Electro – Convulsive Therapy

The 2003 Mental Health Act is an unsatisfactory piece of legislation not least because it permits electro-convulsive therapy (ECT) to be given to a patient who “resists or objects to the treatment”. It should be noted that in 2005 the World Health Organisation recommended that “If ECT is used, it should only be administered after obtaining informed consent. It should also be noted that on 1 February 2013 Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, submitted a report to the Human Rights Council of the General Assembly of the United Nations. His report focussed on certain forms of abuse in health-care settings including psychiatric institutions. He observed that “The environment of patient powerlessness and abusive treatment of persons with disabilities in which restraint and seclusion is used can lead to other non-consensual treatment, such as forced medication and electroshock” (Electroshock = ECT). His report helped to influence the UN Committee on the Rights of Persons with Disabilities. In April 2014 that Committee issued a General Comment on Article 12 of the UN Convention on the Rights of Persons with Disabilities. That Convention is an international treaty that is legally binding on states that have ratified it. (The UK is one of those states.) The General Comment requires parties to the treaty to “abolish policies and legislative provisions that allow or perpetrate forced treatment”. However, although Scotland must observe and implement treaties into which the UK has entered, the Scottish Government has indicated that it is not prepared to abolish the legislative provisions which permit psychiatrists to subject unwilling patients to ECT.

A definition of inhuman and degrading treatment was provided by the European Court of Human Rights in the 2002 case of Pretty v UK (para 52): “ [...] “ill treatment” that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering [...] Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 [...]”.

Given the evidence from the survivors of psychiatry and the families of those who did not survive (see the submissions about the Mental Health (Scotland) Bill to the Health and Sport Committee) it is not surprising that the Special Rapporteur drew attention to “non-consensual treatment, such as forced medication and electroshock ” in psychiatric institutions. It is to be regretted that the Minister for Health and Sport has insisted that no significant changes to the 2003 Mental Health Act are necessary. However, from the information provided below, it should be clear that involuntary ECT falls within the definition of inhuman or degrading treatment. Given that such treatment is
prohibited in all circumstances the Minister’s defence of the current position, namely that involuntary ECT can only be given with the approval of a second opinion doctor, is totally inadequate. (The American psychiatrist, Dr Peter Breggin, in his paper entitled “ECT Resources Center”, states that the giving of ECT against the expressed wishes of a patient is “an extreme civil rights abuse”.)

I have obtained information about ECT from a variety of sources including the transcript of the relevant part of the debate that preceded the passage of the 2003 Mental Health Act. That transcript is well worth studying. Shona Robison (SNP) proposed two amendments “to prevent ECT being given to patients who are incapable of consenting to treatment, or who resist or object to its being administered. The only exception would arise in urgent situations, where the treatment could be given under the urgent treatment provisions in section 171”. She stated that “One of my constituents had ECT when he was 16 years old. … He now regrets the treatment very much, because it completely wiped out all his primary school learning. …” (A woman I know told me that she had been screaming when she was given ECT against her will. She also told me that it did not cure her depression but it did deprive her of her childhood memories.)

Ms Robison also quoted from an appraisal consultation document on ECT from the National Institute of Clinical Excellence (NICE): “… Whilst some patients consider ECT to be a beneficial and lifesaving treatment, others report feelings of terror, shame and distress, and find it positively harmful and an abusive invasion of personal autonomy.”

Clearly, patients in the latter group, by virtue of the definition of inhuman or degrading treatment, had been subjected to treatment in that prohibited category. Unfortunately, no MSP drew attention to that possibility. Margaret Smith (LD) stated that “SAMH is concerned about anybody being given ECT treatment who has not consented fully to it.” (SAMH = Scottish Association for Mental Health.) However, she added “On the other side of the argument, we must take on board the comments that the Mental Welfare Commission for Scotland made to the Committee. It said that if we go down the route that SAMH advocates, we might prevent people from getting treatment that, in some cases, might help them.” The then Labour/Lib Dem Executive chose to accept what it supposed to be expert advice and pushed through the section on ECT against SNP opposition. Now that the SNP form the Scottish Government, it is opposed to amending the 2003 Act in line with its position in 2003. This suggests that officials are dictating to Ministers what the Scottish Government’s policy on mental health legislation should be.

