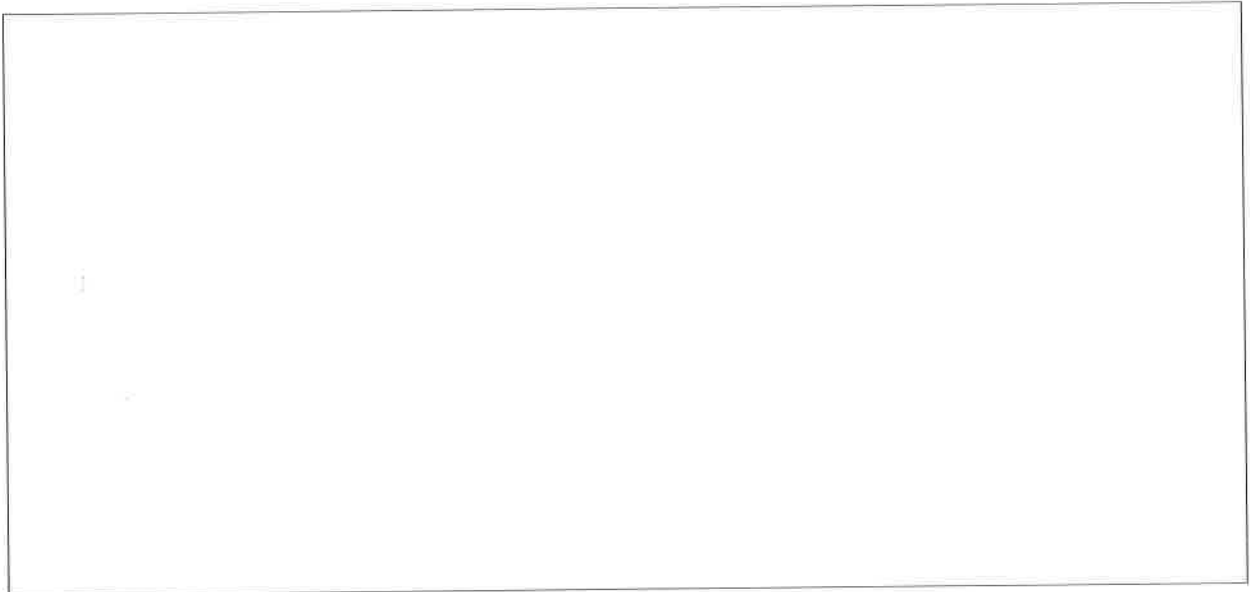


Handout

11 November 2014

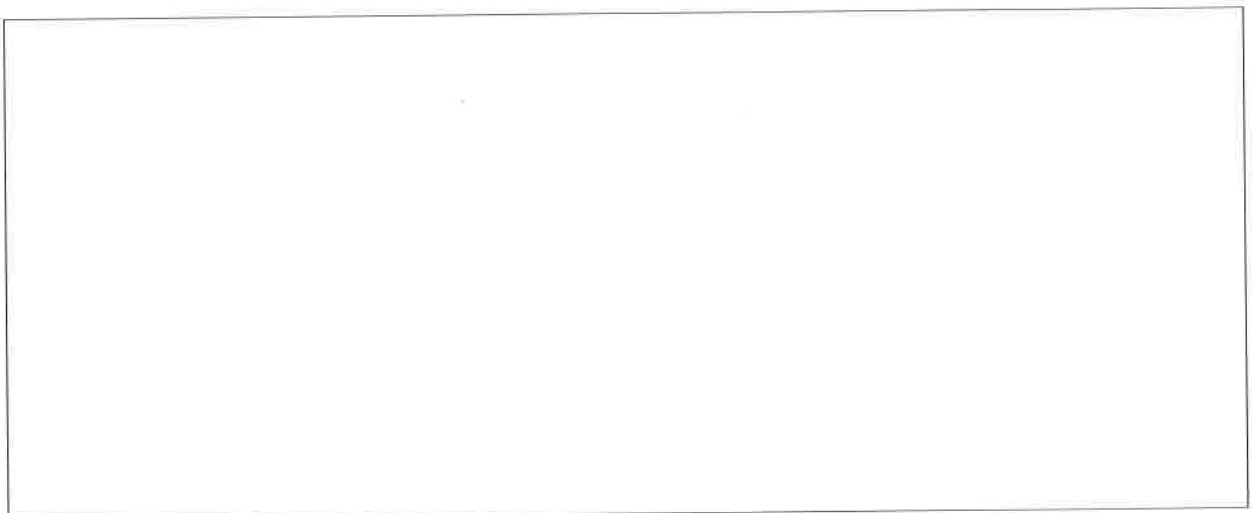
What happens when it all goes wrong and your client with a head injury is arrested?

What makes these clients particularly vulnerable?



What happens when your client is arrested?

Make sure that the police are informed about the client's head injury. Often a call from the family will not be taken seriously. Is there a professional involved who can inform police of the same? A carer or someone who works with the client or YOU?



It is important to have a record that the police were informed of a detainee's head injury. If the police were advised and ignored advice about a head injury and the limitations of the person in custody that is important to record.

Do NOT assume that the Dr at the police station will recognise the problems. They are very poor at doing so. They will not have any expertise in dealing with head injuries. Recent amendment to code C deals with appropriate adults at police station.

Appropriate Adult. What are they? How can they help?

What happens if the client is charged?

What professionals involved can do to assist one another.

