

The appeal judgement noted that the words, "Relating to any matter in question," had been given a wide meaning in *Comp. Financiere -v- The Peruvian Guano Company* (1882), II Queen's Bench Division 55, and this compelled the learned judges to conclude that the term, "Relate to the mental health of a person," had a very wide meaning and was not confined to clinical, nursing or surgical notes of treatment. The second judge noted that records of admission and discharge from a clinic would often identify the aspect of health for which the person had been a patient.

Both judges, therefore, finally upheld the submission that all these records were "excluded material" within the definition of PACE and could, therefore, only be obtained if they would justify the issue of a search warrant which would, in effect, as I understand it, mean only if they would be likely to be valuable evidence against an individual already known to the police.

The judgement means that the police do not have a right of access to medical records under

most circumstances, which is of great importance for reassuring patients about the confidentiality of the information they entrust to us. Obviously nothing in this judgement should ever discourage a doctor from co-operating with the police in the investigation of serious crime and considering in individual cases whether the particular circumstances justify releasing information to the police if this could subsequently be justified as a proper breach of professional confidence when facing either a claim for damages brought by the patient or before the General Medical Council or other disciplinary body.

The decision, however, as to whether the public interest outweighs the individual's right to confidentiality has clearly been placed with the doctor involved and is a decision which has to be taken according to the circumstances of each individual case. I am now arranging with the police to contact the patients concerned and invite them to co-operate with this important investigation.

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Forthcoming reform of Irish mental health legislation

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A new Mental Health Act to replace the 1945 law is awaited presently in the Republic of Ireland, following submissions from diverse groups elicited by the 1992 Green Paper on Mental Health. The Green Paper has been widely welcomed as a comprehensive and thoughtful document. Review of the 1945 Act is long overdue in the face of international developments in the field. Most influential to the thinking underlying the proposals were the 1991 UN Principles for the Protection of Persons with Mental Illness and the 1983 Council of Europe Recommendation. The stated aims of the reforms include classification of the indications for committal to hospital, reduction in the number of committals, the provision of new review procedures for committal decisions, and perhaps to balance the emphasis, to provide fresh impetus and a statutory framework for

the development of community services for all patients. In reply the Irish Division of the Royal College of Psychiatrists made a detailed submission, adopting a pragmatic and cautious approach, and included position papers summarised already in the *Psychiatric Bulletin*. (Royal College of Psychiatrists, 1993).

Difficulties in defining mental disorder for the purposes of committal have been addressed in some novel ways in the Green Paper. The wording of "serious likelihood of immediate harm" seeks to escape the thorny problem of the dangerousness criterion, without relying on treatability alone as the standard. The Irish Division liked this wording and added to the novelty by suggesting that persons with a diagnosis of personality disorder might be committed with the possible exception of most psychopathic

personality disorder. This is all but the reverse of the UK position and should attract comment. The Irish Division argues that problematic mentally handicapped patients can be committed, but to specialist centres; other patients should be committed to hospitals only, not hostels.

The Division is against application decisions requiring the signature of two doctors, or of other (scarce) professionals, and believe that voluntary patients' discharge from hospital can be delayed only if full committal procedures are instigated. Recently publicised incidents in Ireland may force consideration of difficulties around access to patients' domiciles by clinical staff, safe transport of patients to hospital, and disputes between relatives over degrees of primacy, issues not initially considered in the proposals. Forty-eight hour detention is approved by the Irish Division as sufficient time for initial assessment, followed by 28 day extensions renewed in perpetuity if necessary. The right to give or refuse treatment during assessment, which has caused problems elsewhere, is not yet specified. The Child Section suggests that new provision is required for the detention of minors, especially if that becomes defined as 18 years or less, but recommends more facilities and safeguards regarding subsequent aftercare. The Division proposes that consent to treatment by committed patients should be routinely detailed and if refused, in most instances only one further psychiatric opinion would be required to over-ride it. For more invasive treatments (e.g. psychosurgery but not ECT) two opinions would be necessary. In this regard the Green Paper proposals emphasise (from the UN Principles) the circumstance of a patient's *inability* to consent, but the more common situation of "unreasonably withholding" consent will need further definition and elaboration.

A non-judicial review body gets a big thumbs up all round, but costs may confine its work to appeals and long-term detainees. Less clear is the review of routine decisions, or who such a body might be accountable to. Also unspecified is the power of such a body to discharge detained patients, or who, in rural (one psychiatrist) sectorised areas might then pick up the pieces. The Green Paper expresses confidence, not universally shared, that a review body would hold up to scrutiny under the Irish constitution, and perhaps only a lengthy and expensive test case can decide the matter. Receiving similar approbation from the Irish Division is the proposed diversion of mentally ill offenders to psychiatric care by the courts, but less apparent are the mechanisms to

safeguard over the anomalies for patients who might be effectively sentenced to forced treatment and a 28 day detention for the offence of stealing an apple.

Sensitive to the experience of colleagues practising in other countries, the Irish Division expresses ambivalence about community supervision orders, and is chary of their practical relevance given the problem of forcible administration of medication in community placements. Here pious legislative hopes meet brute clinical realities, and there is no easy answer. No comment is forthcoming on the value of a Code of Practice but standards of care can hopefully be maintained by an expanded Inspectorate of Mental Hospitals. Increased protection of patients' interests is encompassed by proposed new enduring powers of attorney additional to existing wardship arrangements. Other rights of detained patients receive less attention, particularly in the areas of seclusion and restraint, or other ordinary civil rights such as voting, body searches or the right to take civil actions. Participation in clinical trials needs further consideration, especially in the context of a comparatively restrictive Irish Clinical Trials Act.

The aspirations of legislators are tested in the furnace of implementation, and to this end reforming zeal must be alloyed to necessary improvements in services. The Division submits that reform (increased medical representation) of the regional health boards, once described as a "nursery school for politicians", must also be undertaken. This and a sustained drive by the Department of Health to convince implementors and consumers of the value of such legal reforms, and in particular to materially provide for them might save us from repeating and regretting the scandals of other failed reforms throughout Europe and elsewhere.

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