# Excessive compulsion disorder: the *Mental Health Bill* and the public safety agenda

**Marcus Roberts** describes the problems with compulsory treatment elements of the new *Mental Health Bill*.

*"Some say they were happy to be detained under section, others resented it and felt they were in prison being punished – so is it an illness or a crime to have mental health problems?"*
**Service user's letter on the draft *Mental Health Bill*.**

*"Afterwards I felt totally beaten, defeated. I felt I had no value, no self-worth. There isn't a word that describes it."*
**Service user's experience of compulsory treatment.**

What is the relevance of the *Mental Health Bill* – introduced into the House of Lords on 16th November – for a journal of criminal justice matters? Surely this bill is about health care, not crime and justice? It is the product of the Department of Health (strapline: "providing health and social care policy, guidance and publications"), not the Home Office (for the record, "putting public protection at the heart of everything it does"). The responsible minister, Rosie Winterton, is Minister of State for Health Services; the supporting cast is led by Louis Appleby, the mental health 'czar'. True, the purpose of this Bill is to amend the *Mental Health Act 1983*, which deals (among other things) with diversion of 'mentally disordered offenders' from the criminal justice system to the mental health system. But nothing in the new Bill directly amends these bits of the 1983 Act. (Some of the general amendments will affect people in the criminal justice system as well – for example, the new and wider definition of mental disorder.)

But public protection lies at its heart all the same, and has driven the long process of which this Bill may be the final ceremony – including draft Bills in 2002 and 2004, both abandoned. The other notable product of this long drawn out legislative, pre-legislative, inter-legislative and re-legislative process has been the rise of a Mental Health Alliance, which has united 78 organisations in opposition to the Government's approach. With hindsight it is clear that the Government's problems were inscribed in its starting point: a misplaced focus on dangerousness to the general public and the widening of the net of compulsion in the name of public safety. The murders of Lin and Megan Russell by Michael Stone in 1996 provided some of the context for New Labour's initial engagement with mental health law. Nor can it be a mere coincidence that the Bill was published the day after a report on the random killing of Denis Finnegan by John Barrett in Richmond Park – Barrett had absconded from Springfield Hospital in Tooting where he was being treated for schizophrenia. Inconveniently, for the Government's spin machine, the Barrett inquiry concluded that "the remedy for what went wrong in this case lies not in new laws or policy change", but in improved mental health services (NHS London, November 2006).

This brings us back to the question of the relevance of this Bill for crime and justice. The 1983 Act provides for powers to detain and treat people compulsorily following an initial assessment period if: they have a psychopathic disorder or mental impairment, and treatment is likely to alleviate or prevent a deterioration in their condition, and the exercise of compulsory powers is necessary for their health, safety or the protection of others. The Government believes this gateway is too narrow, and wants to widen it by amending the Act. It also wants to introduce new compulsory powers to impose conditions on people discharged from hospital, such as compliance with medication and restrictions on movement ("supervised community treatment"). The Bill will also remove exclusions under the current Act which prevent behaviours such as "immoral conduct" and "sexual deviance" from being seen as mental disorders for the purposes of mental health law.

### Reality check

It is grossly misleading to represent people with mental health problems in general as dangerous. The number of homicides committed by people with severe mental health problems represents a tiny fraction of all homicides - around 1 in 20 (*The Guardian,* 1999). This figure has remained constant as we've moved away from institutionalisation towards more treatment in the community – there has been no increase in the homicide rate since the policy of community care was implemented (Taylor and Gunn, 1999). Each of these crimes is extremely serious and devastating for victims and families. To provide some perspective, however, it has been calculated that there were an estimated

1.2 million incidents of alcohol-related violence in 1999, approximately 23,000 per week (Richardson and Budd, 2003). Roger Dobson has observed in an article entitled *Are Schizophrenics the Lepers of our Time* that "statistically we are all 400 times more likely to die from flu than to be killed by a mentally ill patient" (Dobson, 1998). Dr George Szmukler claims that the risk of being killed by a psychotic stranger is "around the same as that of being killed by lightning ... about 1 in 10 million" (Szmukler, 2000). A *Cochrane Review* of the available research evidence concludes that 238 people would need to be compulsorily treated in the community to avoid a single arrest (Kisely, Campbell and Preston, 2006).

On 3 December, a new Government report, *Avoidable Deaths*, was announced on the front page of *The Observer* by the headline 'One person a week killed by the mentally ill'. This report points out that 9 out of 10 victims are not strangers, but friends, carers or family members. This raises some important issues about risk assessment, responsiveness to carers' concerns and follow through in the community. But these issues will not actually be addressed by this Bill.

Would the powers proposed in the Bill make a difference in the small number of tragic cases where violent crimes have been committed by people with mental health problems? Not, according to official inquiries, in the John Barrett or Michael Stone cases. Or take the case of Daniel Gonzalez who killed two women in Sussex and two men in North London in September 2004. Before he committed these crimes, his mother had written to social services bluntly asking "Does my son have to commit murder to get help?" Daniel himself had taken a letter to his GP that read: "Please, please help me, this is very urgent. I really, really do need medical help to find the correct environment and the correct medication" (*The Guardian* 2006). None was forthcoming. It is a recurring theme in such cases that services turn away people when they ask for help. It is troubling, therefore, that the Government has continued to resist calls from the Mental Health Alliance for the introduction of a right to assessment for people approaching services, who should have care plans put together and delivered to address their health and social care needs.

