

- bringing up children where none has to use authority outside of them.
- RP You mentioned earlier that you had been to several different hospitals; did you find any differences among them?
- SH Their atmospheres do affect me. I was aware of the Maudsley's reputation and I suppose like all labels that label had its effect on me.
- RP How does the atmosphere of a hospital affect you?
- SH The atmosphere is often deeply disturbing, especially to visitors, and it is interesting that the patients are often not aware of its effect. One of my strong feelings is that the day-rooms of hospitals are dominated by the television. That is often the only stimulation on the wards and this may be very undesirable. We know television has effects on 'normal' people and it may be that patients are even more sensitive to its varying influences.
- RP Would your ideas on writing apply to all patients or would it be ambitious for some, like the very psychotic or withdrawn?
- SH It is ambitious; the person needs to be able to read, write and concentrate long enough to put things down on paper. All the people I have worked with so far, although suffering from breakdowns, have managed some function in the outside world. So this would be ambitious for those who are very ill, but then again maybe it is important to be ambitious.
- RP Are there any hospitals that you know of which are interested in the idea of a writer in residence?
- SH Although I have been discussing the idea with you in some detail, I have never met one or been one. At the moment its only fantasy. As far as I know, no British hospital has seriously considered the possibilities it represents.

## Chemical castration and consent to treatment

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A funny thing happened to Mr Kenneth Clarke on his way to the House of Commons in October 1982. It was the last day of debate on the Mental Health (Amendment) Bill and for some peculiar reason the then Minister of Health decided to reject the advice he had just been given by DHSS officials and instead accepted at the last minute an amendment proposed by the Opposition which extended the consent to treatment provisions for psychosurgery and certain other (then undefined) treatments to voluntary patients.

A few days later an attempt was made in the House of Lords by Lord Mottistone (on behalf of the Royal College of Psychiatrists) to reverse this amendment for such 'other treatments' on the grounds that there had been no consultation on the proposal, that only five MPs had been present at the time and that it undermined the basic principle of mental health legislation that voluntary psychiatric patients should have the same rights as other patients to receive treatment without interference from the state. The new proposal meant that a voluntary patient would be denied treatment unless at least six other people had

discussed his case – his consultant, a team of three from the Mental Health Act Commission and the others who would have to be consulted in the 'consent and second opinion' procedure. There is no doubt from *Hansard*<sup>1</sup> that the argument was won (seven peers and peeresses supported Lord Mottistone and only the Government minister was against) but a successful 3-line Government whip was imposed to safeguard the possibility of the Bill being sent back to the House of Commons and therefore being possibly lost.

The story is taken up five years later by which time the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 had stipulated that consent and a concurring second opinion was required for psychosurgery and the surgical implantation of hormones for the purpose of reducing male sexual drive. Dr Gerald Silverman, a consultant psychiatrist with a particular interest in the treatment of compulsive sex offenders, had such a patient who was not responding to cyproterone acetate (Androcur) and medroxyprogesterone acetate (Depo-provera). Dr Silverman learned of a preparation goserelin

(Zoladex, marketed by ICI for the treatment of prostatic carcinoma) which seemed to reduce testosterone levels satisfactorily and therefore had potential as a libido-reducing agent. Knowing the provisions of Section 57 of the Mental Health Act 1983, Dr Silverman asked the Mental Health Action Commission whether it was all right for him to continue this treatment. He fully expected the MHAC to agree on the basis that the patient wanted the treatment because it would stop him committing further paedophile sex offences, the patient willingly would accept the treatment knowing its effects and side effects, and in any case he was not a detained patient for whom the protection of the Mental Health Act 1983 was primarily provided.

In come the heavy guns. Dr Silverman is told he cannot proceed with his treatment because the MHAC are unable properly to consult a nurse and 'other professional person' concerned with his treatment. This is hardly surprising given that the patient was not in hospital. Nevertheless, the chairman of the MHAC was able to write to Dr Silverman to the effect that the Commissioners felt able to agree that the patient was capable of understanding the nature, purpose and likely effects of the treatment and was consenting to it.

Three months later the Commissioners change their view: the medical member of the MHAC decided the patient could not consent because he did not understand that the primary site of action of the drug was on his brain rather than his testes.<sup>2</sup> In fact goserelin acts on receptors in the anterior pituitary, thus preventing luteinising hormone from acting on the testes to release testosterone. It may be thought that the patient had more 'common sense' than the MHAC doctor in recognising that the net effect was on his testes rather than in his brain.

At any rate, the Court seemed to think so, for when the patient took the case to the Appeal Court<sup>3</sup> the Judges took the view that it was not necessary for the patient to have to understand the precise physiological process before he could be capable of understanding. The Mental Health Act Commission came into further criticism from the Judges for their refusal to grant a certificate for treatment in the case, their Lordships taking the view that the medical commissioner must first consider whether the proposed treatment was likely to alleviate the patient's condition or to prevent its deterioration. If he concluded that this was not likely, then he must refuse a

certificate. If he concluded that it was likely, then no doubt he might balance the benefit against what he conceived to be the disadvantages. It did not appear that the medical commissioner had approached the matter in this way. According to the Judges, the evidence would seem that the answer to the first question was not only that the treatment was likely to alleviate the patient's condition but that it had done so. If, nevertheless, it was not to be permitted on the grounds that other considerations outweighed these advantages, it seemed that in the circumstances of the case these criticisms should have been discussed with Dr Silverman and a failure to do so amounted to unfairness to the patient or the taking into account of irrelevant matters.

The Court also rejected the MHAC's case on the grounds that goserelin was not a hormone but a hormone analogue and that it was not administered by means of surgical implantation. Finally, the court concluded that the decision by the MHAC doctor that the patient 'understood' in August 1987 and 'did not understand' three months later was 'irrational'. There are those who believe that the case has not enhanced the credibility of the MHAC but its new Chairman has stated that they will not appeal against the ruling.

The Commission is, however reported,<sup>4</sup> to have asked the Department of Health whether goserelin should attract special safeguards following the approval by a MHAC 'second opinion' doctor of the administration of the drug to a detained patient in a Surrey psychiatric hospital thus placing it as a category of medicine under Section 58 of the Act rather than Section 57. It appears then that the goserelin can be given to a patient who is incapable of, or refusing consent. Given the emotion that surrounds the concept of chemical castration we are unlikely to have heard the last of the matter.

## References

- <sup>1</sup>Parliamentary Debates (*Hansard*). House of Lords Official Report 27 October 1982, cols 528–38.
- <sup>2</sup>DYER, C. (1988) Medico-Legal: Mental Health Commission defeated over paedophile. *British Medical Journal*, **296**, 1660–1661.
- <sup>3</sup>*The Times* Law Report (1988, 27 May) Refusal to issue certificate unlawful. R v Mental Health Commission, Ex parte W.
- <sup>4</sup>*The Guardian* (1988, 9 August) 'Castration drug safeguards plea'.