

# Mental Health Law Briefing

Number 97

## Leaks of patient information to the media: can the press be required to disclose the source?

A patient's right to confidentiality of his medical records is well known. It is equally well known that journalists will invariably refuse to disclose the source of their information.

These conflicting issues recently came before the court<sup>1</sup> in the context of an apparent leak of the medical records of a psychiatric patient.

A newspaper had published an article which appeared to be based on information from medical records relating to a detained patient (Mr Ian Brady, the Moors murderer). The NHS Trust responsible for Ashworth Hospital where Mr Brady was detained requested disclosure of the source of the information upon which the article was based given that this source could well be an individual employed by the Trust or at least a person who had access to the records at the Trust. In either case, it was asserted that the records should not be disclosed without authorisation or otherwise than for the medical purposes for which the individual had been permitted to have access to them.

The Trust therefore sought disclosure of the source. This was refused by the journalist and the Trust applied to the court for an order requiring disclosure.

The application was refused. The court held that there was no pressing social need established that the source should be identified. It would not be proportionate to order disclosure to assist the hospital's aim to seek redress against the source when this was balanced against the issues of public interest and the protection of the journalist's source. The court said that there was no public interest justification for the disclosure having regard to:

- (a) It could not be said whether the source had ever been an employee of the hospital or whether he still was.
- (b) It was not possible to say whether the hospital would suffer damage if it failed to obtain an order for disclosure.
- (c) The newspaper had a good record of fulfilling the role of the press in a free society and was seeking to act in the public interest.

<sup>1</sup> Mersey Care NHS Trust v Ackroyd [2006]All ER (D) 76

- (d) It was in the public interest that sources should not be deterred from communicating with the press.

In the circumstances the court was not prepared to order disclosure even though it made no finding whether the fact of the information being disclosed to the journalist constituted wrongdoing. However, the court did order that the medical records could not be used other than in connection with these proceedings (and thus further disclosure was prohibited)

## Comment

Unless the patient had consented, the apparent disclosure here was in fact almost certainly a breach of confidentiality and an actionable 'wrongdoing' –*IF* the perpetrator could be identified. Without the identity of the person responsible for the leak, the hospital was unable to take action other than in the most general terms: to ensure its staff were aware of their duties of confidentiality, that the appropriate security systems were in place and that an attempt (albeit hamstrung by a lack of information) to investigate the cause of the leak had taken place. This case suggests that in cases such as this, hospitals will face difficulty in obtaining information from the media as to the source of their stories, even where they seem to have arisen from a breach of confidentiality.

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## European Commission Green Paper

The European Commission have published a Green Paper proposing a framework for comprehensive action towards a strategy to improve the Mental Health of citizens in the European Union. It cites the facts that:

- Mental Health affects every fourth citizen.
- There are too many deaths from suicide.
- Mental Health causes significant losses and burdens to the economic, social, educational and Criminal Justice systems.
- Stigmatisation, discrimination and non-respect for Human Rights challenge core European values.

The consultation process is open until 31 May 2006.

Responses may be sent by email to:

[mental-health@cec.eu.int](mailto:mental-health@cec.eu.int)

The Green Paper itself can be obtained from the European Commission website <http://europa.eu.int>

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