

Topic in Action 1: Coercion in mental health care

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The oddity of mental health practice



Who am I?

Doctor based in England

Psychiatrist approved under S12 of the Mental Health Act (1983)

What can I do?

Alongside another doctor + an approved mental health professional
- make an assessment, complete a statutory form and detain a person for assessment and treatment of their “mental disorder”

What is the result to the individual?

Deprived of their liberty

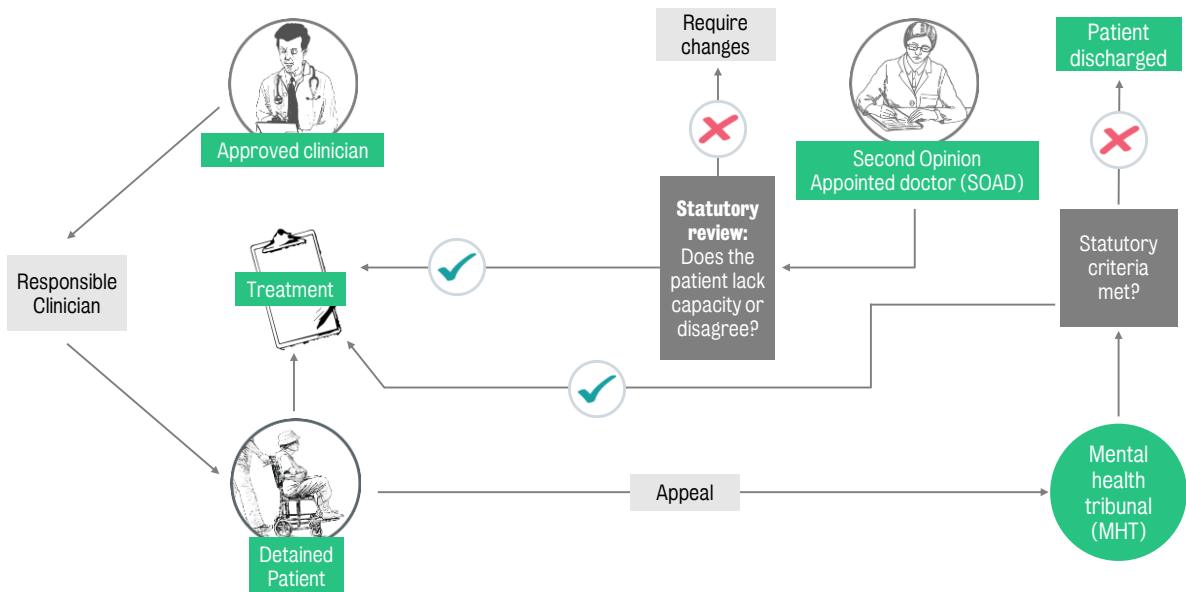
Can be treated against their will

Why is this unique?

Power to detain is almost unique amongst doctors in England

There are powers to detain people suffering from infectious diseases, but they can't be treated against their will – unless they lack decision-making capacity

Stages of treatment decisions



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Compulsory treatment in mental health care

What images does the idea of compulsory treatment conjure?

Film



"One Flew Over the Cuckoo's Nest"

State mental hospital in the USA
Patients brutally coerced

BBC Panorama - Hidden footage



"Winterbourne View"

Learning disability hospital in Bristol, England

BBC Documentary



"Beth's story"

Suffered from anorexia
She benefitted from treatment

Is there a conceptual difference between these examples or is it all coercive?

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Compulsory treatment in mental health care: Two views

A supporter

“

One of the hallmarks of a civilized society is the way it caters for those who require help as a result of mental health problems ... In providing the legal structure within which people are detained and treated ... against their will a balance must be struck between ... the rights of an individual ... and the need to protect the individual and society at large from the adverse effects of mental disorders.

