Comment

Should we change the Mental Health Act 1983 for emergency services?

Following the government’s announcement in March that it would be undertaking a review of sections 135 and 136 of the Mental Health Act 1983, Michael Brown considers whether emergency services should be provided with better tools for attending mental health crises in public places and private premises.

The government announced during March that it would be undertaking a review of sections 135 and 136 of the Mental Health Act 1983. This follows on from a broad review of the work undertaken by the police service in connection with mental health issues. It has been known for some time that these provisions had not necessarily kept pace with the increased role for the police in our broader mental health system, after decades in which a large amount of mental health provision had shifted from institutionalised care to a community, human rights oriented model.

The history of our current law
Sections 135 and 136 were introduced in the Mental Health Act 1959 and were carried, almost entirely unaltered, into the 1983 update of our law. These two provisions consolidated a range of other laws from previous mental health and vagrancy legislation, creating settlements for the intervention of the state where it was believed urgent mental health assessment was needed or where patients subject to the Mental Health Act needed to be re-detained after an unauthorised absence from inpatient care:

- Section 135(1)—the opportunity for an approved mental health professional (AMHP) to seek a warrant from a magistrate, allowing a police officer, the AMHP and a doctor to enter a premises and remove a patient to ‘a place of safety’ for assessment. Entry to the premises may be forced, if need be
- Section 135(2)—a justice of the peace may grant a warrant allowing a police officer to force entry to a premises in order to search for a person who is ‘absent without leave’ or ‘liable to be detained’. Officers may then use other powers under the Mental Health Act, as appropriate
- Section 136—a police constable who finds a person they suspect is suffering from a mental disorder who is in immediate need of care or control, may detain that person in order to remove them to a place of safety for assessment of any necessary treatment or care.

So what is the problem?
The effect of these provisions is to ensure the possibility of the police instigating the protective detention of those of us they encounter in a public place, without ensuring their ability to do so in private. The first of the two warrants within s135 may only be sought by an approved mental health professional and the second of them is only of application to people already detained under law. So where police officers respond to any incident in a private dwelling or other private place, they cannot rely upon the Mental Health Act to ensure that a vulnerable person may be safeguarded.

We know that this has a small range of consequences—if police officers feel that urgent safeguarding is needed, they will rely upon other powers of detention in order to keep people safe. This could include arresting people for minor offences or detaining people to prevent a breach of the peace. We saw this in a recent court case,

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Webley v St George’s (2014), where the Metropolitan Police were responding to what they knew was a mental health crisis in a private dwelling and in the absence of being able to use section 136, they detained a man who was frightened and experiencing suicidal ideas for the criminal offence of affray (threatening behaviour) and removed him to the police cells.

In other cases we have seen the police attempt to rely upon the Mental Capacity Act in defence of their actions to remove a person who was (rightly) perceived to be at risk from a private dwelling. When challenged in the Sessey case (2011) the courts ruled very clearly that such action was unlawful. The police have also sometimes detained someone in the premises to prevent a breach of the peace and then once the person arrested is outside the premises, have detained them under s136. We know from the case of Seal v Chief Constable of South Wales Police (2007) that this is unlawful.

Few would doubt in any of these circumstances that the police would have relied upon provisions in the Mental Health Act if they had a choice by which to do so. I would argue that there are many examples of these kinds of things occurring every day across the United Kingdom—people being criminalised because of our operating to legal frameworks designed for a time when a lot of our mental health care was delivered via old county asylums.

**Comparing and contrasting**

It is worth considering the position internationally—whilst all areas of the United Kingdom are in common by having separate legislative provisions for interventions in private and public places, most other countries no longer make this split. In South Africa, the Republic of Ireland and the various states of Canada and Australia, they allow their police service to take unilateral decisions, if required, to keep people safe. In some of those places, they also allow those decisions to be taken by paramedics and other healthcare professionals. This is worth noting in terms of frustrations that can emerge when health professionals believe that section 136 should be used and officers are sometimes reluctant to do so.

Accordingly, the UK stands out from other countries in denying its police officers or its broader emergency services the opportunity to rely upon non-criminalising laws to ensure the immediate well-being of people who may be at risk. Some service users and mental health professionals have questioned whether that is sufficient reason to empower the police to take unilateral decisions when currently, some of the culture around the use of section 136 indicates misuse and abuse. These are very valid considerations and points well worth considering. I am firmly of the view that we need more training on how to use s136 correctly however it may be reformed.

The very serious business of violating people’s homes is currently protected against by magistrates—regardless of who thinks it necessary to safeguard someone in a private place and conduct a mental health assessment, they must convince an AMHP to apply for the warrant and the AMHP must convince the magistrates to grant it—a double protection of civil liberties. Referring back to the Sessey case in 2011, the judge articulated a clear view that the Mental Health Act provided a full framework of intervention options because of local authorities’ duty to have sufficient AMHPs available to undertake the statutory functions of the MHA and because AMHPs can conduct emergency assessments under s4 MHA, with a warrant if access to a premises is required. Of course this relies upon the ability of families, carers or 999 services to be able to call upon an AMHP in unforeseen circumstances and obtain a response in a realistic timescale. This is very challenging in many areas—responses in under four hours would be exceptional.

The review arguably needs to address the question of whether proper safeguards could be retained, that still allow an urgent and immediate intervention if that is thought necessary. In 2004, a proposed Mental Health Bill included a suggested amendment to these provisions which would allow the police to act in private premises without a warrant, if authorised by an AMHP. It would then allow removal to a place of safety for up to six hours and if that period was insufficient, a warrant would be retrospectively needed from a magistrate. Other safeguards could include requiring a police inspector’s authority to act under the Mental Health Act—such authorities are commonly found in other legislation that involves entry to premises and the safeguarding of vulnerable people. Regardless of what the review may determine a solution to be, I suspect it will find representations from 999 services that there is a legitimate legislative gap in safeguarding because AMHPs and mental health crisis teams are not, strictly speaking, emergency services. And yet we know that demand for crisis teams has risen by 16% over the last two years at a time when budgets are shrinking. If we are consequently expecting an increased emergency service response to mental health crisis in public places and in private premises, we need to consider giving those professionals the tools by which to keep people safe, with appropriate safeguards.

**References**

Seal v Chief Constable of South Wales Police (2007) UKHL 31
Sessey v South London and Maudsley NHS Foundation Trust (2011) EWHC 2617 (QB)
Webley v St George’s Hospital NHS Trust and Metropolitan Police (2014) EWHC 299 (QB)