

Date: Thursday 14 October 2004
Venue: Committee Rooms 3&4, National Assembly for Wales, Cardiff Bay
Title: Draft Mental Health Bill - Response from Hafal

*ar gyfer pobl
gydag afiechyd
meddwl difrifol*

hafal

*for people
with severe
mental illness*

"Hafal empowers people with severe mental illness and their families to achieve a better quality of life, to fulfil their ambitions for recovery, to fight discrimination, and to enjoy equal access to health and social care, housing, income, education, and employment" – Hafal's Mission Statement

Draft Mental Health Bill 2004

Hafal's Response

Note: this Response will be further developed before submission to the UK Parliament's Joint Committee on the Draft Mental Health Bill.

"This is not what patients and families want. We know there is a need for a legal framework but it has to be balanced fairly. The state has no right to compel people to undergo treatment if it is not also prepared to give them legal rights to a choice of treatments which they can seek voluntarily". – Peter Davey, Chair of Hafal.

1. About Hafal

Hafal is a patient and carer-led organisation working with people with severe mental illness and their families in Wales. Many of Hafal's membership of 612 have extensive personal experience of the Mental Health Act 1983. Hafal operates over 60 projects across Wales providing a range of services for people with severe mental illness: these include employment/training projects, supported accommodation, resource centres, club activities, befriending schemes, advocacy and carers' support services. Over 600 people use a Hafal service every day. In addition Hafal campaigns vigorously through research and publications to remove the stigma and isolation associated with severe mental illness.

2. Summary of this Response

Hafal acknowledges that there are some improvements on the 2002 draft particularly those relating to the conditions for Community Treatment Orders and the treatment of offenders. However, there remain fundamental weaknesses in relation to:

- the scope for extending use of compulsion to new groups
- the lack of rights for carers
- the lack of reciprocal rights to treatment, and
- incompatibility with Welsh policy and the current state of services in Wales.

Everybody understands that compulsion is needed as a last resort, mainly to ensure the safety of those who become seriously vulnerable because of their illness. But compulsory treatment is a messy, bureaucratic business which for obvious reasons damages the trust needed between doctor and patient. The Government has missed an opportunity to engage in a dialogue with patients – the real experts who understand how severe mental illness affects people – with a view to reducing the need for compulsion by ensuring early, effective treatment.

3. Scope

Hafal is a member of the Mental Health Alliance and shares its concerns about the scope for the use of compulsion. The 2004 draft is little improved on the 2002 version in this respect because new groups will inappropriately come under the scope of the legislation including those with substance misuse problems and people with personality disorders for whom there is not a clear course of treatment.

The Government has made much of the “closing of the loophole” concerning the very small number of people with a personality disorder whom the Government believe should be detained without having committed an offence. Hafal has always believed that this matter should be addressed through separate legislation: a Mental Health Bill should be about health. The confusion of these two separate issues will result in continuing misunderstanding and prejudice in wider society and distrust and distress for patients and families.

4. Carers

Carers lose rights which they held under the 1983 Act: they no longer have powers to seek the discharge of patients and they are effectively excluded because new provisions for the Nominated Person replace the previous rights of carers. Hafal recognises the right of patients to choose people to advocate for them but this can be addressed at the same time as retaining rights for carers to be engaged as key parties in their own right.

5. Reciprocal Rights

Hafal’s recent survey of patients and families indicated that their highest priority for new legislation was to establish a right to treatment. This would be a counterbalance to compulsory treatment which is understood by patients and families to be a necessary last resort.

Reciprocal rights are frequently argued for as “compensation” – offering something in return for the invasion of individual rights which compulsion necessarily involves. This is a valid argument but Hafal’s members seek legal rights to treatment for much more concrete reasons. Their typical experience is one of a wholly inadequate response when treatment and care is sought voluntarily at the first signs of illness: subsequent deterioration frequently leads to the use of compulsion. Long experience tells our members that the “moral” case for support when it counts at the early stage will never countervail the methodical and relatively consistent application of legal compulsion (which of course will always also win the case for resources).

Rights to early treatment would create a more humane and cost-effective service, steering patients quickly towards recovery and social integration and reducing the need for compulsion.

Reciprocity of this sort was initially recommended in the “Richardson report” “Review of the Mental Health Act 1983: report of the Expert Committee” (DoH 1999). Hafal does not see why this principle should be abandoned.

6. Compatibility with Welsh Policy and Services

We are especially concerned that Wales simply has not got the infrastructure to support this legislation. The Commission for Health Improvement has reported that Wales' services are less developed than those in England. Very little of Wales' National Service Framework has been implemented and there is no clear timetable for implementing many of the required standards. Wales has an acute shortage of psychiatrists and other key human resources.

Implementation of this Bill in Wales would have the effect of diverting resources away from timely and effective services into the management of the legal process: this in turn would mean more people deteriorating to the point where compulsion was necessary.

7. Improvements in comparison with the 2002 draft Bill

(i) Community Treatment Orders

Hafal's members have not opposed in principle the idea of compulsory treatment being provided other than through detention in hospital: their concern was that such arrangements should not extend compulsion but rather offer an alternative to hospital treatment. Hafal therefore welcomes the restriction of CTOs to those who have previously been admitted to hospital but we remain very concerned that CTOs may still be used on patients where previously no compulsion would have been applied.

(ii) Compulsion in Prison

Hafal welcomes the withdrawal of the proposal for compulsory treatment within prisons.

(iii) ECT

Hafal welcomes the further restrictions on use of ECT.

8. Scotland

Hafal has looked carefully at the Mental Health Act 2003 introduced by the Scottish Parliament. Their legislation was developed in careful liaison with patients and other interested parties. Though there remains some controversy there is nevertheless a degree of consensus in Scotland about the way forward. Of course the National Assembly cannot make law as the Scottish Parliament can but Wales' devolution settlement only makes sense if Westminster makes laws which work in Wales: without radical change this Bill will not work in Wales.

9. Evidence

Hafal has conducted a Survey, including specific questions on mental health legislation, of over 300 patients, carers, and staff: Hafal's response is based on this Survey and the extensive experience of members, clients and staff. Full results of the Survey are available on request from Hafal.

10. Contacts

Hafal Head Office

Bill Walden-Jones:- Chief Executive
Alun Thomas:- Deputy Chief Executive
Nicola Thomas:- Company Secretary
Liz Griffiths:- Recovery Programme Co-ordinator
Suite C2, William Knox House
Britannic Way

Janet Randles – Manager, North Wales
Room 72, The Mill Suite
Greenfield Business Centre
Greenfield
Holywell
Flintshire
CH8 7QB

John Abbott – Public Affairs Manager
Hafal National Resource Centre
Ysgybor Fawr
Museum of Welsh Life
St. Fagans
Cardiff
CF5 6DU

Llandarcy
Neath
SA10 6EL
Tel: 01792 816600
Fax: 01792 813056
e-mail: hafal@hafal.org

Tel: 01352 718002
Fax: 01352 718002
e-mail: northwales@hafal.org

Tel: 02920 560800
Fax: 02920 565959
e-mail: publicaffairs@hafal.org

Hafal September 2004