”

Puri et al. (2005)

Compulsory treatment is potentially a good thing...
...but a **balance** must be struck

An opponent

“

Abolition of involuntary mental hospitalization. Involuntary mental hospitalization is imprisonment under the guise of treatment; it is a covert form of social control that subverts the rule of law. No one ought to be deprived of liberty except for a criminal offense, after a trial by jury guided by legal rules of evidence ... No person ought to be detained involuntarily for a purpose other than punishment.

”

Szasz (1998)

Compulsory psychiatric treatment...
...is **slavery**
...is **Human Rights abuse**

Compulsory treatment in mental health care: Historical precedent of abuse

Nazi Germany (Aktion T4
- killed a minimum of
70,000 hospital inmates)



“

Translation: Reich Leader Bouhler and Dr. Brandt are entrusted with the responsibility of extending the authority of physicians, designated by name, so that patients who are considered incurable, can be granted mercy death, after a definitive diagnosis.

”

Hitler (1939)

Soviet Union –
psychiatry to suppress
dissidence



“

Translation: 60,000 Reichsmark is what this person suffering from a hereditary defect costs the People's community during his lifetime. Fellow citizen, that is your money too.

”

*New People – a magazine published
by the Nazi Party (1938)*

Compulsory treatment in mental health care: A patients' perspective

Psychiatric Survivor Pride Day

Toronto, Ontario
October 9, 1999

At 5 p.m. 45 ex-patients and supporters marched to a nearby park protesting forced psychiatric "treatment" (including a proposal for outpatient treatment called "Community Treatment Orders" or CTOs)



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Compulsory treatment in mental health care: Views from the 1800s

Contrasting views on compulsory admission and treatment of mental disorder are nothing new

An opponent

“

For the protection of the British Subject from unjust confinement on the grounds of mental derangement.

”

Perceval et al. (1845)

A supporter

“

The public should be clearly instructed that the annually recurring and possibly increasing horrors from the crimes of "Lunatics at Large" are the price it pays, under the existing lunacy law, for protection from an illusory danger to the "liberty of the subject"

”

Journal of Mental Science (1898)

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Ethical principles underlying health care (1)

Autonomy

No intervention without consent

Justice

Fair shares for all

There are a number of ethical principles that underlie health care
Beauchamp and Childress put forward **four specific principles**

Beneficence

Do good

Non-maleficence

First do no harm

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Ethical principles underlying health care (2)

"A pregnant woman may put her own life and that of her unborn child at risk if she has capacity."

A very strong judicial principle.

Autonomy

No intervention without consent

But what if I lack capacity?
Involuntary treatment strikes a balance between **Autonomy** and **Beneficence**.

How do we allocate scarce resources?

Justice

Fair shares for all

How do professionals spend their time day-to-day?

Beneficence

Do good

Good and harm are often **finely balanced** in psychiatric practice.

Begs the question "Good for whom?"

