Critical Psychiatry Network

'MANAGING DANGEROUS PEOPLE WITH SEVERE PERSONALITY DISORDER

Proposals for Development'

A Response by 'The Critical Psychiatry Network'

(Previously ''The Bradford Group')

1 EXECUTIVE SUMMARY

This response to the government's proposals for managing 'people with Dangerous and Severe Personality Disorder' (DSPD) is made by a group of psychiatrists who share concerns about this and other governmental statements regarding persons with mental health problems.

1. We oppose both of the suggested models for people 'with DSPD'.

2. A recent survey of opinion amongst Consultant Psychiatrists suggests that many colleagues also have strong misgivings about the proposals and that a substantial minority would refuse to implement them.

3. We assert that it is inappropriate medicalisation of human behaviour (in this case, amorality and violence) which has led to the notion of DSPD as a condition amenable to diagnosis and treatment.

4. Furthermore, the evidence base for reliable 'diagnosis', 'risk assessment' and 'treatment' is so weak as to fatally undermine the justification for such drastic measures as indeterminate detention of persons allegedly 'having DSPD'.

5. We believe that the attempt to extend medical authority into preventative detention without treatment (detaining persons 'with DSPD' who had not yet committed a dangerous offence) would breach both medical ethics and Human Rights legislation.

6. We believe that all citizens should have equal rights to fair judgement and sentencing under the criminal

justice system.

2 INTRODUCTION

2.1 The Critical Psychiatry Network

This response to the government paper *'Managing Dangerous People With Severe Personality Disorder'* has been prepared by the 'Critical Psychiatry Network' (formerly the *Bradford Group*), which first met in Bradford in January 1999 to discuss Government proposals to change Mental Health legislation. Members of the Network are individual senior psychiatrists working in England, including members of the Critical Psychiatry Group, based in London.

2.2 Views of the Psychiatric Profession

We have evidence that serious concerns about the government proposals are by no means confined to our membership. In the Summer of 1999 we conducted a survey amongst Consultant Psychiatrists in England and Wales. Sixty percent of the 1137 respondents stated they were opposed to the introduction of preventative detention: only nineteen percent gave their support to such powers. Furthermore, no less than thirty percent of respondents indicated that even if preventative detention became law, they would refuse to implement it. (Further details of this survey are appended to this statement).

We oppose preventative detention for people who are considered to have 'personality disorders' and reject both options proposed by the government. This statement sets out our objections, both as a response to the Proposal Document and as part of a campaign opposing the introduction of preventative detention.

3 THE CONTEXT - PSYCHIATRIC POWER AND MEDICALISATION

3.1 Excessive claims by Psychiatry

For 150 years, psychiatry has claimed expertise and knowledge over an ever-widening range of human problems. Nowhere has this has led to more contradiction and confusion than in the concept of 'personality disorder'. This confusion helps us to understand the public argument between the Home Secretary and the President of the Royal College of Psychiatrists[1] on the *Today* programme in 1998. Their dispute concerned whether or not people considered to have untreatable personality disorders should be nonetheless detained in hospital. The Secretary of State attacked psychiatrists for their reluctance to treat 'unstable offenders', and the President declared that 'the Home Secretary cannot expect psychiatrists to do his dirty work for him when it is presently excluded by the law'.

Political and public anger is understandable if psychiatrists, after claiming for years to have expertise about the human condition, perform a *volte face* in respect of personality disorder. But we assert that indeterminate detention is a step too far, and carries ethical implications that are unacceptable when judged against the scant knowledge base concerning personality disorder in psychiatry.

3.2 Inappropriate Medicalisation

Our view is that the concept of 'Severe and Dangerous Personality Disorder' (DSPD) has arisen in the context of a wider medicalisation of human behaviour. In the desire to distinguish the 'normal' from the 'abnormal' society has allowed the use of medical - especially psychiatric - power to make respectable the control of people seen as undesirable by society at large. This is what Eastman[2] refers to as the public health function of psychiatry. It seems to us that 'DSPD' is a late 1990's western term for people who in the past might have been seen as 'bad' or 'wicked'.

To reify human behaviour and bad behaviour in particular, as being a medical condition properly amenable to medical processes such as diagnosis, prognosis and treatment, is a fundamental shift which has many implications that have not been thought through, either by the government or the wider public. For example, any notion of freedom or responsibility is severely weakened or even inappropriate if one accepts a medical framework for such problems. This forecloses the possibility of any public debate about the moral and ethical status of dangerousness and responsibility. We believe that it is essential that such a debate occurs in the public domain.

