Psychiatric Bulletin (1991), **15**, 721–722

Keynotes

Psychiatry, the law and the media*

LOUIS BLOM-COOPER, QC, Chairman, Mental Health Act Commission

When the *Liverpool Daily Post*, its sister paper, the *Liverpool Echo*, and the *Daily Mail* published inflammatory material about a restricted patient at Park Lane Special Hospital (now Ashworth (North) Special Hospital) their editors were strongly warned by the House of Lords that they would be well advised to exercise greater care in future, that they did not overstep the mark and find themselves in contempt of court. The newspapers won their appeal because the law allowed them to report the fact that a restricted patient had applied to a Mental Health Review Tribunal for his discharge, the date and place of the hearing of the application and any order made discharging the patient, absolutely or conditionally. But the law does not give the papers *carte blanche* to comment on a case in order to mount a campaign of public protest against the patient's release.

The case itself raised legal issues about the scope of specific reporting restrictions imposed by the Mental Health Review Tribunal Rules 1983. These rules were made precisely because the legislature thought that a patient, restricted or not, should be entitled to preserve his privacy. Information, other than the mere statement that he or she had applied to the Tribunal to be released, should not be disclosed, but kept secret.

While the law thus places restraint on publicity of proceedings before Mental Health Review Tribunals, should the media, in reporting or commenting on an individual patient, be subject to any restraint over and above that which is imposed by law? Are there journalistic ethics which should supplement or augment any legal restraints? These are pressing questions that have so far been addressed all too infrequently and without any clear guidance.

One thing seems tolerably clear. The specific rules relating to patients whose cases are before a Mental Health Review Tribunal are an expression, in one area of health services, of society's sensitivity towards the citizen in his or her desire to maintain privacy in respect of any assessment or treatment provided in hospitals or like institutions. The approach generally to invasions of privacy by the media has a peculiar relevance to the individual's involvement in his or her hospitalisation. The individual steps outside the domestic hearth and uses a public (sometimes a private) service for dealing with his health. How far does that translation affect the right to be left alone by the Press? Freedom is a highly prized feature of any civilised society, but it carries with it responsibility. Responsible journalism stakes out a boundary line, a kind of *cordon sanitaire*, an area of the preservation of privacy. And that privacy attaches to the individual wherever he finds himself – in the home, at work or in hospital. By being in hospital a patient does not sacrifice his individual rights to privacy, but in practice the admission or the identity of a patient who is well known and therefore instantly susceptible to media attention may create a special, justifiable news interest in his or her medical condition. The issue has long been recognised, although its contemporary application is less well understood. This is true, in large part, to the failure to restate the solutions agreed upon 35 years ago.

In 1956 the Ministry of Health issued a circular, following the agreement approved by a conference of representatives of the medical profession and the newspaper industry. The circular, which was directed to hospitals and was incorporated in the deliberations of the Press Council, set out the guiding principles to be adopted. The principles can be summarised thus: in cases of sickness, information about a patient's condition should not be given to the press without the permission of the patient or his/her next-of-kin, beyond the statement that the person named in the inquiry is a patient in the hospital. If this statement would be deleterious to the patient's interests, disclosure of even the patient's presence in the hospital should be withheld. The circular gave examples of hospitalisation in special hospitals and NHS mental hospitals, where the mere admission of a patient implies the nature of the diagnosis. Information should not be given without both the patient's consent and that of the responsible medical officer or doctor in charge, who should satisfy himself or herself that to supply the information would not prejudice the patient's health or other interests. In the case of a well-known person a brief indication of progress in his/her care and treatment may be given, but only in terms authorised by the responsible medical officer or doctor in charge.

**Speech given at the Annual Meeting of the Royal College of Psychiatrists at Brighton on 2 July 1991.*

All hospitals are advised to ensure that a sufficiently experienced and responsible officer on the hospital administration – and nominated for the specific purpose – is available at all times, whether in person or on the telephone, to answer press inquiries. This is designed to avoid journalists contacting doctors, nurses and hospital staff, seeking information about a patient. Journalists should then direct their inquiries to the designated officer at the hospital. The Press Council consistently applied the Circular, and further held that journalists must not use subterfuge to gain admission to hospitals – e.g. by posing as visitors – in search of information about patients, whether interviews with them or pictures of them. Only in rare instances, where information which ought to be disclosed in the public interest could not otherwise be obtained, may journalists circumvent the requirement to identify themselves to a responsible hospital official before entering the hospital.

The recent Code of Practice of the Press Complaints Commission is more circumscribed. It echoes the journalist's duty to identify himself/herself for the purpose of making inquiries, but only in respect of "non-public areas". This presumably would mean that unauthorised entry could be made to the hospital, other than wards or operating theatres, to interview hospital staff or even patients temporarily in public areas. Thus the successor body to the Press Council is less protective of the patient's privacy.

Privacy has two discrete aspects to it: the non-disclosure by staff of information about the patient to a newspaper reporter; and the publication of information gleaned by journalists, often through means that do not involve entry to the hospital. It is a notorious fact that a few members of nursing staff, particularly at the Special Hospitals, sell information to certain newspapers about notorious patients, often distorting some insignificant but real incident into an issue of superficial enormity. The activities of these feeders of the news media are not easy to control by the authorities. The problem is that there appears to be no rule against publishing any item about a patient, even though the publication is a clear invasion of privacy. The Press Complaints Commission is silent as to any restriction on the publication of information about patients, although it unhelpfully states that the restrictions on invading privacy of the individual are particularly relevant "to enquiries about individuals in hospitals or similar institutions".

The Press Council, by contrast, did address the question of the publication of information about hospital patients. The Council adjudicated on 8 May 1990 on a complaint arising out of the admission of Mr Jeremy Thorpe (the former leader of the Liberal Party) into the Midland Centre for Neurosurgery and Neurology at Smethwick for assessment, whether he should undergo a noted surgical operation of implanting brain cells from an aborted foetus on to the damaged brain. The Council, in a reasoned adjudication, re-affirmed its adherence to the journalistic ethic that anything other than an identification of the patient's presence at the hospital may, without the patient's consent, constitute an invasion into private life. In the particular case the publication in a regional newspaper, the *Sandwell Express and Star*, did not involve a breach of journalistic ethics.

The Council, however, declared its awareness of other contemporary instances of public disquiet, justified or not, about the activities of journalists in seeking information, and of editors publishing reports, about patients in hospitals. It went on to say that it would be appropriate that the 1956 Ministry of Health Circular should be reviewed at a conference jointly held by the medical profession, health authorities and other sections of the media. By the time of its dissolution at the end of last year the Press Council had been able to do no more than stimulate the Department of Health's interest in the convening of such a conference.

The case to which I referred at the beginning of my presentation involved a patient detained under the Mental Health Act. Some detained patients require clinicians, tribunals and government departments such as the Home Office, to make very difficult decisions not only about their case and treatment regimes, but also, maybe more potentially controversial, when the time comes for their return to the community. The public clearly has a very legitimate interest in the process by which such decisions are reached and the safeguards which are included in the system. The patient also has a right to the protection of his privacy in as far as the details of his or her individual case is concerned. Given the Mental Health Act Commission's role of protecting the rights of detained patients, it is perhaps not surprising that the Commission would like to pursue this matter further. Earlier this year the Commission resolved to initiate a conference. It received the firm support of the Special Hospitals Service Authority. It would be helpful if the Royal College of Psychiatrists now lent its weight to such a proposal.