editorials

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Managers' hearings: dialectic and maternalism

Patricia Gregory, the chairman of an NHS trust, has written a personal perspective on the structures that protect patients' rights within the current Mental Health Act for England and Wales (Gregory, 2000, this issue). Her particular interest is in the role of the hospital managers, as defined in the Act. Patients detained under the Mental Health Act 1983 for England and Wales have the right to appeal against their detention to a formally constituted mental health review tribunal (MHRT), chaired by a lawyer or judge, sitting with an independent consultant psychiatrist and a lay person with relevant experience. In addition, patients have the right to appeal to the hospital managers.

Hearings are conducted by the non-executive directors and by specially appointed lay 'managers' who are not involved in the running of the service in any way. The 'lay' managers usually have no mental health background or experience. The chair and non-executive directors of NHS trusts are appointed by the Minister for Health. Their role was originally to bring business expertise and values to the NHS. Both executive and non-executive directors have recently been given a new responsibility for 'governance'. Because financial considerations might intrude into the decision-making process regarding the detention of individual patients, executive officers of trusts are excluded by the Act from conducting managers' hearings.

Steven Dorrell, the then Minister for Health, circulated a letter (Dorrell, 1996) advising trusts of his intention to abolish the right of appeal to the managers at the earliest opportunity. This was prompted by the media outcry following a widely publicised disaster that occurred following the discharge of a patient by managers.

No central authority keeps statistics on managers' hearings. Discharges by managers, already very rare, are now unheard of (at least until Gregory's report from Kingston). However, the number of such hearings seems to have increased. Because patients are entitled to legal representation at such hearings, paid out of the legal aid fund, mental health lawyers have increasingly used such hearings as a paid practice run for the later MHRT. The appeal to the managers has accordingly adopted the customs and practice of any quasi-judicial body adjudicating on legal detention. Some managers, particularly those who have sat as magistrates, rise admirably to the occasion, though without the assistance of a clerk.

Gregory does not touch on the necessity for 'separation of powers' when sitting in authority over legal detention. The professional judiciary are independent of elected politicians so that they are able to administer the law in an open, fair, objective way, fearless of local prejudice or popular outcry. Gregory's view that powers of detention should be exercised by political figures is not without precedent, however. Parliament took on the role of judge and jury – leading to the regicide of Charles I. Unlike Cromwell's parliamentarians, however, trust chairmen are unelected political appointees. Even the power of unelected political authorities has had its proponents, though the chair of an English NHS trust might be surprised to find himself/herself in sympathy with Marx and Mao.

Gregory suggests that lay managers recruited from the local rotary club might be more representative of the class, culture and ethnicity of the local population. This is a good point and in keeping with her views regarding the extension of popular political power.

Although her article is infinitely tactful, Gregory may be hinting in places that she is somewhat dissatisfied with clinicians. Psychiatrists are often criticised for being excessively paternalistic (whether male or female). We are lampooned for assuming too readily that patients are incapable of making responsible decisions and we then make those decisions for them. In fact the shortcomings of mental health services frequently derive from lack of resources, a point seldom mentioned in managers' hearings, MHRTs or Mental Health Act Commission reports, or for that matter in reports of inquiries after homicide.

I would suggest that the particular fault of psychiatrists now is not to be excessively paternalistic. Our modern failing is to be excessively maternal (here used to apply equally to males and females). By maternalism I mean that benign disposition described by Milne (1926). Faced with a young person of impulsive and energetic temperament who does not know what he wants but has strong opinions about his dislikes, Milne's archetypal mother:

> "knew that he needed just as much kindness as the smaller ones",

and tactfully avoids confrontation. In psychiatry, in the modern culture of complaint, it is often prudent to avoid

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confronting the sensitive, the grandiose and the impassioned. This preserves the therapeutic relationship for a later day, but it has some adverse effects. Often the first time a patient realises that all those around him or her really think he or she is deluded is when confronted in a MHRT, usually by the independent tribunal doctor. If the patient's psychiatrist is consistently kind and tactful in this way, he or she may never have an honest conversation with the patient about his or her illness. If the psychiatrist decides to wait until the patient is less agitated, the eventual confrontation may then be taken by the patient as evidence of inconsistency or perfidy.

Once adopted, the habit of therapeutic maternalism usually generalises to other interactions with sensitive, grandiose figures. I know of one trust where this habit of years of benign maternalism by the consultants ended finally in an abrupt and unheralded vote of no confidence in the trust chair. The surprised recipient resigned but was promptly appointed to a similar chairmanship elsewhere.

Gregory offers to provide common sense for little cost and with minimal training. Gregory does not appear to include professional values or scientific expertise within her definition of common sense, at least as practised by psychiatrists. She appears also to exclude the skills of the lawyer, the social worker or, indeed, the philosopher. At worst, what is left as the major component of common sense is folk wisdom, complete with prejudices, misinformation and superstitions. At best, common sense might include clarity of thought and directness of expression. Perhaps then the appeal against detention should be heard by the most powerful of unelected political activists, those who are not only independent of elected politicians but are actually more powerful than them. The apotheosis of the journalist is upon us.

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