There is no quick legislative fix for what is fundamentally a service provision problem. While there is no evidence that compulsory treatment improves outcomes, we know a great deal about what does actually work. It is things like aftercare support for people leaving hospital, multi-disciplinary outreach teams in the community, and services to tackle stigma, exclusion and isolation. In practice, when local NHS Trusts are faced with budget deficits, it is too often mental health services that get cut – and often precisely those services that help to provide integrated support services for those who need them most.

**Matters of value and functionality**

This mental health law controversy is not only about facts and evidence-bases; it is also about the legitimate function of mental health services. What are they for? What kinds of concerns and outcomes should be the primary focus of legal reform and policy development?

In an article in the *BMJ*, Professor Nigel Eastman voices the concern of many psychiatrists that the mental health system is "being used to effect preventive detention of people who cannot benefit from treatment" (Eastman 2006). This isn't what health services are for. This view was echoed by Shawn Russell – Lin Russell's husband and Megan Russell's father – on the publication of the Stone report. He commented to the BBC, "I agree that you can't lock people up if they haven't done anything, but...I think that the agencies that deal with people like this could work a lot better together to monitor people like this" (BBC News, 2006). The Government should not use mental health services to warehouse difficult people who are unconvicted of any crime and for whom they can provide no help.

In particular, the Bill will remove the so-called 'treatability test' from the 1983 Act. Under current law, someone with a psychopathic disorder or mental impairment cannot be sectioned following an initial assessment period unless treatment can be provided that is likely to 'alleviate or prevent a deterioration' in the patient's condition. The Bill replaces this test with a requirement that 'appropriate treatment is available'. It is difficult to think of a criteria of appropriateness that does not include some health benefit. The Government has – to date – resolutely resisted the campaign of the Mental Health Alliance for a test of 'therapeutic benefit'. Nor has it clarified what exactly it does have in mind.

**Fundamental rights and harm prevention**

Mental health law restricts such basic human rights as freedom of movement and bodily integrity. It makes it possible for someone who has committed no crime in be kept in an (too often bleak and grim) institution for weeks, months or years; to be physically restrained and compelled to take drugs with powerful side effects. What other area of law so radically disempowers human beings and suspends such fundamental rights?

Such powers should not be used lightly, and the greatest care should be taken in developing law in this area. At the very least, the basic quid pro quo for loss of freedom should be treatment that actually helps. Mental health law should be based – consistently and exclusively – on fact and evidence, not media mythology and moral panic, and it should be centrally focused on improving health and social care outcomes, not crime prevention. Mental health legislation should not be targeted disproportionately at the 50 or so people each year who commit homicides, but should address the care needs of the 25,000 people a year who are currently subject to the provisions of the 1983 Act. We should also be highlighting the importance of protecting the individual – the *Avoidable Deaths* report found that 25 mentally ill people a week take their own lives, and that far too few are receiving adequate support after they leave hospital under enhanced care plans.

If the Government's focus had been on service delivery and health benefit from the outset, not only would the majority of people with mental health problems who pose no risk take their rightful place at the heart of the debate, but the evidence suggests we'd deal more effectively with those rare individuals who may pose a genuine threat.

■

***Marcus Roberts** is Head of the Policy and Parliamentary Unit at Mind.*

*Continued on page 39*

*Continued from page 25*

Further information and discussion is available on the Mind website at www.mind.org.uk and the Mental Health Alliance website at www.mentalhealthalliance.org.uk – as well as information about getting involved in the campaign against the current Bill.

**References**

BBC News (2006) "Russell Murder Report Published', http://news.bbc.co.uk/1/hi/england/kent/5376036.stm

Dobson, R. (1998) 'Are Schizophrenics the Lepers of Our Time?', *Independent Review,* 21 July 1998 p.11.

Eastman N. (2006), 'Reforming Mental Health Law in England and Wales', *BMJ*, 2006 332: 737-738.

*The Guardian* (2006), 'Killer who Wanted Fame Murdered four in random attacks', 17 March 2006.

*The Guardian* (1999), 'It is Wrong to Rush in', 17 November 1999.

Kisely S., Campbell L.A., Preston N., (2006) 'Compulsory Community and Involuntary Outpatient Treatment for People with Severe Mental Disorders', *Cochrane Review*, The Cochrane Library, Issue 3, 2006. Chichester, UK: John Wiley & Sons, Ltd.

National Confidential Inquiry (December 2006) *Avoidable Deaths: Five Year Report of the National Confidential Inquiry into Suicide and Homicide by People with Mental Illness*. Manchester: University of Manchester. http://www.medicine.manchester.ac.uk/suicideprevention/nci/

NHS London (November 2006), *Independent report into the care and treatment of John Barrett* (at www.london.nhs.uk/londonnhs-publications.aspx?id_Content=7300)

Richardson A. and Budd T. (2003), *Alcohol, Crime and Disorder: a Study of Young Adults*, Home Office Research Study No. 263.

Szmukler, G. (2000) 'Homicide Inquiries. What Sense Do they Make?', *Psychiatric Bulletin*, 24, 6-10.

Taylor P. and Gunn J. (1999), 'Homicides by People with Mental Illness: Myth and Reality', *British Journal of Psychiatry*, January 1999 174: pp. 9-14.

*Continued from page 35*

Hester, M. and Westmarland, N. (2006) *Service Provision for Perpetrators of Domestic Violence.* Bristol: University of Bristol.

Hester, M., Westmarland, N., Gangoli, G., Wilkinson, M., O'Kelly, C., Kent, A. and Diamond, A. (2006) *Domestic Violence Perpetrators: Identifying Needs to Inform Early Intervention.* Bristol: University of Bristol in association with the Northern Rock Foundation and the Home Office.