JO'S LAW: my plan to replace the Mental Health Act 1983

My name's Jo Roberts and I've had a mental illness. As a result, I've been on the receiving end of the Mental Health Act – and I'm still subject to it today.

In the past I've received compulsory treatment. Some of that treatment was deeply unpleasant and even terrifying. To this day, the Act has a direct impact on how I am able to live my life.

That's why I want to make sure that people like me have a say on how the law is reformed.

WHY THIS MATTERS

The Mental Health Act casts a shadow over the whole subject of mental health, affecting how people with mental health challenges are perceived and treated even if their problems are quite low level. The Act confuses criminal behaviour with serious illness and prescribes the same harsh treatment – compulsion, detention, distrust and disrespect.

The Mental Health Act is one of the main causes of the stigma associated with mental health precisely because its sole focus is on coercion. The public is well aware of the Act – they may not be able to name it but most people have heard the language of "sectioning" and of "men in white coats" coming to take people away.

This perception of the law is often lurid and inaccurate – but it reflects a sad truth: the Mental Health Act is indeed old-fashioned, one-sided, and unfair.

So fixing the law on mental health is a wider issue than just reforming the rules on who can be detained. It is about a fundamental shift away from coercion and towards respect and dignity.

WHAT'S HAPPENING NOW

In 2018 the UK Government commissioned an independent Review which considered how the present Mental Health Act can be improved. The Review published its report in December 2018 and the UK Government has promised to act on it. While I welcome the report, especially where it aims to remove some of the more oppressive aspects of compulsory treatment, I still don't believe that the Review has really got to grips with the patient experience of the Act.

I've talked to over 100 service users and carers about what it's like to be on the receiving end of the Mental Health Act and I've been in touch with thousands more on social media and through Jo's Blog which I have been publishing since early 2019. This inspired me to capture the voices and views of service users and carers in Wales: and now I think I can set out what is really needed to replace the Mental Health Act.

LET'S CREATE A LAW WHICH IS THE PATIENT'S FRIEND!

WHAT WE NEED IN A NEW LAW...

1. REDEFINE THE ROLE AND PURPOSE OF THE LAW

- Balance the use of compulsion with ***reciprocal rights***
- Put the ***minimum use of compulsion*** at the heart of the law with clear targets to reduce its use
- Base the use of compulsion solely on the issue of ***safety*** - for patients and everyone else
- Treatments (both medical and psychological) should be available for those detained as an ***automatic legal right*** - but not compulsorily where the patient has capacity
- Where patients lack capacity there should be an independent ***"guardian team"*** - designated family members or friends (or people designated by the patient) - supported by advocates (and legal experts where needed) who are wholly independent of mental health services and can act formally for the patient at all stages. Where the patient has capacity a similar team should be available to advise the patient

The Mental Health Act has tied everybody in knots over the justification for using compulsion. In reality the only justification - understood clearly by patients, families, and the public - is to ensure people's safety

2. PROVIDE RECIPROCAL RIGHTS BEFORE COMPULSION IS NEEDED

- Enshrine in law the principle of reciprocal rights to ***balance and compensate for compulsion***
- Under this principle introduce rights to **assessment**, **care** and **treatment** applicable before/after/outside the context of the process of compulsion
- Accord this right to ***anybody requiring specialist mental health services*** (i.e. above primary care level)

Compulsion should be balanced with rights for patients – and not just when compulsion becomes necessary but well before that. Legal rights to care and treatment would prevent the need for compulsion in many cases

3. REFORM THE PROCESS OF COMPULSION

- Any detention or other compulsion should require ***judicial oversight*** from the start: by a magistrate where urgent, but always validated by a tribunal within a short time. Any detention or other compulsion should be reviewed not less than monthly by the tribunal
- Short-term detention at a place of safety should be followed by rapid assessment of a patient's capacity and, where required, ***establishment of an independent guardian team*** to act for the patient
- Assessment for the use of compulsion should be ***confined to matters of safety*** based on the likelihood and scale of risk to the patient and, where appropriate, to other people
- Once this threshold of risk is established patients – or their guardian team – should be supported ***to identify and agree sufficient actions*** (not confined to the option of in-patient care) to reduce the risk below the threshold; where a patient or guardian team cannot agree arrangements with mental health services then a tribunal should arbitrate
- There should be a legal right for the patient (or guardian team) to insist on ***alternative, community-based arrangements*** subject to the test of safety
- All mental health patients should be encouraged to agree ***advance directives*** including key choices of care and treatment and identification of potential guardians. Such directives should be legally binding

When safety is at stake then the law should be able to intervene – but it should be available to the patient to satisfy the need for safety by means of their choice so long as safety is achieved

