Psychiatric Bulletin (1992), **16**, 97–98

Point of view

Section 48: an underused provision?

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Section 48 of the Mental Health Act, 1983 (MHA) permits the Secretary of State to authorise the removal to hospital of an unsentenced prisoner who is 'suffering from mental illness or severe mental impairment of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and that he is in urgent need of such treatment'. (Mental Health Act, 1983). Its common usage in the past has been in transfers of unsentenced prisoners from prison to hospital.

However, increasing publicity is being afforded to the dangers of remanding mentally abnormal offenders in custody (Carvel, 1991) and Court-based psychiatric liaison schemes, that aim to divert appropriate defendants from custody for psychiatric intervention, are achieving greater prominence. Techniques employed to secure such intervention in minor offenders include discontinuance of the case and admission using the civil sections of the Mental Health Act. However, at the other end of the spectrum are very serious charges that have to be prosecuted to their legal conclusion. We report on a defendant appearing in a Magistrates' Court who required psychiatric treatment and this was most readily achieved by use of Section 48.

Case history

C.G. is a 34-year-old single man, who has a four year history of schizophrenia that has necessitated three admissions to date. He appeared at the Magistrates' Court charged with causing arson with intent to endanger life. It was alleged that he had set fire to a pair of curtains in his flat. He was arrested at his flat after the fire brigade had extinguished the fire which had caused little damage to the flat.

C.G. was remanded in custody to see one of us (TE) later in the same week as a referral to the Court Liaison Service that operates at this particular court. He was assessed in the cells at the Court and a referral was made to the catchment area psychiatrist (PKB) who was able to assess him that same day at Court. The curtains had been given to C.G. by his sister, who inhabited the flat downstairs to him, and he intended to dump the burnt curtains on her doorstep in protest at her 'persecution' of him. He held a number of persecutory delusions concerning his sister, maintaining that she tampered with his mail and on occasions would attack him with a hammer. Later she would swab his eyes with vodka in an attempt to erase his memory. He also claimed that on occasions, in his flat, he could hear his sister and her boyfriend plotting their next 'attack' on him. While he was being interviewed in the cells he complained that prisoners in adjacent cells were 'stealing' his thoughts.

Notwithstanding the prison medical officer's report which stated that he was unfit to plead, C.G. said he would only plead guilty to a charge of arson because he disputed the 'intent' in the original charge. The Crown Prosecution Service (CPS) were unable to review the case that day and arrangements were made to effect G.G.'s admission to hospital under Section 48, MHA. Technically, this was a remand in custody and when C.G. appeared in Court the following week the CPS had reduced the charge to one of arson. The Magistrate accepted jurisdiction and was able to make a hospital order, by way of final disposal, under Section 37(3) MHA.

Comment

Previous studies of diversion from custody schemes for mentally abnormal offenders (Joseph & Potter, 1991) have mentioned the minor nature or 'nuisance' value of offences committed by this group of people. This case differs from that stereotype. The original charge was indictable only and so could only be tried in the Crown Court. A four to six week delay could be anticipated before the case could be committed to the higher court but the defendant was in need of urgent treatment. Use of Section 35 MHA (report for assessment) was inappropriate since it refers to offences punishable by summary (i.e. in the

https://doi.org/10.1192/pb.16.2.97 Published online by Cambridge University Press

Magistrates' Court) conviction and would not have permitted treatment other than on a voluntary basis. An appropriate section would have been Section 36 MHA (remand for treatment) but that can only be made by the Crown Court. The CPS were unable to reduce the charge when C.G. was first assessed and so use of Section 37 (hospital order) or admission under Part II of the Mental Health Act (if the case were to be discontinued) were ruled out. Given the gravity of the alleged offence the Court would not grant bail with a condition of residence in hospital.

