

# Foreword

We begin this issue of the Journal by focusing on Parts I and II of the Government White Paper - Reforming the Mental Health Act, which was published in December last year.

Our first article by Philip Fennell takes a detailed look at the proposals contained in both volumes of the White Paper, which set out radical changes to our current legal framework of compulsory mental health care. The author argues that the proposals, which promote a closer working relationship between psychiatric and criminal justice systems, will result in adverse consequences for traditional medical values, and a shift in the balance of power between patients, family and state. Professor Herschel Prins provides further comments on the proposals for High Risk patients under Part II of the White Paper and questions whether the proposals give rise to unrealistic public expectations of risk assessment and management based on moral panic and the Government's need for political expedience.

Peter Bartlett, takes a critical look at English mental health reform and urges English analysts to look closely at the mental health law reforms which have occurred in Ontario and which reflect many of the concerns and issues currently being debated in the UK. The article draws a number of useful comparisons between the Ontario system and the proposed English one and suggests that English commentators and legislators would do well to look to the experience of mental health law reform in Ontario, which has much to teach us.

In our fourth article "Legal Knowledge of Mental Health Professionals: Report of a National Survey", Dr Nigel Eastman, Caroline Roberts and Jill Peay present findings from a national postal survey carried out to assess relative levels of legal knowledge within professional groups who hold key responsibilities under the Mental Health Act. The results of this important study are significant for those working and training professionals in the field of mental health and are of particular relevance for those deciding on the future roles of professionals under the proposed new Mental Health Act.

Professor Georg Hoyer and Dr Robert Ferris set out a detailed analysis of involuntary outpatient treatment of patients with mental disorders. They explore whether the introduction of broad outpatient commitment orders is warranted by empirical evidence about the efficacy and effectiveness of such orders in their article.

Finally, David Hewitt considers the use of placebo for therapeutic purposes in the treatment of patients with mental illness. The article examines the lawfulness of the practice under domestic law and the possible effect of the Human Rights Act 1998 upon therapeutic placebo administration.

In this issue we review four recent cases, three of which concern Mental Health Review Tribunals. In each of the cases, the effect of the implementation of the Human Rights Act 1998 is very apparent. Anselm Eldergill considers the Court of Appeal's decision in *The Queen (on the application of H) v Mental Health Review Tribunal North East & London Region and the Secretary of State for Health* (2001). The Court's conclusion that the burden of proof placed on patients at MHRTs is incompatible with Articles 5(1) and 5(4) of the European Convention on Human Rights, (and the consequent Declaration of Incompatibility), is of course of considerable interest beyond the confines of mental health law. In *R v Camden and Islington Health Authority ex parte K* (2001) the Court of Appeal considered the plight of those patients granted deferred conditional discharges,

but who have no reasonable prospects of discharge. In *The Queen (on the application of C) v London South and South West Region Mental Health Review Tribunal (2000)* the Administrative Court declined to view the standard 8 week period between an application by an unrestricted patient and the MHRT hearing itself, as failing to meet the requirement in Article 5(4) for a speedy review of detention. Kristina Stern and Rebecca Trowler have submitted interesting analyses of these two decisions. Finally, Philip Plowden considers the Court of Appeal's deliberations in *R v Offen, McGilliard, McKeown, Okwuegbunam, S (2000)*, on mandatory life sentences for those convicted of a second 'serious' offence unless 'exceptional circumstances' apply, and looks at the implications of the Court's decision for those suffering from a mental disorder.

As always, we are very grateful to all the authors for their generous contributions to this issue of the Journal.

*Charlotte Emmett*

Editor