

Number 33

## Visiting Patients and the Human Rights Act

The Code of Practice provides that all detained patients are entitled to maintain contact with and be visited by anyone they wish to see subject only to limited exceptions. Visits should be prohibited only in exceptional circumstances. There are two principal grounds that may justify the exclusion of a visitor:

- (a) Restriction on clinical grounds;
- (b) Restriction on security grounds.

Hospitals should have in place policies to reflect the guidance in the Code of Practice, which additionally specifically provides that hospitals should have written policies on arrangements for visits by children. Such visits should only take place following a decision that such a visit would be in the child's best interests.

### Human Rights Act

What effect does the Human Rights Act have on this? As many will be aware Article 8 provides for a right to private and family life albeit that this is a qualified right which may be restricted for reasons that include public safety, the prevention of disorder or crime, the protection of health or morals, or for the protection of the rights and freedoms of others. Policies that restrict a patient's visits but which are not justifiable under the Article 8 right to a private and family life may be open to challenge. Hospitals would therefore be well advised to review their policies now.

### New Case Law

Specific guidance on the issue of visits by children to patients in the Special Hospitals was issued by the Department of Health last year<sup>1</sup>. Whilst this is obviously directly applicable only to patients in Special Hospitals, rather than being guidance in relation to child visits to other patients, nevertheless some of the principles are of wider application, including the need to ensure that a risk assessment is done before any visits are commenced, and that consideration is given as to whether the visit is in the child's best interests.

The guidance from the Department of Health has, however, recently been subject to challenge by an application for judicial review citing the Human Rights Act<sup>2</sup>.

In that case, the patient, Mr Lally, had been convicted of the murder of an elderly man in 1990 and sentenced to life imprisonment. He was detained in Rampton Hospital under Sections 37 and 41 MHA 1983. Visits by his nephews and nieces were not allowed pending risk assessment by a clinical team.

<sup>1</sup> Health Circular Number HSC 1999/160

<sup>2</sup> R v. Secretary of State for Health ex parte Lally [2000] The Times, 26<sup>th</sup> October

MENTAL HEALTH LAW

RadcliffesLeBrasseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax +44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax +44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax +44 (0)29 2034 3045  
DX 33063 Cardiff 1

info@rlb-law.com  
www.rlb-law.com

The patient contended that the DOH Guidance was (1) illogical as it grouped together murderers with sex offenders, (2) discriminatory as it distinguished between prisoners and patients, and (3) contrary to Article 8 of the Human Rights Act as it broke up family life.

The Court held that the Guidance was not irrational as no child was absolutely excluded from visiting. Where appropriate, an application to the Court for a Contact Order under Sections 8 and 10 of the Children Act 1989 could always be made.

Furthermore, the Court held that the guidance provided a realistic procedure capable of being operated with due expedition and therefore could not be a breach of the Article 8 right to a family life.

### Comment

Some of the comments on Article 8 were particularly helpful. The Court held that “family life” was an elastic concept that depended very much on the facts of an individual case. It could not be said that the relationship between an uncle or aunt with a nephew or niece would necessarily automatically amount to “family life” within the meaning of Article 8. Each case would have to be decided individually and reviewed to consider whether there actually was in existence some “family life” that was being infringed.

This is helpful judicial guidance on the interpretation of Article 8, in particular by providing clarification that there is no specific category of “family” to which this Article applies. This will mean that family life issues can be limited to close relatives in some situations but, equally, expanded to even wider relationships in appropriate cases where it can be shown that there was a “family life” in existence.

*STOP PRESS*

### Severe Personality Disorder

The Secretary of State for the Home Office in answer to a parliamentary question has stated that the Government’s proposals for those with severe personality disorder will be implemented as part of wider changes to the Mental Health Act. Paul Boateng MP has said that “the effective implementation of new arrangements will require the provision of new, high quality, specialist services for this group (i.e. those with severe personality disorder) which will be part of the process of service development and piloting. Access to these services will be managed through a plan of care and treatment appropriate to the individual”. He has also said that the Government’s proposals will be published in detail in a White Paper before Christmas.

### RadcliffesLeBrasseur November 2000

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

Future editions can be received by email. Please e-mail: [marketing@rlb-law.com](mailto:marketing@rlb-law.com) or telephone 020 7227 7388.