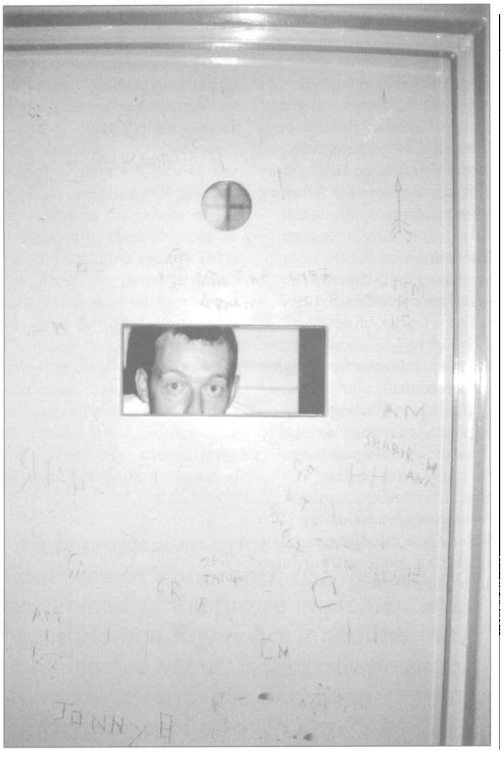
A response to the Government's consultation paper

Graeme Sandell adds to the debate on the Government's proposals.

The first thing I want to do is say something about some of the big, unavoidable issues in looking at this whole subject area. But I also want to highlight some of the more detailed matters that are flagged up in the consultation document and, indeed, some which are not. I think it is important to do so because the detail, as much as the principle, will determine whether or not the proposals that the Government set out, or proposals in a similar vein, can actually be translated into a reality acceptable to the rest of us. Alongside those two things, I also want to address some of the anxieties that we in the National Association for the Care and Resettlement of Offenders (NACRO) have. Indeed, I think I probably reflect some of the reservations that *other* individuals and organisations also have.



David Kidd-Hewitt

I want to start with some of the things that we at NACRO take into account when thinking about our response to the Government's proposals. We have drafted a response and, given the reception that it got at NACRO's Mental Health Advisory Committee last week, and following some preliminary discussions internally, I suspect we are going to be discussing the issues for quite some time. It is interesting that an organisation like NACRO, which is usually very clear in what it thinks, is struggling to be absolutely sure on some aspects of this one. It is an important recognition of how difficult this subject area is.

Maintaining hope

In terms of the things we took account of, the first is the harsh truth that there are some individuals who are so dangerous, regardless of the academic, historical or political basis on which we judge that danger, whom we will as a society deem to be a serious risk. We will want them locked up. That is an uncomfortable truth we will have to accept and some of the arguments I have heard from some civil liberties' quarters perhaps ignore that. I think we ignore that truth at our peril. Having said it, there is a consequent risk that we might end up with a system, whatever it looks like, that offers no hope to those people who are detained within it. I think it is absolutely crucial that any system we do develop maintains a degree of hope; the hope of eventually moving back to the community, but also the hope and the option of moving to less secure settings and to more appropriate regimes as people change over time. That is something characteristic of some of our European colleagues in the responses and the systems which they have set up to deal with this problem.

It is also important that the spirit of the consultation paper, in terms of continuing research to find therapeutic interventions or regimes that work, is carried on, because they are needed to underpin the new system. The important thing, and one which we very much want to urge in our formal response, is the need to maintain a level of funding and a level of commitment to commissioning the kind of research about 'what works'. I think the conventional wisdom is that the experts get it about 70% right, which is pretty good given the complexity of personality disorder. However, there is clearly a great deal of scope to do very much better, that must be underpinned by research. The consultation paper itself acknowledges that but is perhaps overly confident that the accuracy of assessment tools will dramatically improve in the near future. For now there is a risk that the proposed powers could be applied to the wrong people.

The other thing we took into account is that the United Kingdom's record in dealing effectively and appropriately with people with a severe personality disorder, especially in the context of our special hospitals, is not great. It is important to note that there are lessons to be learned from other European systems and the Dutch TBR *(Terbeschikking-stelling van de regering)* arrangements and the system that backs that up is always held up as a shining example. (The TBS is the order consigning people to detention). There are a lot of things to learn from the Netherlands and the consultation paper makes that clear. There is also a gloomier side. I have been to the Netherlands and seen the arrangements working; there are a lot of people in prison with mental health problems who should not be in prison, including a lot of people with quite severe personality disorders. The TBS system itself is getting clogged up over time because some people are not being moved on and the demand on is much greater than the Dutch anticipated when they first put it into place. So there are positive lessons to be learnt from abroad, as well as negative ones.

One of those lessons relates to the role and responsibilities of different professionals, particularly in who takes the lead. To me, the fact that the basis for detention under the new powers is about personality disorders, about

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abnormality of mind, leads without any question to psychiatry as being the agency or profession which has to take the lead role. Again, there is a qualification. In our response to the consultation document we will be saying that, while we think psychiatry should have the lead, by no means should they have the entire responsibility for this category of person. There needs to be a genuine multi-disciplinary approach. We would urge that the arrangements that are put in place should reflect what the Dutch, the Swedes and others do; that is, formally to encourage dissenting reports from other professionals who are involved in the process of making assessments, and recommendations on the back of those assessments.

