Correspondence

Implications of the Bournewood decision

Sir: The House of Lords is due to deliver a decision in June on the case of L. *v.* Bournewood Community and Mental Health NHS Trust. It is expected to uphold the Court of Appeals decision that a hospital could informally admit a person for treatment for a mental disorder under section 131 of the Mental Health Act only with his consent (*The Times*, Inability to consent makes detection illegel. L. *v* Bournewood Community and Mental Health NHS Trust, 8 December 1977).

In the meantime, it is clear that it is unlawful to detain patients without capacity as informal patients and that there are many informally detained in-patients whose capacity to consent ought to be reviewed. I have been told by one second opinion doctor that he has been asked by the Mental Health Act Commission if he would be prepared to work on weekends! This is hardly surprising.

However, the more far reaching implications in having a dramatic increase in the number of formally detained in-patients are likely to impact on all health care workers within the psychiatric services. First, there is the added burden of the paperwork involved in preparing the section documentation. Second, increased time will have to be spent attending mental health tribunals, not to mention the effect that these tribunals will have on the Lord Chancellor's legal aid budget.

If the House of Lords uphold the court of appeals decision, is there not a case for the introduction of a new section in the Mental Health Act which pertains to those patients who lack the capacity to consent or dissent?

DAMIAN MOHAN, *Lecturer in Forensic Psychiatry, University of Southampton and Broadmoor Hospital, Professorial Unit, Broadmoor Hospital, Crowthorne, Berkshire RG45 7EG*

Sir: The Court of Appeal's judgement in Leboff *v.* Bournewood Community Mental Health Trust if implemented (depending on Law Lord's Judgement) has serious implications for patients with severe mental impairment and some with moderate degree of mental impairment, who lack capacity to consent for admission to hospital for assessment and treatment of their 'mental disorder'.

In my view, there are at least three approaches to the Appeal Court's Judgement which could be used to bypass the potential use of sectioning orders (section 2/3 mainly) of the Mental Health Act 1983, in order to detain, mainly long-term patients in hospitals who have been there for many years on a voluntary basis.

(a) Those patients who do not require or need assessment may be discharged, imposing an enormous burden on social services and relatives to find community accommodation.

(b) The Welsh Office Circular of 22.1.98 WHC (98) on page 2 (iii) states "in an emergency if patient lacks the capacity and no application for admission under the Act is made, a hospital is able to look after the patient to prevent him or her from harming themselves, until other reasonably satisfactory arrangements can be made". As there is no specific time for discharge stated this can be perhaps interpreted in a much wider sense.

(c) Sections of hospitals could be designated as residential. Residents who were properly assessed by their responsible medical officers are no longer labelled as 'patients', and therefore the Mental Health Act in their case does not apply.

The Court of Appeal judgement affects only those patients who lack capacity to consent for admission for assessment and treatment to hospital, but what about patients living in the community and who receive psychotropic medication or other treatments? In fact when all the hospitals eventually close, all such people with mental impairment with or without capacity to consent will be assessed and treated in community-based accommodation. A clear and legally fair and just law for these vulnerable sections of society is an urgent requirement.

T. H. SINGH, *Consultant Psychiatrist, Bridgend and District NHS Trust, Learning Disability Services, Hensol, nr Pontyclun, Mid Glamorgan CF72 8YS*

Improving treatment adherence among patients with chronic psychosis

Sir: I read Sair *et al*'s article (*Psychiatric Bulletin*, February 1998, **22**, 77–81) on compliance with interest. The authors rightly note the move away from the authoritarian connotations often