

Foreword

Since publication of the last issue of the Journal, there has been considerable and increasing speculation about the Government's timetable, and indeed intentions, with regards to progressing the reform of mental health legislation as outlined in the White Paper published in December 2000. As this issue goes to print, the uncertainty persists, as does the debate on what will/should be the detail of the Bill to be presented in due course to Parliament. Consistent with our aim when publishing previous issues, we intend that the contents of this issue of the Journal will contribute to that debate.

Our first article is by Professor Herschel Prins. Professor Prins contributed to the June 2001 issue with some 'comments' on Part II of the White Paper. In this issue, he takes a broad overview of the concepts of dangerousness and risk. He places them in past and present contexts, and provides examples of how supervision of dangerous offenders might be made to be more effective. He reminds us that "occasional failures are inevitable" once "society has ordained that risks through legislation will be taken".

Paragraph 2.25 of the White Paper states the Government's intention that "the Patient Advocacy Liaison Service [PALS] announced in the NHS Plan [July 2000] will be the gateway to specialist advocacy services". In our second article Sinead Dalton and Peter Carlin take a 'brief look' at Independent Advocacy, and express concern that independent schemes might be threatened by PALS. They urge that independent advocates develop a greater understanding of the law affecting their practice, and that schemes develop more adequate policies and guidelines, particularly in relation to confidentiality.

In our third article, Dr. Alec Buchanan encourages us to return to the 'capacity' debate highlighted by the Report of Professor Richardson's Expert Committee, and subsequently responded to by the Green Paper of November 1999. He returns to basics and asks why we have mental health legislation. He suggests that if one answer is to provide criteria for psychiatric detention and treatment, those criteria should be based on a person's ability to make a proper choice.

As we await legislative developments, courts and tribunals have been fully occupied grappling with difficult issues relating to the care and treatment of those with mental health problems - not least because of the possibilities presented by the Human Rights Act 1998 to imaginative lawyers. Space allows us to examine in detail only a small number of the reported cases potentially of interest to our readership. In this issue: Hilary Patrick reviews the important Privy Council decision on the Scottish Parliament's controversial 'public safety' legislation in *A v The Scottish Ministers*; David Hewitt considers the Court of Appeal's views on the further detention of a recently-discharged psychiatric patient as conveyed in their judgments in *R v East London & the City Mental Health NHS Trust and David Stuart Snazell, Approved Social Worker, ex parte Count Franz Von Brandenburg*; Paul Bowen recognises the significance for those detained patients who refuse treatment, of the Court of Appeal decision in *R (on the application of Wilkinson) v Broadmoor RMO (1) Mental Health Act Commission (2) Secretary of State for Health (Interested Party)*; Anne Stanesby reflects on the European Court's finding of inhuman and degrading treatment and punishment of a mentally ill prisoner, in the case of *Keenan v The United Kingdom*; and finally Elizabeth Griffiths contemplates

the failings of disability discrimination legislation and government guidance to have sufficient recognition for workplace difficulties faced by those with a mental illness, in her consideration of the Employment Appeal Tribunal decision in *Leonard v Southern Derbyshire Chamber of Commerce*.

Richard Jones's *Mental Health Act Manual* (published by Sweet and Maxwell) is widely regarded by practitioners from many disciplines (and members of the judiciary) as 'the bible' in the field of mental health law. In the autumn of 2001, the 7th edition was published. In our Book Reviews section, Robert Brown and Anthony Harbour contribute a critique of this authoritative and invaluable text. In December 2001, the Mental Health Act Commission published its Ninth Biennial Report, covering the period 1/4/99 to 31/3/01. In our second book review, Professor Anselm Eldergill, whilst acknowledging the Report as "essential reading" and as providing "an excellent summary of where mental health services stand", casts a critical eye over its contents, bearing in mind the Commissions statutory remit.

As always we express our gratitude to those who have so generously contributed to this issue of the Journal.

John Horne

(Acting Editor)