4. PROVIDE RECIPROCAL RIGHTS FOR THOSE SUBJECT TO COMPULSION

- There should be a minimum, guaranteed ***choice of treatments*** available to all patients subject to compulsion – including psychological therapies
- ***Minimum standards*** for hospitals for those detained including private rooms, gender segregation if chosen, access to phone and email, and education and recreational opportunities every day
- A ***choice of location*** offered – for example whether to go to a local hospital or travel further to a specialist unit
- All patients subject to compulsion (or their guardian team) should have the option to access a ***personal health budget*** (based on the cost of in-patient care) with which to design and purchase their own treatment and care package at an independent hospital or in the community - subject to the package meeting the threshold for reducing risk

The law may be required to ensure safety but it should never be used to compel people to accept a particular course of care and treatment at a particular place – or to accept a substandard environment

5. REDUCE THE USE OF COMPULSION

- Create a legal duty on health and social services to establish and work towards ambitious targets to ***reduce use of compulsion*** by…
- Providing care and treatment earlier ***before a crisis occurs***
- Working harder to agree ***voluntary treatment*** with patients through negotiation
- Achieving earlier discharge safely by providing ***improved ongoing support in the community***

Compulsion is sometimes necessary but always frightening, expensive, and counter-productive in terms of mental health. The most valuable change for all concerned would be to reduce the use of compulsion safely

6. DIFFERENTIATE CRIME AND ILLNESS

- A ***fundamental review*** of mental health and the criminal law should be undertaken
- There should be ***an end to the injustice*** of holding people who are seriously ill responsible or partially responsible for harm they do when they are psychotic
- But ***there is no need to increase risk***: the safety-oriented mental health legislation proposed above can provide for compulsion where necessary to keep people safe

It is barbaric that people who are very seriously ill are treated as criminals. Other civilised countries understand that we should distinguish clearly between crimes committed purposefully and harm caused unwittingly by people whose illness has overwhelmed their judgement

7. ENGAGE CARERS AND FAMILIES

- Carers and families – or others chosen by the patient - should be ***part of the team*** which works with the patient to determine how everybody can be kept safe
- Where patients lack capacity carers and families should typically ***lead the guardian team*** acting for the patient
  – or if the patient wants this there should be independent guardians available
- ***Support for carers and families*** should form part of the package of support for the patient before, during, and after compulsion is used
- Where the patient does not wish carers and family to be involved the alternative guardian or the relevant services should nevertheless ***always take note of carers' and families' evidence and views*** – this need not involve any breach of the patient's confidentiality
- The ***safety of carers and families*** must be an active consideration along with that of the patient and of other people

Carers and families often know best what to do when a patient is seriously ill – and they can help practically too. The law should recognise this

8. END THE UNFAIR TREATMENT OF BLACK, ASIAN AND MINORITY ETHNIC PATIENTS

- Recognise the disadvantages faced by BAME patients and families - not just from the Mental Health Act but from wider mental health services
- Develop a new service model for Black people which ***reflects their community*** in terms of staffing, management, and culture
- Transform the experience of Black patients with ***recovery-based support*** in place of routine compulsion

Black people are four times more likely to be detained under the Mental Health Act than White people

WHERE CAN I FIND OUT MORE ABOUT THE MENTAL HEALTH ACT REVIEW?

To find out more about the UK Government's Independent Review of the Mental Health Act visit:
www.gov.uk/government/groups/independent-review-of-the-mental-health-act

For an overview of the current Act please visit:
www.mentalhealthwales.net/the-mental-health-act-1983-amended-in-2007

HOW CAN I GET INVOLVED?

If you agree with me or would like to add your own points, please email me at **josblog@hafal.org** or write to me care of Hafal, Unit B3, Lakeside Technology Park, Phoenix Way, Llansamlet, Swansea SA7 9FE. Alternatively you can hashtag me using the following: **#josblog**

MORE ABOUT JO...

I've been subject to compulsory treatment a few times in my life and was sectioned for long periods. I am still subject to a Home Office section. I originally campaigned for a fair Mental Health Act back in the early noughties when a draft new Act was being considered by Parliament. I gave evidence in Parliament and played a leading part in seeing off this draft Act which was not taking us in the right direction at all. We then ended up with an amending Act which modified parts of the 1983 Mental Health Act.

Hafal
Unit B3
Lakeside Technology Park
Phoenix Way
Llansamlet
Swansea
SA7 9FE

Tel: 01792 816600
Email: hafal@hafal.org
Web: www.hafal.org

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Jo's Law is published by mental health charity Hafal. We are supporting Jo with her campaign in order to promote discussion of mental health law in England and Wales.

Hafal Chair Mair Elliott said: "We've been really inspired by Jo's campaign and the points she has raised and we look forward to exploring our own position in the light of Jo's research in the coming year. Look out for more information at our forthcoming events and on our website and social media."

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