Supervised discharge – paper tiger?

Frank Holloway

The Mental Health (Patients in the Community) Act received Royal Assent in November 1995 and comes into effect on April 1st 1996. Officially the legislation is a "key part of the Government's strategy to ensure more effective care in the community for people with severe mental illness" (Jewsbury, 1995). It is the last element to be put in place of the Ten Point Plan, put forward by the then Secretary of State for Health in August 1993 (Department of Health, 1993), in response to a perceived crisis in community care for the mentally ill. The Act inserts additional sections into the Mental Health Act 1983 and the Mental Health (Scotland) Act 1984, introducing the new power of 'supervised discharge' (termed 'aftercare under supervision' in the legislation). The stated political intention of the new "stronger legal powers" is that patients are "subject to conditions, including a treatment plan negotiated with them and their carers, and a requirement to attend for treatment. A named key-worker [is] responsible for that patient's care" (Department of Health, 1993). Revealingly, the Ministerial Press Release concludes that the legislation "will reinforce the message for those caring for mentally ill people outside hospital that their supervisory responsibilities must be vigorously discharged". The Act is seen as providing a formal legal structure for the aftercare of detained patients.

This new Act, some 5000 words long, should now have been read by most psychiatrists. At the time of writing, the planned supplement to the *Mental Health Act Code of Practice* has not been published, although it has been circulated in draft form (Jewsbury, 1995). Trusts are struggling to put into place administrative systems to deal with the legislation. The process of placing a patient on 'aftercare under supervision' is clearly the product of a committee of very powerful minds who have together produced an intricate jewelled bureaucratic mechanism. The end result from the patient's perspective is very similar to a Guardianship Order initiated by health professionals, excepting the 'power to convey', which it has been suggested may allow patients to reconsider their adherence to the agreed aftercare plan in transit! The practicalities and circumstances of conveying an unwilling person with a severe mental illness have not been addressed by the Act's authors, although the draft guidelines suggest the power may be used to take a patient putting themselves or others at risk home urgently. This is unlikely to be an appealing prospect to most community psychiatric nurses. One of the three key criteria for placing a patient on supervised discharge is that "*his being subject to aftercare under supervision is likely to help secure that he receives the aftercare services to be so provided*" (S 25A (4) (c)). It is unclear how the power of supervised discharge can in reality help ensure that patients receive aftercare services that all involved (including the patient and carers) are agreed they need. It is therefore conceivable that a reasonably-minded Responsible Medical Officer would never use this power, except out of frustration at a local authority failing to use the existing powers of Guardianship. Legislation to enable this change would have required 75 words, not 5000.

The supervised discharge provisions, when initially published, were criticised by a wide range of professional, user and voluntary bodies (Eastman, 1995) and aptly described as "the worst of both worlds" (Thompson, 1995). They fail to provide the compulsory adherence to treatment that some yearn for (Turner, 1994) while potentially infringing patients' liberty, damaging therapeutic relationships and making professionals responsible for matters over which they have little, if any, control. The widespread concern expressed by those who were to implement the legislation had no effect on the political process. This is unsurprising since the Act's purpose is political rather than clinical (Eastman, 1995). The legislation has given an illusion of decisive government action (at no extra budgeted cost apart from additional legal aid for Mental Health Review Tribunals when patients appeal against supervised discharge) while allowing blame when something goes wrong to be thrust down the chain of command to the poor bloody community care infantry. It is also worth noting that the media have been led to believe that an element of compulsion in community treatment does now exist.

There is no doubt that much still needs to be done to improve the quality of community care for

the mentally ill (Tyrer & Kennedy, 1995). We would be failing in our duty if we allowed this poor quality legislation to distract us from that task. However, supervised discharge, the supervision register (Harrison & Bartlett, 1994) and recent discharge guidelines (Department of Health, 1994) underline the importance of formalised risk assessment in contemporary psychiatric practice: this has enormous implications for training and research.

References

DEPARTMENT OF HEALTH (1993) *Legislation Planned to Provide for Supervised Discharge of Psychiatric Patients.* Press Release, 12 August.

— (1994) *Guidance on the Discharge of Mentally Disordered People and Their Continuing Care in the Community.* HSG (94) 27.

EASTMAN, N. (1995) Anti-therapeutic community mental health law. *British Medical Journal*, **310**, 1081–1082.

HARRISON, G. & BARTLETT, P. (1994) Supervision registers for mentally ill people. Medicolegal issues seem likely to dominate decisions by clinicians. *British Medical Journal*, **309**, 551–552.

JEWSBURY, I. (1995) *Supervised Discharge: Consultation on Draft Guidance.* Letter from NHS Executive, 29 November.

THOMPSON, C. (1995) New powers for the care of the mentally ill. *The Times*, 23 March, 17.

TURNER, T. (1994) Compulsory treatment in the community: some debating issues. *Psychiatric Bulletin*, **18**, 657–659.

TYRER, P. & KENNEDY, P. (1995) Supervision registers: a necessary component of good practice. *Psychiatric Bulletin*, **19**, 193–194.

Frank Holloway, *Consultant Psychiatrist, Maudsley Hospital, Denmark Hill, London SE5 8AZ*

https://doi.org/10.1192/pb.20.4.193 Published online by Cambridge University Press