

Number 55

## Disclosure of Information to Victims

MENTAL HEALTH LAW

Confidentiality is at the heart of healthcare. All professionals are well aware of their common law duties of confidentiality, although with multi-disciplinary and joint working the issues are becoming more complex. These are areas on which we are asked to advise more frequently than probably any other.

A patient's right to obtain information under the Data Protection Act is well known. The Freedom of Information Act 2000 will come into force in 2005<sup>1</sup> to provide further rights of access to patients. However, to what extent is a victim entitled to obtain information about a patient from a Mental Health Review Tribunal? It is an area that is canvassed in the new draft Mental Health Bill but it has recently been considered by the Court.<sup>2</sup>

### Facts

The Claimant was the mother of the patient's child. The Claimant had separated from the patient over seven years ago before he was convicted of manslaughter and ordered to be detained under Section 37/41 Mental Health Act.

The patient's detention was reviewed by an MHRT which ordered a deferred conditional discharge. The Claimant had written to the Tribunal setting out her views on discharge and sought information regarding the conditions imposed and the reason for deferral. This was refused by the Tribunal and the Claimant argued that the Tribunal had a discretion whether or not to provide her with the information. She sought information regarding the current level of risk of the patient, the conditions of discharge and in particular, any limitation on him living in a particular area and when he was likely to be released from hospital. It was argued on her behalf that failure to provide this information amounted to a breach of her rights under the European Convention on Human Rights, namely the right to life and the right to private and family life.

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<sup>1</sup> The Act is due to come into force in January 2005 but by October 2003 all NHS bodies must have a publication scheme in force.

<sup>2</sup> T -v- Mental Health Review Tribunal and G, LTL 25.2.2002.

## Court Decision

The Court held that the MHRT did have a discretion under the Rules<sup>3</sup> to disclose information. In this particular case, it had failed to consider the exercise of its discretion so Judicial Review would therefore be granted and the matter remitted to the Tribunal to reconsider. The Court expressed the view that whilst all the information being sought by the Claimant might not be properly provided, there did not appear to be any reason why she should not be told if there was a restriction on the patient living in a particular area or from contacting a particular individual or individuals. However, the Court rejected the suggestion that there had been any breach of Articles 2 or 8 of the European Convention of Human Rights.

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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.

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### Correction – The Draft Mental Health Bill Briefing No. 54

The recent Briefing publication sent out by ourselves wrongly stipulated that the new Mental Health Bill, published in draft on 25<sup>th</sup> June 2002, is open to a twelve *month* consultation period. This is incorrect and the consultation period is actually twelve *weeks*. We apologise for any confusion that this may have caused.

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<sup>3</sup> Rule 21(5) of the MHRT Rules.