Non-maleficence

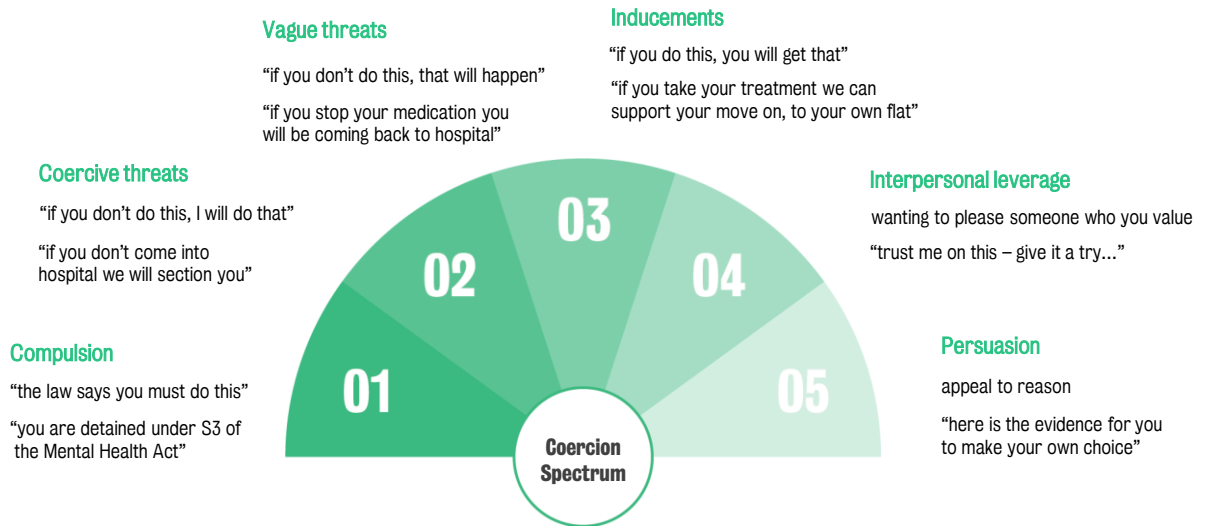
First do no harm

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Coercion in mental health care



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What justifies coercive interventions?

Paternalism

Legitimate action by the state where a person lacks capacity

This action must be in the person's "best interests"

Public safety

Actions to prevent harms by a person to others who is deemed to be dangerous (usually after some form of judicial assessment) – this can extend to preventing a person's harm of themselves



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ECHR & HRA



Human Rights Act 1998

Formally incorporates the ECHR into UK Law
All public authorities in the UK must follow the HRA



European Convention of Human Rights (ECHR) 1950

Conventions which the UK has been signed up to since 1951

Provides Rights that are:

Absolute: e.g. protection from torture

Limited: e.g. right to liberty

Qualified: e.g. freedom of expression

Interference with ECHR Rights must demonstrate **'Proportionality'**

“

Is it necessary in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued.

”

The Human Rights Act and mental health care

Right to life



Can this possibly be engaged by the suicide of a patient?

Prohibition of torture



No-one shall be subjected to torture or to inhuman or degrading treatment or punishment

Could compulsory treatment, such as restraint and/or seclusion be construed as torture or inhumane?

Right to liberty and security



Legitimate deprivation of liberty in specific circumstances – subject to local judicial processes

Article 5 (1) (e)

“the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants”

When we detain we take away this right. A key principle is that this action is subject to legal scrutiny

Right to a fair trial



Right to respect for a private life and family life

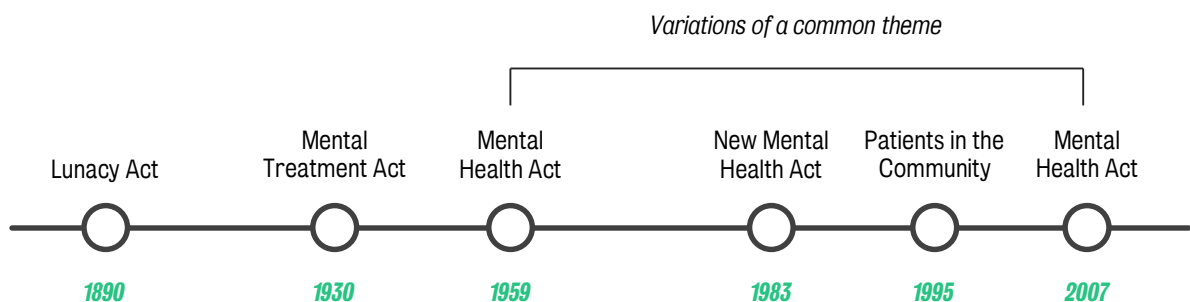


Compulsory treatment and a lot of other aspects of hospital care profoundly affect this right