'Joined-up thinking'

Finally, before I come to the detail of the current proposals, a personal hobby horse of mine; it is called joined-up thinking'. When he comes this afternoon, I expect the Minister will talk about the proposals for SPD fitting within a range of other mental health policy initiatives. These are about safe, sound, secure, mental health services. He will talk about the review of the existing *Mental Health Act* which Professor Genevra Richardson and an expert team have undertaken. He will talk, I am sure, about some of the proposals for changing the provision of health care and the arrangements for provision of healthcare in prison settings. I am sure he will also mention the National Service Framework for mental health services, which is due to be published later this month. I have no doubt that in saying these things he will be very sincere. I welcome his sincerity and I welcome the approach. There is a more sceptical side of me which worries about whether or not the 'joined-up thinking' that is required is evident in this area. Firstly, Professor Richardson's group has acknowledged, publicly enough for me to say here, that they had neither the time nor the expertise, adequately to review Part Three of the existing *Mental Health Act*. They have not looked at it that closely, therefore it is going to be impossible to square what they say about Part Three with the SPD proposals. In addition, a key element of the proposals coming from Professor Richardson's team is in respect of the civil sections of the existing Act and they are going to be proposing, as you may have seen from an earlier consultation paper they produced, a capacity test. Again, that is extremely difficult to reconcile with the proposals which have been set out for this particular group, the severe personality' disordered offenders.

The changes to the Prison Service form a very large document. The only thing it really says is that health needs to do more. I do not know what that means. I am not sure that those in the Prison Service or those in health services in particular, know quite what that means. Again, that is not joined up. Finally the National Service Framework, which is due to be published later this month will, I can confidently predict, make no substantial specific reference to the mentally disordered generally, let alone those people with severe personality disorder. So you have four key strands that have a direct bearing on where our mental health services for both offenders and others are going. It is not irretrievable, but there is clearly much to do to link all of these and I hope that many will be saying to the Government that they need to demonstrate that the joining-up can be done. The risk is obvious. If this does not happen, people with a severe personality disorder and other serious disorders who may fall through the gap and fail to get placed in the inappropriate services.

I will now return to the consultation paper itself and start by saying that in general terms NACRO welcomes the thrust of what the Government has set out. I have to say that, because last year we published a report called *Risks and Riots*, which I co-authored, urging the Government to go in this very direction. We stopped short of some of the more contentious areas, particularly the one about whether these powers should be applied to people who have yet to commit a criminal offence. I have already said that this is not NACRO's final view on these things, because we are still discussing the issues. The main argument is about whether we should support the proposals as they stand. These appear to suggest that people who have not committed any criminal offence could be detained under the proposed new powers. Some of my colleagues think that is a complete non starter, while others take the view that it is a matter of practicalities as opposed to principles. How many people could attract the diagnosis of anti-social or dissocial personality disorder from a psychiatrist, without having committed a criminal offence? I think if you look at those two international classifications of disorder you will find it almost impossible for anyone to get to this point. Nevertheless, I think there is a need for it to be tackled rather more clearly than in the consultation document as it currently stands.

Overall NACRO is in favour of Option B, which is the creation of an entirely new, separate service. We have some qualifications to add, not least because if people go to this new service there will be a very powerful stigma attached to them, which has implications for their future prospects, both within the psychiatric system and out in the wider community. We might say that the Option A proposal suggesting greater use of discretionary life sentences is superficially attractive, but it is only used in some 2% of the cases where it is technically available to the courts.

Looking at the details

I will now concentrate on some of the more important details in the consultation paper. Firstly, resources. We agree with the premise that the small group of individuals affected by these proposals represent a disproportionate challenge to existing resources. But we would want to emphasise that this will remain the case. There is not going to be an easy option of throwing money in the short term at the problem, cracking the problem and then being able to discontinue providing very substantial resources in the future. We think there is an absolute requirement for Ministers to make a commitment to provide sufficient resources to support the establishment of such a system.

I also want to talk about assessment. The discussion in the consultation paper about the development of rigorous assessment procedures only becomes material once an assessment process has been initiated. On my reading of the paper it is not clear what would prompt this. So the first question concerns whether a requirement for assessment is going to be prompted by an offence and, if so, what kind of offence are we looking at? In addition to the sexual and violent offences to which the paper refers - and obviously homicides are included - offences involving psychological violence, such as stalking and threatening behaviour, would also be relevant. But there is a problem if we link the requirement firmly to categories or types of offence, in that this might exclude some offenders who should properly be dealt with under the new powers. Even if the powers are only available through the courts, important questions also arise, such as would the requirement be automatic, removing discretion from judges? If not, how are we going to train our judges so that they will be properly aware and confident of implementing the measures they are empowered to use? The emphasis in the

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consultation paper appears to be on the training of the multi-disciplinary team which will be involved in the management of SPD individuals. Training for those who will be concerned with initiating the court process does not feature at all.

