

# Has the Mental Health Act had its day?

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Patients with a "mental disorder" in England and Wales can be detained and treated against their will under the Mental Health Act (MHA). The United Nations has said the UK should repeal legislation authorising compulsory treatment in healthcare.

Should this law be reformed - or could changes make things worse for patients? Experts debate the issue in *The BMJ* this week, ahead of the 56th Maudsley Debate on 22 November 2017 at King's College London.

Unjust discrimination against people with [mental ill health](#) in relation to involuntary [treatment](#) should be replaced with universal rules based on decision making ability, argues George Szmukler, Emeritus Professor of Psychiatry and Society at King's College London.

In non-psychiatric cases, the person's decision-making ability (capacity) and what is in their best interests are key to when treatment decisions can be overridden, he explains. Yet in psychiatric cases, [mental health](#) law invokes two entirely different criteria operate - the presence of a (largely undefined) 'mental disorder' and a perceived 'risk' to the person's health or safety, or of harm to others. The patient's autonomy is thus not accorded equal respect.

"We have accepted such discrimination for so long because of deeply rooted stigmatising stereotypes of people with mental illness - that they are incapable of exercising judgment, and that dangerousness is intrinsic to mental illness," he writes.

Szmukler believes we can create a legal framework governing involuntary treatment that is non-discriminatory. "The law must be generic; that is, it applies to everyone who has a problem with decision-making, whatever their diagnosis - physical or mental - and in any setting - medical, surgical, psychiatric, or in the community," he argues.

"Northern Ireland has taken the ground-breaking step of enacting such a law. We are sure to see more like it in the future," he concludes.

A world without compulsory mental health treatment is a commendable ambition, writes Scott Weich, Professor of Mental Health at the University of Sheffield. But he worries about legal distractions that won't improve outcomes while services are so thinly stretched.

By abandoning the Act, as in Northern Ireland, "lives would be lost and more people in distress would go without help," he argues. It would also mean contravening other human rights, including the rights to health, liberty, justice, and life. The most vulnerable people would likely suffer most.

The law is not the problem, he says. Only properly resourced [mental health services](#) can reduce rates of compulsion and assure decent, humane outcomes. "But because UK services are so thinly stretched, abandoning the MHA would discriminate against [people](#) with [mental illness](#) by denying them care."

One of the paradoxes of the MHA is that its application obliges services to provide care, he adds. "Only patients deemed at most risk can access mental [health](#) beds. In other words, they get help only because the MHA (that is, the law) demands that they get treatment."

"We can't divorce the law from its setting," he concludes. "Focusing on the MHA is looking too far downstream, and is a dangerous distraction."

Unless services are properly resourced, changing the law won't make things better for patients, and it might make them very much worse."

**More information:** George Szmukler et al. Has the Mental Health Act had its day?, *BMJ* (2017). [DOI: 10.1136/bmj.j5248](https://doi.org/10.1136/bmj.j5248)

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