

Number 39

## Human Rights: Patients' rights to receive telephone calls

In view of the publicity surrounding the Human Rights Act, the right to a private life provided by Article 8 will now be well known. Article 8 provides:

*"Everyone has the right to respect for his private and family life, his home and correspondence."*

In a recent European case<sup>1</sup> the issue arose as to whether it was legitimate to restrict telephone calls if a patient was detained as an in-patient under Mental Health legislation.

### Facts

The patient had been detained in a psychiatric hospital following an alleged rape. He was not convicted by the criminal court because his mental condition meant he was able to plead diminished responsibility. Whilst in hospital the patient's telephone calls were restricted, in particular, calls from his lawyer were put through to his RMO rather than the patient. The issue arose as to whether there was legal justification in restricting his telephone calls. The local Ombudsman in Finland had found that communication by telephone was included within Article 8 and that there was no justification for restricting it.

In this case, the parties reached a friendly settlement acknowledging a breach of rights without a formal judgement of the European Court, although the Court appears to have implicitly approved the agreement.

### Commentary

Some will find the outcome of this case surprising because of the qualification of article 8, which provides for lawful interference.

"... for the prevention of disorder of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The key factor in this case was, however, that the telephone calls were from the patient's lawyer. Interception of such communications with a lawyer may of itself also to be a breach of Article 6, the right to a fair trial.

However, it is not difficult to envisage situations where telephonic communications may be generated by psychiatric patients which might offend against the health or morals of another individual and in respect of which steps under the Human Rights Act to prevent such telephone calls might arguably be taken.

The Mental Health Act Commission has previously decided telephone calls should be treated like correspondence. The Mental Health Act permits interference with patients' mail only on the basis

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<sup>1</sup> Valle v. Finland (European Court of Human Rights 7 December 2000)

set out in<sup>2</sup> the act, and there is of course an express exception for correspondence with a patient's legal advisor<sup>3</sup> – itself further justification for the Valle Decision.

The wide availability of mobile phones does, however, make regulation of such matters that much more difficult, and is an area that most units will therefore wish to cover in a legally sustainable policy document, to make the position plain to both staff and patients.

Although the Valle case therefore does not provide definitive advice on which telephone calls may legitimately be restricted, it does make it plain that any restriction must be very carefully considered for Human Rights Act compliance.

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<sup>2</sup> S. 134 Mental Health Act

<sup>3</sup> S.134(3)(g)