Preventative Detention

Dominic Beer asks whether a controversial aspect of the New Mental Health Act is really fair.

In the last decade, mental health services have received much adverse publicity, particularly over homicides committed by psychiatric patients. This has given rise to the mistaken public perception, especially in the print media, that many psychiatric patients pose an increasing danger to other people. In fact the number of homicides committed by the mentally ill has remained both small and constant since the 1950's.[1] However, in the litigation-culture in which we now live, it seems that someone must be blamed for these rare events.

The 125-page New Mental Health Act[2] White Paper is an attempt to restore the public's faith in the mental health services, and is as much about public protection as mental health: 'Concerns of risk will always take precedence'. Both the Secretary of State for Health and the Home Secretary have signed it. There is a widening of the definition of 'mental disorder'. People with 'dangerous and severe personality disorders' can be detained if there is a 'significant risk of serious harm to others'. There is no need any more to show that treatment will help. Hence, preventative detention is envisaged. This may be difficult to square with the Human Rights Act 1998, which says that detention may only occur for recognised disorders on 'objective medical evidence' rather than for 'behaviour deviating from the norms prevailing in a particular society'.[3] So, in practice, we may ask who will actually be detained? The estimate is about 2,200 such people, possibly more, three-quarters of whom are currently detained in prisons or in maximum secure hospitals. Who will manage them? What will the treatment/management be? Where will they be detained? For how long? What will the criteria for release be? These are questions for which there is little evidence or research base to provide clear answers.[4,5,6]

The question of preventative detention is the most controversial part of the proposed legislation, but there are other issues, which may provoke discussion. After the 1983 Mental Health Act, mental health professionals in Europe will have found it strange that their counterparts in the UK allowed themselves increasingly to be put in the position of being considered accountable for the anti-social actions of their mentally ill patients. The proposed legislation seems to accentuate this.[7]

What then of the Christian angle? The ethical principles in question here are truth, justice, mercy, personal responsibility and public welfare. If there are indeed people who pose a danger to society, then society needs to be protected from them as far as possible. However, there is no accurate way of identifying such people reliably. As a consequence, many people may be detained who would not have gone on to do anything anti-social. There is injustice in that. Scrutiny by tribunals may well redress some of the justice issues and will assist in seeking out the truth as it pertains to risk factors for violence in individual patients. However, improving public welfare by a small amount is likely to be at the expense of justice for many individuals and possibly also of justice for society in the long term. How does the principle of mercy apply to those suffering from mental illness who have committed an offence? Under these proposals they have the opportunity to benefit from treatment rather than imprisonment. The emphasis in the White Paper of providing more assertive treatment in the community for those who do not wish to have it appears to lessen the emphasis on personal responsibility. However, the written care plan must address issues not just of mental health but also those relating to the patient's physical health, accommodation, employment, faith and financial needs. By focusing resources on the social, personal and medical needs of this group of patients, some patients may become more willing to comply with their overall care, thus improving their mental health and ability to take more complete responsibility for their actions. But for those with 'dangerous and severe personality disorder', preventative detention may result in a diminution of personal responsibility by trying to make mental health professionals 'responsible', or accountable, for the anti-social actions of their patients.

In summary, for the mentally ill, these proposals may lead to better care if resources are forthcoming. For those with 'dangerous and severe personality disorders' the proposed legislation enters unknown waters. It is unjust if there is an emphasis on detention when no crime has been committed and no effective treatment is given. But if detention can be therapeutic, thus enabling change, this group may end up benefiting.

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KEY POINTS

Distorted media coverage of homicides committed by psychiatric patients has created the perception that dangers to the public are increasing and that 'the system' has somehow failed. It is therefore no surprise that the New Mental Health Act White Paper is as much about public protection as mental health. The proposal to detain those with severe personality disorders is particularly controversial. Whilst the safety of society is important there is currently little evidence or research base to provide clear answers about the 'who', 'where', 'how' and 'how long' questions of detention. Public welfare must therefore be balanced with justice and mercy and treatment must be aimed at promoting a sense of responsibility in the patients themselves.

References

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3 Winterwerp v Netherlands 1979, 2 EHRR 387

4 Eastman N. Public health psychiatry or crime prevention? *BMJ* 1999; 318:549-551

5 Szmukler G, Holloway F. Reform of the Mental Health Act: health or safety? *British Journal of Psychiatry* 2000; 177:196-200

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7 Van Lysebetten T, Igodt P. Compulsory psychiatric admission. A comparison of English and Belgian legislation. *Psychiatric Bulletin* 2000; 24:66-68