

Foreword

As readers will be only too aware, the 3rd November 2008 will see the coming into effect of most of the amendments made by the *Mental Health Act 2007* to the *Mental Health Act 1983*¹. It is also the date on which the Mental Health Review Tribunal becomes one of the new First-tier tribunals² within the Health, Education and Social Care Chamber consequent to the provisions of the *Tribunals, Courts and Enforcement Act 2007*. With the publication of numerous regulations and lengthy Codes, the implementation of the Deprivation of Liberty (formerly a/k Bournewood) safeguards still scheduled to take effect in April 2009³, and the *Mental Capacity Act 2005* having not yet been in force for even a year⁴, these are very demanding (and interesting) times for all those working in the field covered by mental health law, be it, for example, as practitioners attempting to get to grips with the new legal provisions; lawyers seeking to advise and assist clients, sometimes against a background of some uncertainty; trainers attempting to convey the extent of the changes without alienating their audience by the sheer volume of material; or MHA administrators seeking to devise appropriate procedures. There is so much to be considered and written about⁵, but of course potential authors (particularly at this time) have many other pressing demands made of them, in addition to any requests editors of academic journals may make. Fortunately some have found the time to write for this issue of the JMHL. As ever, we are very grateful to them for their generosity.

In the November 2007 issue Kris Gledhill, a barrister now lecturing in the Law School at the University of Auckland, New Zealand, critically analysed 'Community Treatment Orders'⁶. Mat Kinton, Senior Policy Analyst at the Mental Health Act Commission, has helpfully taken matters further, and provided a detailed look at the detailed provisions contained within ss. 17A to 17G of the amended MHA 1983, which should help '**Towards an Understanding of Supervised Community Treatment**'. I do hope that in future issues the JMHL will carry reports indicating the extent to which use is made of CTOs. Will they prove to be as damp a squib as the soon-to-be-abandoned After-care under Supervision has proved to be, or will they be utilised as much as in some other jurisdictions⁷?

Anselm Eldergill, a former Visiting Professor in Mental Health Law at Northumbria University's law school, turns his (and our) attention to the Republic of Ireland. In '**The Best is the Enemy of the Good: the Mental Health Act 2001**', he carefully analyses some of the provisions of the Republic's 2001 Act, a consideration of other provisions being promised in Part 2 of his article, to be published in the next issue. As regular readers will know, the JMHL's Editorial Board is very keen to publish articles about other jurisdictions, and these two articles about Ireland are of course most welcome.

In previous issues of the JMHL, the plight of offenders with mental health problems has perhaps not received the attention it warrants. We make some amends within this issue. In '**Proposed reforms to Partial Defences and their Implications for Mentally Disordered Defendants**', Dr. Andy Bickle, Specialist Registrar in Forensic Psychiatry, provides a detailed consideration of the Law Commission's proposals for new definitions of provocation and diminished responsibility, and includes a discussion of their consequences for the provision of expert psychiatric opinion. In '**The Community Order and the Mental Health Treatment requirement**', Linda Seymour and colleagues from the Sainsbury Centre for Mental Health report on that organisation's ongoing research into the use made of such orders by the criminal courts.

1 See www.dh.gov.uk .

2 The other two tribunals within the Chamber are to be the Care Standards Tribunal and the Special Educational Needs and Disability Tribunal (England). For more information about the proposed changes see www.tribunals.gov.uk .

3 See www.dh.gov.uk

4 The implementation date of the Act was 1st October 2007

5 E.g. the 'Guardianship and deprivation of liberty' debate, encouraged by a subsequently much-discussed article which was published in the November 2007 issue of the JMHL (pp 170 – 173) – 'Deprivations of Liberty: Mental Health Act or Mental Capacity Act?' by Richard Jones.

6 'Community Treatment Orders' Gledhill (2007) JMHL November pp 149 - 169

7 For some idea of CTO statistics elsewhere, see f/n 103 of Gledhill, *op.cit.*

In the past the JMHL has not published many accounts of research. This issue is somewhat of an exception. In addition to the article from the Sainsbury Centre, we have two further reports of investigative work. Dr. Bickle and forensic psychiatrist colleagues from Rampton High Security Hospital summarise an **'Audit of Statutory Urgent Treatment at a High Security Hospital'** (namely Rampton). The audit concentrates on the use made of section 62 MHA 1983. Mat Kinton and a Commissioner colleague, Bob Jones, invite us to consider **'A snap shot of long-term section 17 use in South West England'**. I am delighted that the JMHL has been invited to convey reports on these interesting pieces of innovative work, and I hope other researchers will submit articles to us for consideration for inclusion in future issues.

We are again well-served with case reports. They cover a wide range of issues:

- Peter Bartlett (Nottinghamshire Healthcare NHS Trust Professor of Mental Health Law at Nottingham University) considers **'Capacity, Best Interests and Sex'**, when reviewing Munby J's lengthy judgment in *MM v Local Authority X*⁸, a case of interest and importance to all concerned with issues of 'capacity' and 'best interests'.
- Roger Pezzani and Stephen Simblet (both Barristers) find that **'Section 75(1) of the Mental Health Act 1983 is compliant with Article 5(4) of the European Convention on Human Rights... just'**. They review the Court of Appeal's decision in *R (Daniel Rayner) v Secretary of State for Justice*⁹ about the statutory duty of the Secretary of State for Justice to refer the case of a recalled conditionally discharged patient to a Mental Health Review Tribunal.
- Neil Allen (Barrister and Teaching Fellow at Manchester University) analyses the Court of Appeal's decision in the important case of *Savage v South Essex Partnership NHS Foundation Trust*¹⁰. In **'Protecting the Suicidal Patient'**, Mr. Allen concludes that: "If suicide prevention is to be a national priority, obliging mental health services to take reasonable steps to protect life in limited circumstances would surely be a positive, and not unduly onerous, judicial development." This highly significant case will be considered by the House of Lords later this year.
- In a third contribution to this issue, Dr. Bickle recognises that **'The Secretary of State for Justice has a duty to provide Offending Behaviour Programmes in prison – submissions to the contrary are lacking in realism!'** In the combined cases of *R (Walker) v Secretary of State for Justice* and *R (James) v Secretary of State for Justice*¹¹ the Court of Appeal considered the consequences of an insufficient number of offending behaviour programmes in prisons for indeterminately detained 'dangerous offenders'. Given the fact that "a significant proportion of those in line to participate in [such] programmes will suffer from a mental disorder" (to quote Dr. Bickle), I have no doubt that a review of this interesting case warrants inclusion in the JMHL.

We conclude with a number of book reviews. We consider **'Risks, Rights, Recovery'**, the Twelfth Biennial Report (covering 2005 – 2007) of the Mental Health Act Commission; **'Mental Health Law'** by Professor Phil Fennell; **'Blackstone's Guide to the Mental Health Act 2007'** by Paul Bowen (Barrister); and two books by Professor Jacqueline Atkinson – **'Advance Directives in Mental Health: Theory, Practice and Ethics'** and **'Private and Public Protection: Civil Mental Health Legislation'**.

The last Foreword in the November 2007 issue ended with a statement that every effort would be made to adhere to the publication date of the next (this) issue of May 2008. Regrettably, despite our best efforts, that has not proved possible, and for this I do of course apologise. I hope however that readers will find the contents of this delayed issue to be interesting, informative and helpful. I would be delighted if it also inspired the submission of contributions for future issues.

John Horne

Editor

8 [2007] EWHC 2003 (Fam)

9 [2008] EWCA Civ 176

10 [2007] EWCA Civ 1375

11 [2008] EWCA Civ 30