4 WEAKNESSES IN KNOWLEDGE ABOUT DSPD

4.1 Problems with Diagnosis

Even if one sets aside the fundamental concerns about the conceptual basis for DSPD, there are serious weaknesses within the knowledge base regarding this condition. Despite ministerial statements to the effect that anyone knows who the people concerned will be, there are real difficulties in terms of reliable diagnosis. There is a further complication in that contrary to the implications in the document many people have both mental illness and personality traits (which some may term 'disorder').

Such problems should be deeply disturbing to a democratic society when, on the basis of such frail judgements, citizens may be erroneously drawn into a system that may detain them without the prospect of release for life. Yet the proposal document, having stated a need for further research, seems to imply that the drive to action will mean such concerns are brushed aside and indeterminate detention for persons 'with DSPD' will go ahead anyway, despite (one can only conclude) the officially acknowledged current lack of reliable methods of diagnosis. We agree with Mullen's view[3] that the diagnosis of psychopathy is tautological, and does little more than reaffirm a history of previous offences in a different (medical) language, thus generating a spurious association between personality disorder and offending. This is mythology, not science.

4.2 Weakness in Risk Assessment

We assert that weaknesses in the assessment of risk will imperil citizens who do not, in reality, pose a threat to others. Risk assessment, much in vogue at present, claims in this context to predict human behaviour with sufficient reliability as to be the foundation for crucial and potentially long-term decisions about that person. This will be especially difficult when attempting to predict the risk of a serious offence in someone who has yet to commit such an act. The real weakness of risk assessment relates to the methodological problems of drawing conclusions from nomothetic research to individual cases. Whilst research has identified risk factors for *groups* of people, the reliability of applying such factors to *individuals* is highly problematic, especially in respect of rare events such as an individual serious criminal act. Furthermore, it is not at all clear that doctors

or other mental health workers are the most appropriate persons to judge dangerousness.

Again, as with diagnostic problems, the proposal document includes admissions of weaknesses in risk assessment. Yet it seems this failing, which in practical terms is as fundamental as problems in diagnosis, is to be downplayed in the rush to legislate. We note that many of our colleagues, who would not necessarily agree with some of our other concerns, do have deep misgivings about the reliability of risk assessment in this context.

4.3 Implications of Untreatability

The proposal document is confused and vague regarding treatability. Whilst the *raison d'être* for these proposals is to allow the detention of persons judged to be untreatable, the same document also refers to the current evidence for treatments for people 'with DSPD': and then admits to significant weaknesses in the evidence for treatments.

The essence of the concept of DSPD is that the condition is an intrinsic part of that person's psychological and behavioural repertoire. Setting aside our difficulties with the notion of 'treatment' in this context (namely that this places human personality within a highly medical framework) we note that others share doubts concerning the evidence for the value of treatment[4]. The individuals referred to in published research will have been selected in terms of motivation and have not been compared to adequate control groups. That is, such treatments have not been tested in the wider range persons seen as having DSPD. The validity of such approaches is highly dubious, and there would be no prospect of 'recovery' (and consequently release) for most persons detained because of alleged DSPD.

5 ETHICAL AND CRIMINAL JUSTICE ISSUES

5.1 Breaches of Healthcare ethics

The proposals are deeply flawed from an ethical standpoint. We believe that care and treatment are fundamental values that justify medical authority. We also believe that for doctors to participate in a system that expressly detains people without the reasonable prospect of treatment is an unsustainable and unethical extension of medical power. It also defines the problem as medical when in fact it is moral and social. We accept that, like all doctors, psychiatrists have a public health duty, but it is our view that there is no justification for the use of preventive detention when there are already adequate means for the protection of the public under the Criminal Justice System. In England and Wales, section 2 of the Crimes (Sentencing) Act allows discretionary life sentences for those convicted a second time for serious violence or a sexual offence.

The government's proposals pose ethical problems to all mental health workers who may become involved in the identification and assessment of persons with 'DSPD'. So far as the medical profession is concerned, we will be seeking the guidance of the General Medical Council.

5.2 Potential for Abuses of Human Rights

Contrary to the government's position, we believe that the cornerstone of the proposals - that persons deemed to have untreatable Dangerous and Severe Personality Disorder should be detained, even without

conviction - may well be in breach of both common justice and Article Five of European Convention on Human Rights. We agree with Eastman's[2] view that the government, in choosing to follow this route in tackling the problem of dangerousness, is doing so to avoid coming into conflict with Article Five, which proscribes 'arbitrary detention' except in those deemed to be of unsound mind. We believe the several and serious problems with the concept, definition and assessment of 'persons with DSPD' will lead to such arbitrary detentions.