Thus use of Section 48 of the MHA allowed the defendant to be removed to hospital to receive treatment. In the meantime the CPS were able to reduce the charge such that it could be dealt with in the Magistrates' Court. Action under Section 48 also allowed the question of Fitness to Plead to be avoided.

Retrospective analysis of defendants referred to psychiatrists from the Magistrates' Courts in Lewisham and North Southwark, Greenwich and Bexley Health Districts lead us to conclude that this case is by no means unique. Yet Section 48 has always been used sparingly. In 1985, 41 orders under Section 48 were made and by 1989 the number had only risen to 100. The recent Home Office circular *Provision for Mentally Abnormal Offenders* (Home Office, 1990), should bring the whole concept of diversion from custody to the attention of a wider audience. More specifically, in his latest report as the Chief Inspector of Prisons (1990) Judge Tumim recommended a greater use of Section 48, MHA (para. 3.64 and 2.94). Our research shows that 20% of defendants referred to the Court Liaison Service are later committed to stand trial in the Crown Court (unpublished data). It seems reasonable to conclude that a certain proportion of these could have benefited from the 'urgent treatment' provided by the use of Section 48, MHA. In this particular case the administrative arrangements associated with making the order were completed at Court and it would have been possible to effect the transfer direct from the Court to hospital.

Nonetheless, many psychiatrists may have qualms about the use of Section 48. Firstly, by agreeing that the defendant has an 'urgent need' for treatment they may well feel under pressure to provide a bed equally urgently. Sections 47 (removal to hospital of sentenced prisoners) and 48 (removal of unsentenced prisoners) both allow a period of 14 days in which to admit the person to hospital. However, the former section makes no comment of the 'urgent need' for treatment. It has been suggested that Section 48 could be improved and its use encouraged by removing the 'urgency' criterion (Ian Bynoe, personal communication).

Secondly, in the case reported above a restriction direction (under Section 49(1), MHA) was automatically added to the Section 48 because the defendant had been remanded in custody by a Magistrates' Court (Section 48(2) (b)). The restrictions so imposed do not permit the patient to have leave outside the hospital grounds. The responsibility on the nursing staff consequent to this may give rise to concern and apprehension about having such patients on an open ward.

Finally, the use of Section 48 is potentially problematic. If the person is committed to the Crown Court he may wait many months for the trial while detained in hospital receiving treatment. At sentencing, having received a period of treatment, a hospital order under Section 37, MHA may be no longer appropriate and yet the Judge may be reluctant to consider a less 'restrictive' medical disposal, such as a probation order with a condition of treatment.

Conclusion

Experience has shown that mentally abnormal offenders remain at risk of suicide so long as they remain in custody – even if they are waiting for transfer to hospital (Johnson, 1991). The increasing number of diversion from custody schemes now operating in Magistrates' Courts means that psychiatrists are intervening at earlier stages in the legal process and may be aware of a particular mentally disordered defendant for longer before legal proceedings can be concluded. Section 48 is part of the armamentarium available to psychiatrists allowing them to transfer defendants in need of treatment early on in the court case and its use should be encouraged.

References

CARVEL, J. (1991) Disturbed offenders 'in limbo of neglect'. *The Guardian*, 21 March.

DEPARTMENT OF HEALTH & SOCIAL SECURITY Mental Health Act 1983. London: DHSS, 1984.

HER MAJESTY'S CHIEF INSPECTOR OF PRISONS FOR ENGLAND AND WALES (1990) *Suicide and Self Harm in Prison Service Establishments in England and Wales*. London: HMSO.

HOME OFFICE (1990) *Provision for Mentally Disordered Offenders*. Circular No. 66/90.

JOHNSON, A. (1991) Social staff 'failed to help high suicide risk inmate'. *The Guardian*, 4 April.

JOSEPH, P. & POTTER, M. (1991) Mentally disordered homeless offenders. *Health Trends*, **22**, 51–53.

https://doi.org/10.1192/pb.16.2.97 Published online by Cambridge University Press