- Is it possible to make representations – persuade the Prosecution to withdraw the charge?
- Prosecution charging policy – Public interest considerations.

What if the charge stands? Is the defendant fit to stand trial?

Definition of Mental Disorder

Section 1(2) Mental Health Act 2007 amended section 1(2) Mental Health Act 1983 and defines mental disorder as "any disorder or disability of the mind."

The former categories of mental disorder (mental illness, mental impairment, severe mental impairment and psychopathic disorder) were abolished and the single definition applies throughout the Mental Health Act 1983.

Examples of clinically recognised mental disorders include personality disorders, eating disorders, autistic spectrum disorders, mental illnesses such as depression, bi polar disorder and schizophrenia, and learning disabilities.

"Learning disability" means "a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning." (section 2(3) Mental Health Act 2007 inserts a new subsection 1(2A) into the Mental Health Act 1983.)

The Pritchard Criteria. Is the defendant fit to stand trial.

The Pritchard test requires that the accused must be able to: plead to the indictment; understand the course of the proceedings; instruct a lawyer; challenge a juror; and understand the evidence. If the accused is unable to do any one of these five things then he or she is unfit to plead.

- (a) understand the course of the proceedings at the trial so as to make a proper defence;
- (b) understand the substance of the evidence;
- (c) give adequate instructions to his legal advisers; and
- (d) plead with understanding to the indictment.

A court cannot make a determination as to the accused's unfitness to plead "except on the oral or written evidence of two or more registered medical practitioners at least one of whom is duly approved"

"Registered medical practitioner" is defined in the 1964 Act as a "fully registered person within the meaning of the Medical Act 1983 who holds a licence to practice". "Duly approved"

means “approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder”.

If they are unfit to stand trial what happens next?

Trial of Issue

Disclosure Considerations

Crown Court Disposals.

Powers of courts to order hospital admission or guardianship.

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, **F1**..., or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

[F2(1A)]In the case of an offence the sentence for which would otherwise fall to be imposed—

(a) under section 51A(2) of the Firearms Act 1968,

(b) under section 110(2) or 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000, **F3**...

(c) under **[F4]**section 225(2) or 226(2) **F4**of the Criminal Justice Act 2003,

[F5]or

(d) under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon).]

F5nothing in those provisions shall prevent a court from making an order under subsection (1) above for the admission of the offender to a hospital.

(1B) References in subsection (1A) above to a sentence falling to be imposed under any of the provisions mentioned in that subsection are to be read in accordance with section 305(4) of the Criminal Justice Act 2003.]

F2(2)The conditions referred to in subsection (1) above are that—

(a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from **[F6]**mental disorder **F6** and that either—

(i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and **[F7]**appropriate medical treatment is available for him; or **F7]**

(ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and

(b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

(3) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case **F8**... , then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(4) An order for the admission of an offender to a hospital (in this Act referred to as "a hospital order") shall not be made under this section unless the court is satisfied on the written or oral evidence of the **[F9]** approved clinician who would have overall responsibility for his case **[F9]** or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital **F10**..., and for his admission to it within the period of 28 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.

(5) If within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified; and where such directions are given—

(a) the Secretary of State shall cause the person having the custody of the patient to be informed, and

(b) the hospital order shall have effect as if the hospital specified in the directions were substituted for the hospital specified in the order.

(6) An order placing an offender under the guardianship of a local social services authority or of any other person (in this Act referred to as "a guardianship order") shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

(7) **F11**.....

(8) Where an order is made under this section, the court **[F12]** shall not—

(a) pass sentence of imprisonment or impose a fine or make a [F13] community order (within the meaning of Part 12 of the Criminal Justice Act 2003) [F13] [F14] or a youth rehabilitation order (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008) [F14] in respect of the offence,

(b) if the order under this section is a hospital order, make a referral order (within the meaning of [F15] the Powers of Criminal Courts (Sentencing) Act 2000) in respect of the offence, or

(c) make in respect of the offender [F16] [F17] ... an order under section 150 of that Act (binding over of parent or guardian),

but the court may make any other order which it has power to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention.

41 Power of higher courts to restrict discharge from hospital.

(1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section F1... ; and an order under this section shall be known as "a restriction order".

(2) A restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.

(3) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—

(a) none of the provisions of Part II of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part II or absolutely discharged under section 42, 73, 74 or 75 below;

[F2(aa)] none of the provisions of Part II of this Act relating to [F3] community treatment orders and community patients [F3] shall apply;]

(b)no application shall be made to **[F4the appropriate tribunal]F4** in respect of a patient under section 66 or 69(1) below;

(c)the following powers shall be exercisable only with the consent of the Secretary of State, namely—

(i)power to grant leave of absence to the patient under section 17 above;

(ii)power to transfer the patient in pursuance of regulations under section 19 above **[F5or in pursuance of subsection 3 of that section]**; and

(iii)power to order the discharge of the patient under section 23 above;

and if leave of absence is granted under the said section 17 power to recall the patient under that section shall vest in the Secretary of State as well as the **[F6responsible clinician]F6** ;
and

(d)the power of the Secretary of State to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 above may be exercised at any time;

and in relation to any such patient section 40(4) above shall have effect as if it referred to Part II of Schedule 1 to this Act instead of Part I of that Schedule.

(4)A hospital order shall not cease to have effect under section 40(5) above if a restriction order in respect of the patient is in force at the material time.

(5)Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 40 above and Part I of Schedule 1 to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

(6)While a person is subject to a restriction order the **[F6responsible clinician]F6** shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

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