It is our view that there are disturbing parallels with past examples of the political abuse of psychiatric power. In the former Soviet Union, psychiatry was routinely used to seek out and persecute those dissident individuals who did not conform to the State's norms. In our own nation asylums were once used to confine young single mothers on the grounds that such deviant (and supposedly socially dangerous) behaviour must indicate some form of moral insanity.

6 FUTURE CONSIDERATIONS

6.1 Potential extension of DSPD detention

We believe that either of the two options outlined by the government would, if enacted, create a dangerous precedent. The highly charged political and media focus upon mentally disordered offenders is likely to continue and to be inflamed by the government's focus upon mentally disordered dangerous offenders (as opposed to non-disordered dangerous offenders, who form the majority of killers[5]). In time, there may be increasing pressure upon psychiatrists to recommend prolonged detention if there is doubt about possible risks: and for the reasons given above there will often be much doubt. Similarly, there will be great difficulties in recommending release.

We believe that as a result of these pressures there will be far more people affected by the proposed policies than is suggested in the proposal document, either through the potentially terrifying process of referral for assessment for DSPD or in actual detention.

6.2 Rejection of Prejudicial Approaches to the Mentally Disordered

As already stated, we reject both of the alternative approaches proposed by the government. We do acknowledge that there is public concern over this area and we are not arguing that recidivists should be at liberty to assault or kill others. What we do oppose is the misguided and prejudiced idea of detaining fellow citizens, without right of jury trial, on the basis of an alleged disorder whose definition and even existence is not clearly agreed, using risk assessments of dubious value, with the prospect of detention perhaps for many years from young adulthood, without reasonable hope of 'treatment' and therefore release.

6.3 More Appropriate Use of Current Criminal Justice Systems

Instead of having a different (diminished) set of rights for persons more or less arbitrarily designated as 'having' DSPD, we believe all citizens share rights to fair trial and sentencing as offered by the existing criminal justice system. We suggest that existing provisions, such as section 2 of the Crimes (Sentencing) Act, could be used in respect of all serious offenders, i.e., without prejudice those diagnosed with personality disorders.

REFERENCES

1 '*Today'* programme, Radio 4: see '*Psychiatrists hit back at Home Secretary'*, British Medical Journal 1998; 317:1270; 7 November.

2. Eastman, N. (1999) Public health psychiatry or crime prevention. *British Medical Journal.* 318, 549 – 551.

3. Mullen, P. (1999) Dangerous people with severe personality disorder. *British Medical Journal.* 319, 1146 – 1147.

4. S. Kinsley, *'Psychotherapy for severe personality disorder: exploring the limits of evidence based purchasing'*. British Medical Journal, 1999; 318:1410-2.

5. PJ Taylor & J Gunn, *'Homicides by people with mental illness: myth and reality'*; British Journal of Psychiatry, January 1999:174: 9-14.

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SURVEY OF CONSULTANT PSYCHIATRISTS IN ENGLAND AND WALES

A Brief Report

As a result of concern by the 'Bradford Group' (Critical Psychiatry Network) regarding government proposals in the mental health field, a postal survey of consultant opinion was undertaken members of the network in the early summer of 1999. We aimed to include all Consultant Psychiatrists working with adults within England and Wales.

In the questionnaire we stated:

'... the government is proposing changing the law to allow certain people to be held under preventative detention who have come to be regarded as suffering from a personality disorder. Such people would already be diagnosed as dangerous. No criteria for dangerousness has been specified but psychiatrists are expected to detect the degree of dangerousness and detention would probably depend on whether a high degree of dangerousness is 'diagnosed'. It is proposed that this procedure may be applied to persons who are mentally competent and have committed no crime'.

We then asked if the recipient supported plans for reviewable detention and also, should reviewable detention became law, if they would refuse to implement it.

We sent out 2430 questionnaires and received 1137 replies (a 47% response rate).

Only 214 (19%) of respondents said they supported plans for reviewable detention. 684 (60%) said they were against the plans. 203 (18%) said they were unsure and 36 (3%) said they believed the issues raised would not affect them.

Furthermore, 339 (30%) of all psychiatrists who responded said that if reviewable detention became law they would refuse to implement it. 292 (27%) said that they would implement it and 454 (40%) were unsure.

We believe that these findings suggest widespread professional concern about these proposals.