The following is a summary of what happens when a patient is given electro-convulsive therapy: he or she is injected with an anaesthetic to block out pain, and also with a muscle-paralysing agent to shut down muscular activity and hence prevent spinal fractures. Electrodes are then placed on his or her head and a high current is passed through the brain. This constitutes a single treatment. A course of ECT consists of several such treatments. According to
information obtained by Alison McInnes, MSP, the median number of
treatments per course in 2012 was 8, with the majority of patients receiving
two treatments per week. (She was also informed that in 2012 362 patients in
Scotland were given between them 434 courses of ECT, 32% of those given
ECT had not consented to it and 23% of the patients who lacked capacity
showed no improvement!) It should not take much imagination to appreciate
how terrifying it must be to be forcibly taken twice a week for several weeks
to the room where the ECT procedure is carried out. The procedure will be
particularly distressing to anyone who knows that ECT is not always effective,
that it can cause permanent memory loss and even result in death. (Statistics
from Texas suggest that the death rate among the elderly receiving ECT is
one in 200. In Scotland during the period 2005-2011 there were recorded 6
deaths among patients aged over 65 who were receiving ECT.)

Alison McInnes has kindly asked several questions on my behalf relating to
the 2003 Mental Health Act. I am concerned about the number of evasive,
misleading or untruthful answers provided by the Minister for Health and
Sport. It seems reasonable to assume that those answers were formulated by
officials who wished to ensure that the Minister did not provide information
which might draw attention to the unsatisfactory nature of the 2003 Act. For
example, in his response to a question about ECT, the Minister claimed that
“there is no evidence of permanent memory loss”. That is untrue as can be
verified by noting what Shona Robison reported about one of her
constituents or by going to the internet (google risks and side effects of ECT). Anyone who
uses the internet to research ECT will find that the Minister was
also being
disingenuous when he advised Alison McInnes that ECT is “a safe and
effective treatment for severe mental illness” though, to be fair to the Minister,
that false statement is likely to be traceable to a psychiatrist.

It is to be hoped that MSPs will now accept that involuntary ECT is inhuman or
degrading and must, therefore, be ended. If it is not ended then the NHS
might have to pay compensation to victims that could amount in total to well
over £1 billion. It should be noted that in 2004 a judge ruled that “slopping out”
in jails amounted to degrading treatment. He observed that this had damaged
the human dignity of the prisoner who had raised the action and had caused
him to have feelings of anxiety, anguish, inferiority and humiliation. Clearly the
judge had based his ruling on the definition of degrading treatment referred to
above. The judge awarded the prisoner only £2400 compensation but since
then other prisoners have been awarded similar compensation. According to
the Scottish Prison Service, the total amount of compensation that has been
paid out to individuals who were forced to slop out when they were prisoners
in Scottish jails has risen to £11,313,500! It seems safe to assume that if one
mental patient who had been given involuntary ECT could establish in court
that this action constituted inhuman or degrading treatment then there would
be an award of compensation of very much more than £2400. If that
happened then it would be a near certainty that others who had been similarly
treated would receive similar compensation. If an ECT case did come to court
then the plaintiff could refer to successful ECT actions raised elsewhere. In an
action raised in the USA in 2005, one in which Dr Breggin was the medical
expert, there was an award of £635,000. (Following that case, a state Court of Appeals confirmed Dr Breggin’s testimony about the harm done by ECT.) More recently Dr Breggin was the expert in a malpractice suit against an ECT doctor that resulted in a settlement of over $1 million. The position of the Scottish Government seems to be that it need not seriously examine the possibility that involuntary ECT constitutes inhuman or degrading treatment unless a court rules that is the case. It is to be hoped that MSPs will realise that it would be prudent to amend Scottish mental health legislation before that happens and a Scottish court awards substantial compensation to the victim. If there were such a judgment then other victims would be likely to claim and be awarded similar compensation: according to a 2009 STV report, in 2007 the House of Lords ruled that prisoners who brought human rights claims under the Scotland Act (sic) did not have to do so within a one year time limit. (There is such a limit in the Human Rights Act.) Also, according to a 2011 report in the Telegraph, judges in Scotland’s highest court overturned a ruling that three former prisoners had been too late to submit their compensation claims for being forced to use chamber pots in their cells. Given this precedent and the fact that the infliction of inhuman or degrading treatment on an individual is such a serious matter, it seems likely that if involuntary ECT were ruled to fall into that category then all who had been subjected to it would be eligible for compensation and that the total to be paid out would be horrific. In such situation it would ultimately be the taxpayers who would have to pay up. It might, therefore, be worthwhile having a public debate on this issue before there is a vote on the Bill that is currently before Parliament.

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