The Human Rights Act and mental health care: Code of practice

- 24.42** Clinicians authorising or administering treatment without consent under the Act are performing a function of a public nature and **must therefore comply with the Human Rights Act (HRA) 1998**, which gives effect in the UK to certain rights and freedoms guaranteed under the European Convention on Human Rights (ECHR).
- 24.43** In particular, the following should be noted:
- **compulsory administration of treatment which would otherwise require consent is invariably an infringement of article 8 of the ECHR** (respect for family and private life). However, it may be justified where it is in accordance with law (in this case the procedures in the Act) and where it is proportionate to a legitimate aim (in this case, the reduction of the risk posed by a person's mental disorder and the improvement of their health)
 - **compulsory treatment is capable of being inhuman treatment (or in extreme cases even torture) contrary to article 3 of the ECHR**, if its effect on the person concerned reaches a sufficient level of severity. But the European Court of Human Rights has said that a measure which is convincingly shown to be of medical necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading.
- 24.44** **Scrupulous adherence to the requirements of the legislation and good clinical practice should ensure that there is no such incompatibility.** If clinicians have concerns about a potential breach of a person's human rights they should seek senior clinical and, if necessary, legal advice.

Evolution of mental health legislation in England and Wales



Law reflects the concerns of society at the time

Evolution of mental health legislation in England and Wales: Legal precedence

19th century legislation: Concerned about issues of harm to people unjustly detained in hospital

James (William) Norris

1814: American sailor detained at the Bethlem

Case was used to push for reform of the oversight of asylums

Daniel McNaughton

1843: Tried for the murder of the Prime Ministers' Private Secretary

The trial led to codification of an insanity defence

Christopher Clunis

1992: Convicted of killing Jonathan Zito

Untreated psychotic illness

Led to the development of Community Treatment Orders in England and Wales

Michael Stone

1996: Convicted of killing Lin and Megan Russell

Untreatable psychopathic disorder

Led to changes in the definition of mental disorder in the Mental Health Act

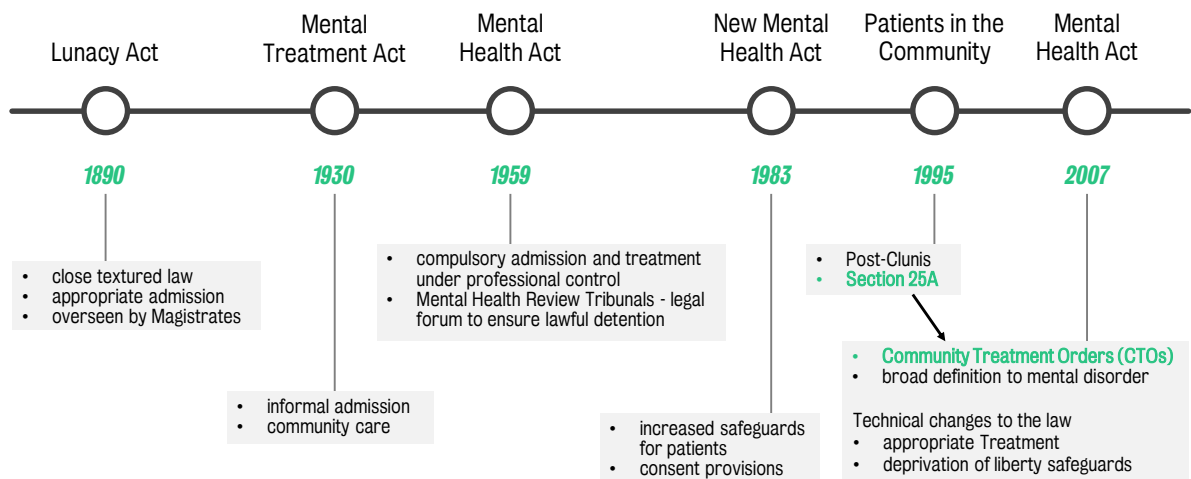
Led to specialist services for people with "Dangerous Severe Personality Disorder"

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Evolution of mental health legislation in England and Wales: Major changes



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Evolution of mental health legislation in England and Wales: Legislation

Two statutes govern care and treatment:

- 1 **The Mental Health Act (1983)**
- 2 **The Mental Capacity Act (2005)**

*Amended in 2007
Introduced "Deprivation
of Liberty Safeguards"*

All have "Codes of Practice" attached

The Mental Capacity Act (2005)

Care and treatment of people lacking capacity

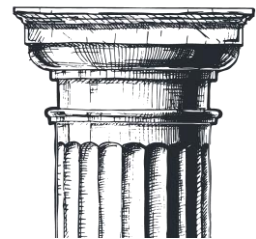
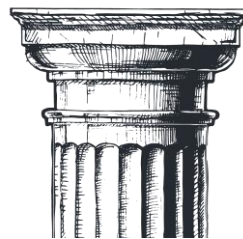
The Mental Health Act (1983)

Care and treatment of mental disorder

Overlap: Many omitted to hospital who are treated for mental disorder lack capacity at the time of omission.

