Proposals for the dangerous severely personality disordered: well or ill-intentioned?

Jill Peay questions the Government's proposals.

After two years of extensive informal discussions and an announcement in February of an imminent consultative document the Government has now published its outline proposals for those deemed to be suffering from severe personality disorder who pose a risk of serious offending (Home Office/Department of Health 1999). The delay is testament to the complex array of inter-relating issues faced by the joint working group; issues which raise questions about the diagnosis and treatment of severe personality disorder and the assessment, prediction and management of risk, whilst at the same time having profound implications for civil liberties, the law, professional ethics and service provision. But, having confronted these difficulties, do the proposals bear critical examination?

The developments only directly involve a small group of people - estimated to be just over 2,000 in England and Wales - who are very seriously disordered and who are thought to pose a very high risk to the public. Most of these men (and over 98% of them are men) are currently detained in prison or in secure hospitals (Singleton et al 1998). A small number are in the community; whilst thought to be some 300-600, the document accedes there is no existing research data to back this up.

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Of those who are detained, the law currently requires that some will be allowed to return to the community even though they remain dangerous. The spectre, therefore, is of a potential danger which better designed law and better services might minimise.

The legal options

Two options are proposed, both of which rely on the development of new and more rigorous procedures for assessing the risk associated with severe personality disorder. Both options require amendment to the current *Mental Health Act* and the introduction of new civil orders to detain those deemed DSPD (the 'dangerous severely personality disordered') but currently considered untreatable by some mental health professionals. The second option would also require the courts to acquire greater powers to sentence those with DSPD to indeterminate detention.

In the week following their launch the proposals were roundly condemned. Much of the criticism has focused on the power to incarcerate in anticipation of *potential* wrongdoing - characterised by even the *Daily Telegraph* as 'another step towards abolishing the presumption of innocence' which they rightly termed 'a vital bulwark against the capricious application of law'. The Royal College of Psychiatrists are strongly opposed to the compulsory detention in psychiatric hospitals of those with psychopathic disorder deemed untreatable. Proposals which can unite in opposition MIND, the Law Society, Liberty and the Royal College of Psychiatrists suggest that the Government may need to reflect further.

The lack of public information

Four matters of concern have not, as yet, attracted great attention. First, the proposals will clearly impact on the *Mental Health Act 1983*. As the document notes 'Decisions on proposals for new legislation to tackle the problems presented by dangerous people with severe personality disorder will need to be looked at alongside proposals for wider changes in mental health law' (1999:8). The Richardson Committee has advised the Secretary of State for Health on the necessary scope of those changes. Yet, comments are being sought on the DSPD proposals without 'Richardson' having been published. It is curious that whilst Government is in possession of this necessary information, it is not to be shared with those whose comments are now solicited on DSPD. Is this a failure to engage in joined up thinking or a case of the sighted wanting the views of the blind? Either way it makes little sense and can hardly facilitate incisive submissions.

Secondly, there is the complex question of treatment. The proposals are set in an acknowledged context not only of inconclusive research into the causes of severe personality disorder and how best to address the associated risks, but also in the knowledge that there is no convincing evidence that psychopaths can or cannot be successfully treated (Dolan and Coid 1993). Whilst great emphasis is placed on the need for a programme of appropriate research, policy development apparently cannot wait for the outcomes of this research before decisions must be made. Given the levels of distress amongst the group concerned (they exhibit suicide levels comparable to those with mental illness) and the perceived risk of harm they pose to others, one can understand the urgency. In an ideal world, policy development should be tempered by research findings. However, with the tiny numbers involved, the complex and uncertain aetiology, the diagnostic problems of properly differentiating those who *would* satisfy the DSPD criteria and who *would not* be false positives for risk, and of the long time-scale involved for therapeutic programmes, one must question the robustness of any research designed to answer the complex questions posed. It may be that the nature of the problem is simply not amenable to research designed to establish clinical effectiveness. In this context, 'policy development' ought to proceed with the utmost caution.

