 8 rights (Right to respect for Private and Family

Life) and would also breach the provisions of the Data Protection Act 1998.

The Judge considered the recommendations made by the independent inquiry, which recommended that the report be published in full not only to health professionals but to the public at large. They gave a number of reasons for making such a recommendation, including that publication would be in the public interest and that the public had a right to know the result where an enquiry had been set up to investigate assertions of inadequate care and supervision.

Considering Mr Stone's Article 8 right in conjunction with his Article 10 right (freedom of expression), the Judge carefully considered Mr. Stone's assertion that where there is to be an interference with a convention right, such interference should be kept to the minimum necessary, and as such the report should be redacted. However the Judge found that in this case redaction was inappropriate. The three main reasons the Judge gave as to why redaction was inappropriate were:

1. It would deprive the public of knowing precisely what facts had prompted the conclusions and comments made by the panel.
2. The detail within the medical notes was crucial for assessing what was known and was not acted on and what was not known and what they should have known.

<sup>1</sup> [2006] All ER (D) 144 (Jul)

3. Redaction would prevent informed criticism and assessment of any criticisms made within the report.

The Judge then went on to carry out the balancing exercise<sup>2</sup> required in Article 8 cases concerning privacy, weighing up the benefits that would be achieved by publication against the harm that may be done by the interference with the right to privacy. Although the Judge acknowledged Mr Stone's claim to privacy, in his view there were a number of points which outweighed such a right.

1. Redaction of the report would be ineffectual and could potentially mislead the reader.
2. There was a public interest in the public at large having access to the report as it would allow them to reach an informed assessment of the failures identified and the recommendations made.
3. The publication to the relevant health professionals would be insufficient in meeting the community's expectations.
4. Where individuals or agencies were being criticised, the public had a right to know the full reasons for such criticism.
5. The actual details of the case were particularly crucial for any informed assessment of the panel's conclusions and recommendations.
6. The report focused solely on the investigation foreseeably arising out of two murders and an attempted murder carried out by Mr Stone and, in the Judge's view, there was some justification for restricting Mr Stone's right to privacy as a consequence. The report and investigation effectively surrounded Mr Stone's own acts which were found to be criminal.
7. Disclosure of the full report would assist in correcting inaccurate media reports made in the past. The Judge also noted that there was a great deal of information already in the public domain.
8. Both Josie Russell and her father supported the publication, as did the Secretary of State and all the relevant mental health authorities.

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<sup>2</sup> *Campbell –v- MGN Limited* [2004] 2AC 457

The Judge felt that the same balancing exercise could be carried out in relation to Article 10 and here, again, felt that disclosure could be justified as a proportionate response.

The Judge briefly turned to the provisions of the Data Protection Act and was content that disclosure could be made on the basis that, although there was sensitive personal data included within the report, conditions set out in Schedules 2 and 3 of the Act were met. The Judge felt that the Schedule 2 condition appropriate in this instance was that the processing was *necessary...for the purpose of any other functions of a public nature exercised in the public interest by any person*. With regard to Schedule 3, two conditions in his view were met. The first was that the processing was *necessary...for the exercise of any function conferred on any person by or under an enactment* (under the National Health Service Act 1977 and the regulations) and, secondly, that processing was *necessary for medical purposes and is undertaken by...a health professional...* The Judge felt that the Schedule 3 definition of 'medical purposes' allowed disclosure to take place.

## Comment

The Judgment is useful in a number of ways. Firstly, it gives helpful guidance on how the Courts consider redaction of sensitive medical information contained within reports. It is clear that where redaction will render a report ineffectual or misleading, then real care must be taken before redaction is considered an appropriate option. Further, the Judgment provides useful guidance on how the public interest may be met in relation to disclosure of independent investigations of a similar nature. It is clear that in this case, due to the high profile nature of Mr Stone's conviction, the Court's view was that the public interest clearly outweighed that of Mr Stone's right to privacy. Not every inquiry made generates such a media response and caution would have to be taken before disclosing such reports, in full, in the future.

Finally, the case provides useful detail on how reports of this nature can be disclosed without breaching the Data Protection Act, and the application of the conditions within Schedule 3 of the Data Protection Act.