Liberty: Doesn't allow you to deprive someone of it

Liberty: To deprive of liberty you have to use MHA or special Deprivation of Liberty Safeguards



What does the Mental Health Act do?

Legitimises deprivation of liberty in a hospital

P1: Includes a (very broad) definition of mental disorder

P2: Procedures for "civil" detention

P3: Procedures for the detention of offender-patients including those presenting a risk to the public

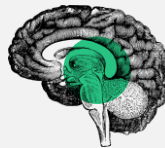
P4: Procedures surrounding compulsory treatment of patients liable to detention

P5: Procedures surrounding appeal against detention and legal review of detention

Criteria for detention



Is there a mental disorder?



Is it of a nature or degree to warrant admission to hospital



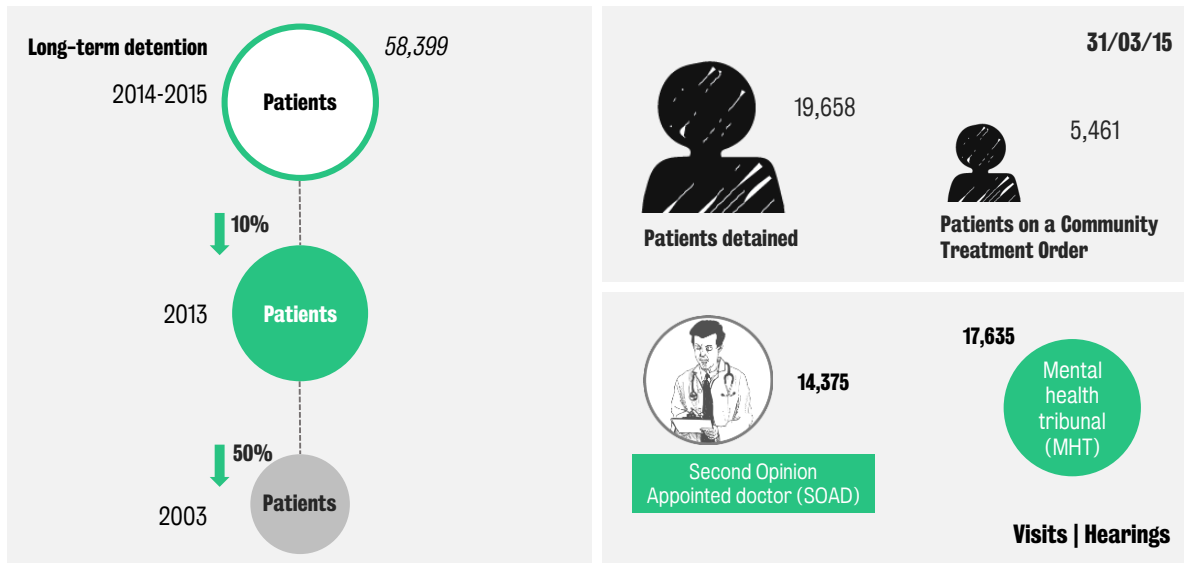
Is it in the interests of:

