

# Health and Social Services Committee

## HSS(2)-14-04(p.8)

Date: Wednesday 24 November 2004

Venue: Committee Rooms 3 & 4, National Assembly for Wales

Title: Committee's Report on its Scrutiny of the Draft Mental Health Bill.

### Purpose

The Committee is invited to approve the draft report at Annex 1. The report will be sent to the Minister for Health and Social Services and Lord Carlile, Chair of the Joint Parliamentary Committee.

**Committee Service  
November 2004**

**Annex 1**

## National Assembly for Wales

### REPORT BY THE HEALTH AND SOCIAL SERVICES COMMITTEE

#### Draft Mental Health Bill

### Background

1. On 14 October 2004 the Health and Social Services Committee considered the Draft Mental Health Bill published by the UK Government on 8 September for pre-legislative scrutiny. The Committee invited those organisations in Wales that gave evidence on the previous draft Bill in September 2002 to do so again. Copies of the written evidence submitted in advance of the meeting are appended to this report, together with the minutes of the meeting.

2. The organisations represented were:

- Association of Directors of Social Services;
- HAFAL;
- Mind Cymru;
- Royal College of Psychiatrists;
- Royal College of Nursing.

The Law Society was also invited to the meeting, but had not been able to accept.

## **Consideration of Evidence**

3. The Committee focused its examination of the draft Bill on the changes from the draft Mental Health Bill that was published in 2002 and the extent to which the new draft met the concerns raised then.

## **General Principles**

4. Written evidence from the Royal College of Psychiatrists addressed the question of whether the draft Bill was rooted in a set of unambiguous principles. They recommended a number of issues that the Bill should address specifically as principles. Hafal supported this view.

## **The Committee's Conclusion and Recommendation**

- The Committee took the view that the principles underlying the draft Bill should be set out clearly. The current draft, as with the 2002 draft, was not compatible with Assembly policy.

## **Conditions for Compulsory Treatment**

5. All of those who gave evidence took the view that the revised definition and associated conditions would result in increased levels of compulsory detention. New groups would come under the scope of the legislation inappropriately, including those with substance misuse problems and people with personality disorders, for whom there was no clear course of treatment.

6. In their written evidence, the Royal College of Psychiatrists said that any new Act must not have an adverse effect on voluntary (consenting) patients. This could occur because patients who are under compulsion will have first call on the limited resources. This view was supported by Hafal, who felt that the Bill would not help people who sought treatment voluntarily in the early stages of mental illness.

## **Committee's Conclusions and Recommendations**

- The definition of mental disorder was too broad and needed to be qualified by exclusions.
- The emphasis on compulsion would draw heavily on resources resulting in less scope for early therapeutic intervention where this was sought voluntarily. The right of people to have voluntary treatment needed to be given equal status.

## **Treatment Orders in the Community**

7. In their written evidence Hafal had been particularly concerned about the loss of carers' rights. It felt that carers would no longer have powers to seek the discharge of patients and they were effectively excluded because new provisions for the Nominated Person replaced the previous rights of carers. Vicky Yates, a carer who gave oral evidence to the Committee felt that carers would have all the responsibility and none of the rights. She believed the new legislation would put pressure on carers to ensure patients did not breach conditions, which could be seen as part of the coercing process and would have an adverse effect on the caring relationship.

8. Hafal also raised concerns that under Clause 14(1) any person could request the Local Health Board to carry out an assessment of a mentally disordered person. This could lead to malicious or mischievous requests.

9. Mind also raised concern that the nominated person was entitled only to be 'consulted' and had no powers to discharge a patient under compulsion. They felt that the nominated person should have the same powers as the nearest relative under current law and should retain the right to block the patient's admission. Mind took the view that it was unlikely that people who were well enough to be in the community and not in hospital would need compulsory treatment. It could be difficult to break the cycle of compulsory treatment where treatment was shown to be effective and removal of compulsion could put the patient at risk.

10. The Royal College of Psychiatrists told the Committee that, although the draft Bill provided for compulsory treatment in a health care setting, it did not contain enough detail about how this might be achieved. In its written submission, it recommended that the rights and safeguards should be same under the Mental Capacity Bill and the Mental Health Bill.

## **Committee's Conclusions and Recommendations**

- The role of the nominated person would be weaker than that of the current "nearest relative". This needed to be addressed, as did the role and rights of carers. The Committee recommended that the Joint Parliamentary Committee be asked to look at the roles of the nominated person and carers in the cycle of assessment and treatment.
- The concerns about compulsory treatment raised by the Committee in 2002 had not been addressed. These related to the criteria for applying compulsion and how compulsory treatment would be given in the community.
- Clause 14(1) was open to abuse in people making malicious or frivolous requests for assessment. It was recognised that this clause was probably intended to protect the rights of families and carers, but its intention needed clarification.
- There is potential for people being trapped in a cycle of incidents of compulsion. Compulsion should be a temporary measure only.

- It was important that the provisions and terminology of the draft Mental Health Bill and the Mental Capacity Bill currently before Parliament should be compatible.

## **Effects on Professional Roles**

11. In their written evidence, the Royal College of Nursing said that the Approved Mental Health Professional may require a different view, possibly a conflicting one, from that of the actively caring nurse, patient or manager and there were clear implications for the therapeutic role. The role needs to be clarified. They supported this in their oral evidence with the view that moving the focus from a therapeutic, caring relationship to one of compulsion could be extremely damaging.

12. The Association of Directors of Social Services was disappointed that the Approved Social Worker role had not been retained. The Bill did not take account of the increasing integration of health and social care and the aims of the National Service Framework. Mind expressed grave concerns at the loss of independence resulting from the creation of the Approved Mental Health Professional. The current Approved Social Worker was seen to have a level of independence because he or she was not normally employed by the NHS. Service users had been extremely concerned by this proposal.

13. The Royal College of Psychiatrists highlighted the current shortfall in consultant psychiatrists in Wales, where there are 40 vacancies. It estimated that 30 more psychiatrists would be required in addition to filling the vacancies, if there were to be no diminution in services for patients not subject to detention.

## **Committee's Conclusions and Recommendations**

- The provisions in the Bill for compulsion could damage the therapeutic relationship between the patient and health care professionals.
- It would not be appropriate for the role of the Approved Social Worker to fall to a professional in the health service.
- If the number of people receiving compulsory assessment and treatment were to increase under the Bill as predicted it would be necessary to recruit more psychiatrists.

## **Other Resource Implications**

14. In their written evidence all of the organisations expressed concerns about implications for resources, both staffing and financial. The Royal College of Nursing and the Association of Directors of Social Services expressed the view that mental health services were already under funded and that the requirements of the Bill would exacerbate the problem.

## **Committee's Conclusion**

- The additional costs that would be associated with providing more tribunals and advocacy were

noted, although evidence on this had not been discussed.

## **Effects on Welsh Mental Health Services**

15. Hafal expressed the view that the provisions of the bill would increase the stigma attached to mental illness

### **Committee's conclusion and recommendation.**

- The Bill should seek to reduce, rather than increase, the stigma associated with mental illness. The Committee recommended that the Joint Parliamentary Committee address this issue in detail when it scrutinises the Bill.

David Melding AM  
Chair

November 2004