

Expert opinion

Confidentiality and the examining psychiatrist

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The dilemma of the medical practitioner as to when to break confidence and when to keep silent has again attracted the attention of the courts recently in the case of *R v Crozier* (*The Guardian*, 1990).

The facts in this case concerned the trial of the defendant for the attempted murder of his sister. In court the defendant had pleaded guilty and the case was adjourned while a medical report was obtained by his solicitor. One Dr M was instructed to examine the defendant and to complete the report. Unfortunately the report did not reach defence counsel in time for the hearing and the judge sentenced him to nine years in prison. Dr M entered the courtroom just as the judge was passing sentence. He had mistakenly believed that the hearing would begin later than it did. Dr M approached prosecution counsel and revealed that the defendant was in his opinion suffering from a psychopathic disorder which came within the Mental Health Act 1983 and that moreover a doctor who had originally believed that the defendant was not suffering from illness of that nature had now changed his mind. The prosecution applied under Section 47(2) Supreme Court Act 1981 for variation of sentence. The judge squashed the prison sentence and made an order under section 37 Mental Health Act 1983 and a restriction order under section 41. The defendant appealed, arguing that disclosure of the report amounted to a breach of the duty of confidence owed to him.

The decision

The appeal made by the defendant was rejected in the Court of Criminal Appeal who held that the judge

was acting in the interest of both the public and ultimately of the defendant in varying the appeal.

Their Lordships referred to the case of *W v Egdell* (1990) in which the disclosure by an examining psychiatrist of a copy of a report originally compiled at the request of W who was detained in a secure institution was held to be in the public interests on the grounds of the danger to the public at large. The Court of Appeal said that Dr M was in very much the same position as Dr Egdell had been. Both doctors believed that the disclosure was in the public interest.

Comment

This case follows hard upon the heels of the decision of the Court of Appeal in *W v Egdell*. It confirms that the courts are prepared to hold that a doctor may go ahead and disclose personal medical information in a situation where he believes that it is in the public interest to do so. There are, however, two issues which remain unresolved. Firstly, just exactly what was the duty owed by Dr M? Is the duty owed by examining psychiatrists the same as that owed by other medical practitioners? Secondly, we await a case to clarify the uncertainty we were left in after the judgement in *Egdell*, namely is a psychiatrist legally liable in the law of tort to a third party if he believes that a patient may pose a danger to them and he fails to warn that third party who is harmed by the patient?

References

The Guardian (1990) Law Report, 8 May 1990.
W v Egdell (1990) 2WLR 471.