Moving on, I think there needs to be a clear framework setting out the basis on which assessment will be triggered. It might be sensible to find something of a compromise where, for example, assessments are mandatory for certain categories of offence; obviously the more serious ones which I have already mentioned, but also to be discretionary for any offence, so that the entire field is covered. Just where during the criminal proceedings the assessment process would be set in train by an offence needs to be identified. It is probably necessary for a tariff of seriousness to be laid down. That list of offences would also be pertinent in any civil proceedings, with the framework setting out the basis on which assessment will be triggered and determining whose responsibility it would be to set the process in motion.

Staffing, training and security are very important areas. Judging by the experience of our special hospitals, we think there may be some difficulties in terms of striking the correct balance between providing adequate security in the new service as well as a sufficiently therapeutic environment. Security is not just about doors that lock and windows that cannot be opened; it is about the environment and the relationships of people who work in those centres. If the system is to work well there is an argument to be made for therapeutic regimes to be an integral part of the overall structure, so that the security procedures are enhanced by the development of those constructive relationships. Another crucial aspect of staffing is that, on the one hand, staff who have remained for a long time in a particular service know the ropes and have a great deal to offer in terms of making the facility run well. But of course they are also vulnerable over time to becoming manipulated, to colluding consciously or unconsciously with patients. On the other hand, you have new staff coming in who do not know the ropes and are vulnerable because they lack information and understanding of the individuals with whom they are dealing and of how the system works. We think it very important that a structure is imposed on any new system, with a pattern of staffing rotation and secondment ensuring that people do not get stale or manipulated. This can also be used constructively to make sure that there is more movement of staff between different parts of the relevant services, which would minimise the separateness of the kind of service that will inevitably ensue. Numbers are also important and there is a necessity for there to be adequate staffing to ensure the proper ratio to patients, both in specialist units and the ones the Government are talking about setting up under Option B.

Therapeutic approaches are not much mentioned in the consultation paper. It is important to recognise that although the SPD group we are looking at is not large - 2000 or thereabouts - it is liable to present a very wide variety of problems, necessitating a range of very different therapeutic approaches. Outcomes are more likely to be positive if the patients are matched to regimes most appropriate to their needs. There is also an argument to consider about how many we need and where such centres should be sited. There is an argument applying to prisons generally, that people should be detained somewhere adjacent to where they normally reside, because this gives them the best opportunity of maintaining family ties, friendships and other links with their community. If you are providing a range of specialist services within an overall service and different regimes within that service, then that reduces your ability to minimise the geographical dislocation for the people that are being detained. I point again to the Dutch example, which has addressed this issue by creating a range of clinics with a range of different therapeutic regimes. When they set up their range of clinics it was some years ago and it is very hard to change the nature of an approach taken by a particular clinic. Now the level of demand, the nature of the demand and the set of needs that they are trying to respond to, does not easily match the network of facilities they have.

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Outcomes

I also want to say something about outcomes. Since it is intended that the new system as proposed would involve powers of supervision and recall following release, it should not be very difficult to keep track of the individuals involved for the purpose of measuring outcomes over a period of time. There are a number of outcome measures set out in the consultation paper. We are looking at a very difficult group of people and there needs to be recognition, not least so the public understands, that it would be silly to raise the hurdles to success too high. Perhaps this links back to the hope question; if you set up a system where most people will fail, then the view is going to be that it is purely about incarceration and not about positive, constructive attempts to work well with people.

We would also urge much greater emphasis be given to prevention. Somewhere out there are young people developing serious personality disorder. It would be good if we did not have to wait until they engaged in the kind of behaviour which risked criminal convictions, or any other behaviour which would bring them into contact with these kinds of provisions. We think there is much more that could and should be done to identify what contributes to young people developing these problems and to making interventions much earlier.

There are a couple of pitfalls which the new service could fall into. The first one is the broad one about implementation. If you are going to establish a new service, where do you put it? I do not think that many people would welcome these new centres in their back garden, so maybe we have to build them where we have already got similar facilities in place.

A further difficulty is the problem of people clogging up the system over time. There are two problems: the clogging caused by those people who are unsuccessful in terms of being able to be moved on to other parts of the system, or out of it; and the fact that if the system works well, it may become over-attractive to some judges.

In conclusion, while I welcome the Government's proposals in general terms, I very much hope that the Minister might give us some assurances about some of the things on which I have touched. In particular, that the resources will be available; that there will be a clarity about who leads and who is accountable for the arrangements; that the commitment to seeking better responses, the research, the testing out of different regimes and clinical approaches is high and will be maintained over time; and that the four key strands of mental health policy relevant to this group are joined up in a transparent and effective way. We need a system that gives hope to the people who are held within it and where all those involved strive for success. That is the best way, at the end of the day, to protect the public.

***Graeme Sandell** is Head of Mental Health, NACRO*