

Foreword

On 26th June 2002, the Government published its draft Mental Health Bill for England and Wales, which if enacted, would signify the most fundamental reform of mental health laws for nearly half a century.

Since its publication, the mental health field has been very much in a reactive mode, driven by widespread concerns about a number of key proposals contained in the Bill. Described as ‘a serious threat to civil liberties’, ‘unethical and unworkable’, ‘a regressive public order measure masquerading as a therapeutic one’, the subsequent absence of the Bill from the Queen’s Speech in November was perhaps not surprising following its almost universal condemnation. Its omission gave rise to brief speculation that it might be withdrawn in its entirety from the Government’s legislative agenda, although such suspicions were short lived, following the Health Secretary, Alan Milburn’s assurances that the Government would press ahead and introduce a Mental Health Bill into the current parliamentary session. This brief hiatus will undoubtedly be welcomed by those campaigning against the draft Bill and afford Ministers an opportunity to reconsider the Bill’s more controversial proposals.

In the final months leading to the publication of a revised Bill in 2003, this issue of the Journal seeks to highlight the many fundamental concerns about the current draft Bill expressed by sectors working in the mental health field, by bringing together a handful of the estimated 2000 or so responses made during its short consultation period last summer. For ease of reference, the articles and commentaries which focus squarely on the implications of the draft Bill have been placed in a separate section at the end of this Journal (when editing this section, we have assumed that readers have some prior knowledge of the contents of the Bill).

The articles in the main body of the Journal focus on more varied topics in mental health law, although many have direct relevance to the proposed reforms. The complex and often emotive topic of psychopathic disorder is revisited in our first article by Professor Herschel Prins. In his article, which will be of particular interest to those involved in devising the future institutional care for DSPD individuals, the author highlights the enormous psycho-social-legal problems that those labelled as psychopathic cause in their day-to-day management, and recognises the need to adopt a multidisciplinary approach and a better and more effective use of existing services and funding in order to achieve their successful management.

Since 1994, independent inquiries have been mandatory for all homicides committed by persons in contact with mental health services. The recommendations contained in these reports are intended to influence mental health policy and practice, although the extent to which they do is the subject of debate. In their article, Melissa McGrath and Professor Femi Oyeboode present a series of findings following a qualitative review of recommendations from all reports of inquiries after homicide published between 1994 and 2001, and analyse the extent to which such recommendations have directly influenced mental health policy and practice today.

Our third article by Edward Myers looks at the topical issue of stress in the workplace and explores the current legal position of employees considering bringing actions for occupationally related stress against their employers. This article analyses the leading cases in this area of

Walker v Northumberland County Council (1995) and the more recent Court of Appeal decisions of *Hatton v Sutherland and Others* (2002) and discusses the implications of these decisions on the laws surrounding occupational stress.

Oliver Lewis' emotive article "Mental Health Law in Central and Eastern Europe: paper practice promise" focuses on ten countries in central and eastern Europe soon to become members of the European Union and explores the broad socio-legal issues within their mental disability systems. The author highlights the difficulties encountered by these countries in combating human rights violations within mental health services and asks whether the expectation that things will change following membership of the European Union is a realistic one.

Our final article in this section is authored by Mat Kinton and considers whether the powers to provide compulsory treatment under the Mental Health Act 1983 should be extended to prison environments and importantly, whether such an extension of powers should follow the proposals made by the Government in the draft Mental Health Bill.

We include three case reviews in this issue of the Journal. David Mylan reviews the case of *R (on the application of C) v Secretary of State for the Home Department* (2002) which considers the Home Secretary's powers to refer restricted patients who are subject to deferred conditional discharge, to a tribunal. This case follows the ruling in *IH* which was reviewed in the last issue of this Journal. As you will recall, *IH* established a "New Regime" for the ways in which tribunals should approach the conditional discharge of a patient in circumstances where the discharge cannot be immediately implemented, and as a result is deferred. David Mylan concludes that although the ruling in *IH*, to an extent, made the Court of Appeal ruling in *C* a foregone conclusion, it is the first instance decision of the Administrative Court in *C* that is of particular interest, in that it introduced a fetter on the powers of the Secretary of State to refer a restricted patient to a tribunal in certain circumstances.

Nicolette Priaulx reviews the House of Lords' decision in *R v Manchester City Council, ex parte Sennett, R v Redcar and Cleveland Borough Council, ex parte Armstrong, and R v Harrow London Borough Council, ex parte Cobham* (2002) which confirms that services provided under section 117 of the Mental Health Act 1983 are provided as a consequence of a free-standing obligation on the authorities, and are thus free of charge. The author discusses the financial implications of the decision for both social services and the NHS, its significance as a move 'towards protecting one of the cornerstones of community care policy' and asks whether the ruling will be sufficient to ensure a continued protection of the entitlement to free after-care services in light of the Draft Mental Health Bill 2002.

Nicola Cho considers the case of *R (on the application of SSG) v Liverpool City Council (1) Secretary of State for Health (2) and LS (Interested Party)* (2002) in which the Administrative Court approved the naming of gay and lesbian partners of mental health patients as nearest relatives under Section 26 of the Mental Health Act 1983. This decision is not only of significance for patients in same sex relationships, but it also evidences another important step by both the courts and Government towards the full legal recognition of rights of gay and lesbian couples.

The debate surrounding the management of those diagnosed as suffering from severe personality disorder is again highlighted in Deirdre N. Greig's book "Neither Mad nor Bad, the competing discourses of psychiatry, law and politics" which is reviewed by James Gray in this issue of the Journal. This book traces the life of Australian, Garry David and focuses of the responses of

society, parliament, the law and psychiatry to the problems presented by his behaviour and his being diagnosed as suffering from severe personality disorder.

The second section of the Journal considers the implications of the draft Mental Health Bill 2002. Professor Anselm Eldergill's paper "Is Anyone Safe?" analyses the Government's case for reforming mental health laws and analyses the new civil powers of detention and powers of compulsory treatment proposed by the Government in the draft Bill. This essay is based on Professor Eldergill's inaugural professorial lecture, which was delivered at Northumbria University on 13th November, 2002. A digital recording of this lecture can be found at <http://law.unn.ac.uk/mentalhealth/lecture>.

Thoughts on the draft Bill from both a legal and psychiatric perspective are provided by Professor Michael Gunn and Professor Tony Holland, in our second article on the Bill which is followed by a selection of responses to the Bill's consultation period on behalf of the Law Society, the Royal College of Psychiatrists, Liberty, and by MHRT Regional Chair, Guy Otten and by Robert Brown, social worker and approved trainer of ASWs.

As always, our thanks and gratitude to all those who have contributed to this issue of the Journal, and to the editorial board who work very hard to maintain the quality and integrity of the Journal. Unquestionably, the mental health law field continues to be both vital and expansive and we look forward with interest, if not with some trepidation, to the remainder of this parliamentary session.

Charlotte Emmett

Editor

