



## W v. Egdell

[1989] EWCA Civ 13; [1990] 2 WLR 471; [1990] Ch 359; [1990] 1 All ER 835

**Country:** United Kingdom

**Region:** Europe

**Year:** 1990

**Court:** Court of Appeal, Civil Division

**Health Topics:** Health care and health services, Health information, Mental health

**Human Rights:** Right to due process/fair trial, Right to privacy

### Facts

W pled guilty to manslaughter on the grounds of diminished responsibility for the indiscriminate killing of several people. He was diagnosed with paranoid schizophrenia and was detained indefinitely in mental hospitals.

A Mental Health Tribunal recommended W's transfer to a regional secure unit (RSU) in 1984. The Secretary of State refused to consent to W's discharge or transfer at that time and again in 1987, after two psychiatrists recommended that W be transferred to a RSU. After those psychiatrists' assessments, in 1987, W's solicitors retained Dr. Egdell (respondent in this appeal), a distinguished consultant psychiatrist, to consult on W's suitability for transfer to a RSU. In contrast to the reports of prior psychiatrists, Dr. Egdell's report recommended strongly that W should not be transferred to a RSU or discharged. This prompted W's solicitors to withdraw W's application for transfer with the Mental Health Tribunal.

Not knowing that W's solicitors had withdrawn his transfer application, Dr. Egdell called the tribunal, asked whether it had seen his report, and was told that the report had not been received and that the application had been withdrawn. He then called the assistant medical director at W's hospital to express his disagreement with the other reviewing psychiatrists as to W's suitability for discharge or transfer. Although W's solicitors refused consent for the disclosure of Dr. Egdell's report, Dr. Egdell forwarded his report to the assistant medical director at W's hospital. Dr. Egdell also requested that the hospital send his report on to the Home Office, noting that he would otherwise send it himself.

When W's solicitors learned that Dr. Egdell submitted the report to the hospital they brought the original action against Dr. Egdell for breach of confidence. The lower court dismissed the action for damages and other relief. W appealed that decision.

### Decision and Reasoning

The Court affirmed the lower court's dismissal of W's claim on the basis that Dr. Egdell had not breached his duty of confidence.

The Court first noted that there were two competing public interests at stake in this case: (a) the duty of confidence owed by doctor to patient and (b) elimination of a risk to public safety. The Court determined that, considering W's past killings, there was grave concern for public safety such that the authorities responsible for W's treatment and management should have access to all information concerning his condition. Therefore, the balance of public interest clearly lay in the restricted disclosure of vital information to the Director of the Hospital and to the Secretary of State who had the onerous duty of safeguarding public safety.

One justice concurred, considering the strong public interest in maintaining professional confidences more deeply, and noting that a patient's right to confidence is underpinned by the public interest. The concurrence also noted the complications in balancing between a patient's right to confidence versus public interest considerations arising from the fact that Dr. Egdell was an independent psychiatrist reporting on W as a mental health patient under section 76 of the Mental Health Act. Ultimately the concurring justice agreed that Dr. Egdell's disclosure was necessary to protect public safety and prevent further crime.

### Decision Excerpts

In this case the number and nature of the killings by W must inevitably give rise to the gravest concern for the

safety of the public. The authorities responsible for W's treatment and management must be entitled to the fullest relevant information concerning his condition. It is clear that Dr. Egdell did have highly relevant information about W's condition which reflected upon his dangerousness.â€• Page 12.

â€œThe breadth of such a duty in any case is, however, dependent on circumstances. Where a prison doctor examines a remand prisoner to determine his fitness to plead or a proposer for life insurance is examined by a doctor nominated by the insurance company or a personal injury plaintiff attends on the defendant's medical adviser or a prospective bidder instructs accountants to investigate (with its consent) the books of a target company, the professional man's duty of confidence towards the subject of his examination plainly does not bar disclosure of his findings to the party at whose instance he was appointed to make his examination. Here, however, Dr. Egdell was engaged by W, not by the tribunal or the hospital authorities. He assumed at first that his report would be communicated to the tribunal and thus become known to the authorities but he must, I think, have appreciated that W and his legal advisers could decide not to adduce his report in evidence before the tribunal.â€• Page 14.

â€œWhere a man has committed multiple killings under the disability of serious mental illness, decisions which may lead directly or indirectly to his release from hospital should not be made unless a responsible authority is properly able to make an informed judgment that the risk of repetition is so small as to be acceptable. A consultant psychiatrist who becomes aware, even in the course of a confidential relationship, of information which leads himâ€"to fear that such decisions may be made on the basis of inadequate information and with a real risk of consequent danger to the public is entitled to take such steps as are reasonable in all the circumstances to communicate the grounds of his concern to the responsible authorities.â€• Page 19, concurrence.