Correspondence

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Concerns over reform of the Mental Health Act

Szmukler & Holloway (2000) have expressed their concern that proposed changes to the Mental Health Act 1983 owe more to the current preoccupation with public safety than to concern for patient care. We believe that many other psychiatrists share these concerns. This is supported by the results of a postal survey that we conducted last year. It involved sending a brief questionnaire to every consultant psychiatrist in England and Wales. The questionnaire provided background information on what at that point was known about the proposals (Department of Health, 1998) and focused on attitudes towards plans to extend powers of compulsory treatment in community settings.

We mailed the questionnaire to 2655 psychiatrists and received 1171 replies, a response rate of 44%; 541 (46%) responded that they were in favour of plans for compulsory treatment in the community. The remainder either disagreed with the plans (406, 35%), or stated that they were unsure about them (224, 19%). In addition, one in every six psychiatrists stated that they might be prepared to refuse to implement the plans. Additional comments were written in a space provided on the form by 625 (53%). Some felt that plans were long overdue and necessary for the proper implementation of community care. Others expressed the view that the changes would be anti-therapeutic, would lead to increased use of compulsory powers and increase stigma. We concluded that a clear consensus on the need to extend compulsory powers into community settings does not exist.

In order to allow for compulsory care in the community these proposals lower the threshold for compulsory treatment from that which "warrants detention in hospital" to that of "a mental disorder of such seriousness that the patient requires care and treatment" (Secretary of State for Health, 1999). Such a change is likely to lead to a further increase in the use of compulsory powers unless other factors balance these changes. Szmukler & Holloway's suggestion that greater emphasis should be placed on a person's capacity and that a legislative framework for advanced directives should be provided would be an important step towards obtaining this balance and may help to gain more widespread professional support for any new Act.

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Szmukler, G. & Holloway, F. (2000) Reform of the Mental Health Act. Health or Safety? *British Journal of Psychiatry*, **177**, 196–200.

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Szmukler & Holloway (2000) put forward some plausible arguments in favour of incapacity as a key point in deciding when to administer treatment on an involuntary basis. However, there is the problem of how to assess the capacity of the individual in question.

Guidelines regarding capacity of individuals already exist (Department of Health & Welsh Office, 1999). Assessing capacity, however, remains a subjective process and any decision regarding capacity will depend on the assessor. Incapacity in such circumstances could then simply amount to disagreeing with the psychiatrist (Sayce, 1998). If such an Act were to replace current legislation, it would be important to avoid this pitfall. This can only be assured by taking into account the views of all concerned parties – professionals, clients and the public. Whatever changes are made, it will be important to avoid excluding individuals lacking capacity who would benefit from compulsory treatment, in the name of individual liberty; or including individuals for compulsory treatment whose views regarding treatment even remotely differ from the widely held beliefs of the profession, in spite of having the capacity to decide (Fulford, 1998).

The recent preoccupation of society and the psychiatric services with dangerous individuals with mental illness has become instrumental in demands for changes in the mental health legislation. However, to assume as Szmukler & Holloway do that the protection of society is the prime aim of involuntary treatment is ill-founded. They cite an increase in compulsory admissions as evidence. However, during this period other factors, such as targets to reduce rates of suicides and increasing charges of negligence against psychiatrists owing to widely reported cases of suicide and homicides, have also played their role in increasing detention of individuals under the Mental Health Act.

In the current environment there is a need for a broader and more open discussion involving professionals, clients and the public alike. Only by educating the public can we as professionals fulfil our duty in the shaping of a just and more humane policy towards people suffering from mental illness.

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