- a) The person's health
- b) The person's safety
- c) Protection of others



For long-term detention is appropriate treatment available

Mental health hospitals by numbers: England and Wales

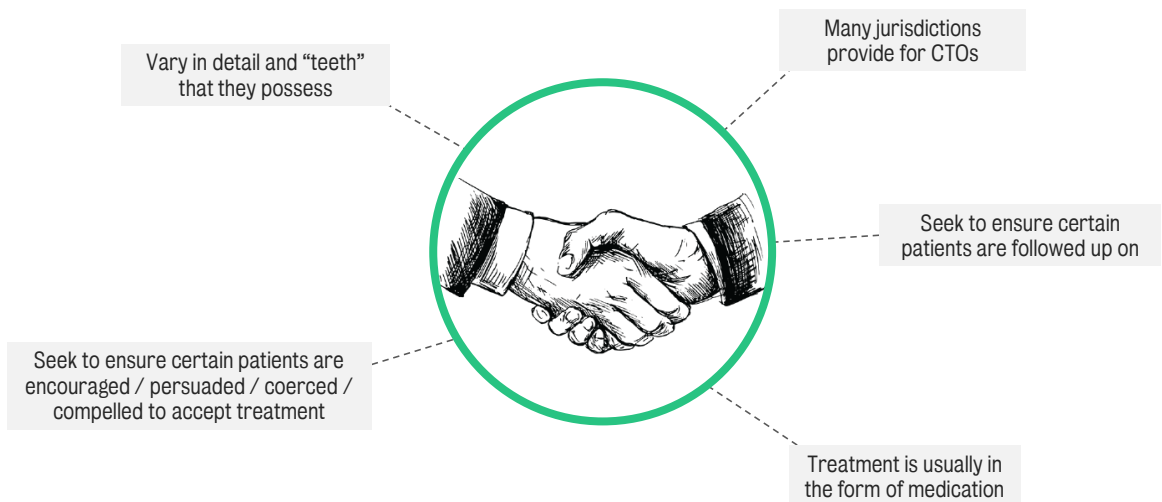


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Community Treatment Orders (CTO)

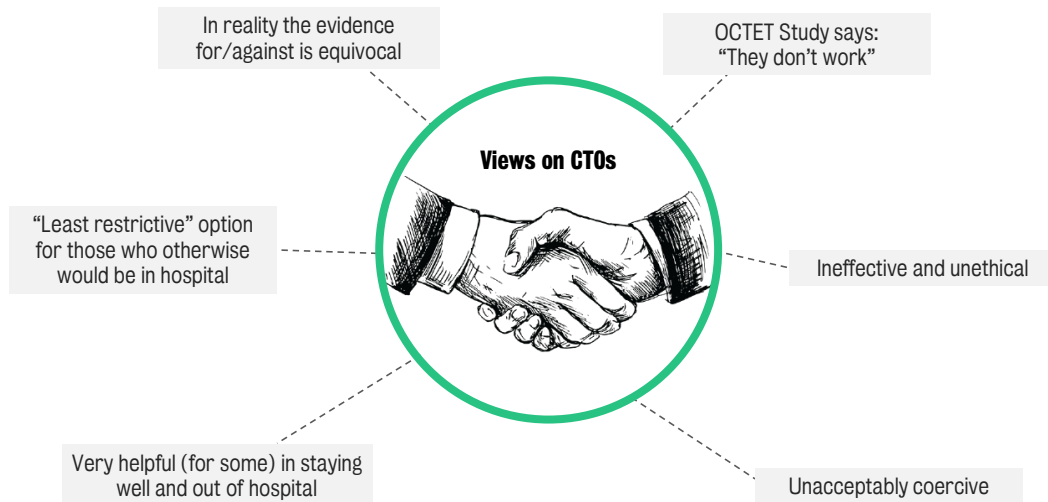


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Community Treatment Orders (CTO): Views



The image of compulsory treatment



Coercion from the service user's perspective

Being detained

Significant amount of first-person literature
Dating back to the 18th century

Coercive experiences

Some literature on seclusion and restraint
This has led to attempts to decrease the use
of restraint and improve patient outcomes

Perception

Compulsory inpatient treatment: Coercive

Voluntary inpatient treatment: Coercive and
outcomes may be worse than compulsorily
detained patients

Objectively coerced patients: Can be reasonably
satisfied with their treatment experience

Framework of "procedural justice": Compulsion is
less upsetting if set in a framework – process
appears fair and understandable

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