The proposals are premised on the basis that there is a need to develop effective therapeutic strategies and underpinning legal provisions for those currently

deemed untreatable by psychiatrists (for if they were treatable, they could be eligible for the existing raft of hospital provisions). Whether a genuine legal lacunae exists, rather than an understandable unwillingness by some practitioners to accept these patients, is a moot point. The House of Lords re-iterated in *Reid* that treatment, and by implication treatability, is to be interpreted broadly, including the provision of nursing care; the treatabilty test therefore appears primarily a basis for practitioners to exercise their discretion in respect of the patients they would wish to treat. Changing the law will not necessarily change their decisions; and whilst civil orders under the Government's first option (of no new specialist facilities) could result in increasing numbers of untreatable DSPD patients being placed in health facilities, if health professionals are unenthusiastic about accepting them, will the assessment process, whose outcome will be dependent on these health professionals, generate any would be compulsory clients?

Treating an unwilling population

Attempting to treat the untreatable is sufficient of a challenge. But attempting so to do with an unwilling population is likely to defy the most ardent of those practitioners prepared to have a go. Moreover, whilst great emphasis is to be placed on a thorough assessment of those who may be suitable for the DSPD regime, it is hard to imagine why those potentially at risk of indeterminate detention would wish to co-operate with the battery of tests and history taking involved. This is, by definition, an intelligent and manipulative group of offenders (or potential offenders); what for them would be the incentive to co-operate? Indeed, what are mental health practitioners to say when explaining the purpose of assessment? The ethical dilemmas they face are manifest. Research on the treatment of those with personality disorder appears to support the notion that effective treatment - if any there be - takes place with willing participants. Hence, prisoners opt to go to Grendon; patients attend the Henderson Hospital on a voluntary basis. The use, for example, of compulsory cognitive behaviour therapy with a group of offender/patients and non-offenders, all of whom probably retain capacity, is bizarre; how might research progress into the effectiveness of treatment given that so many of those undergoing the new measures will be unwilling or untreatable on conventional measures? Working with this group, detained indefinitely, is likely to be extremely undermining of staff morale and problematic for patients, not least because of the difficulty they will face in terms of demonstrating their reduced risk.

David Kidd-Hewitt

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Potentially dangerous proposals

Third, the proposals involve the removal of psychopathic disorder from the criminal sections of the MHA; thus, there may be no sentencing option for those with something less than DSPD, even if they are treatable. Is no therapeutic effort under compulsion in hospital to be made with this group? Perhaps the answer, given the argument above, is no, and rightly so. But the proposals are not explicit about why this group of needy offenders should be excluded from hospital disposals. Imprisonment beckons, albeit with the prospect of transfer to hospital if they have co-occurring mental disorders. And for those in the community, who might be willing to engage with services, are they not even less likely to present themselves if the prospect of a civil order of an indefinite nature (with or without the prospect of benefit from treatment) hangs over any contact they may have with the mental health services? In short, the proposals are potentially dangerously anti-therapeutic.

Finally, there is the lesson of the Hospital and Limitation Direction (Eastman and Peay 1998). As another initiative designed to tackle the problems this group poses, its implementation and subsequent near terminal neglect as a sentencing option should be an object lesson in why ill-considered legislative reform is not what is required. That is not to suggest that nothing is required, for these proposals do concern a group of profoundly damaged and distressed offenders; some of whom clearly have the capacity to cause serious harm to others, and have done so in the past, thereby meriting lengthy periods of incarceration. But the emphasis, if treatment is on the agenda, surely has to be on willing participation by this group, and on willing participation by those who must engage with them. There must be an incentive for co-operation with effective and well resourced services, not the threat of indeterminate detention for both offender and, seemingly, therapist. ■

Jill Peay *is a Senior Lecturer in Law at the London School of Economics and Political Science.*

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