

Mental Health Bill Bulletin

November 2006

Amending Bill Published

On Friday November 17th the UK Government published an Amending Bill that seeks to make changes to the Mental Health Act 1983.

The Amending Bill, which will get its Second Reading in the Lords on Tuesday 28 November, includes controversial clauses that would allow people to be detained without any useful treatment being available, even if they have not committed an offence. However, there are no amendments awarding patients **rights to early treatment**.

“Where are our rights?”

Hafal, Wales' principal organisation working for people with severe mental illness, has called into question the amendments in the Bill, asking:

- Where are patients' rights in the Bill?
- What impact will the amendments have on services in Wales?

Bill Walden-Jones, Chief Executive of Hafal, stated:

“Compulsion laws must be balanced with rights to early treatment.

“Our clients and carers have always been reasonable: they have accepted that there are times when compulsion is necessary. But we also believe that including the right to early treatment in the Amending Bill would deliver a just Mental Health Act for the future – an Act that would lead to a reduction in the need for compulsion.

“The Welsh Assembly Government has a sound programme to improve mental health services in Wales which is supported by Hafal and other user



organisations. There is a real danger that this programme will be disrupted by the new Bill which, with its focus on extending compulsion, may undermine the partnership between patients and professionals which is so vital to successful mental health services.”

INSIDE: A breakdown of the Bill

Below: Hafal's Mental Health Bill rally held in Llandrindod Wells on 16th November 2006; 150 service users, carers and health professionals took part in a demonstration calling for reciprocal rights...



*ar gyfer pobl
gydag afiechyd
meddwl difrifol*

hafal

*for people
with severe
mental illness*

What are the proposed amendments?

What the Government Proposes	What Hafal says
Supervised Community Treatment	
<p>The Government wants to introduce Supervised Community Treatment (SCT) for patients following a period of detention in hospital. It will mean patients can live in the community under the powers of the Mental Health Act. Only people who "would be a risk to their own health or safety or that of others if they did not continue to receive their treatment when discharged from hospital" can be considered for SCT.</p>	<p>Hafal does not oppose in principle the idea of SCT for those who have already received hospital treatment. However we believe that the powers to limit the behaviour of those subject to community treatment orders should be clearly defined and confined mainly to treatment compliance. And they should only be imposed for limited periods of time. Hafal is also concerned that SCT should only be used instead of hospital treatment: the present proposals may well lead to increased use of compulsion.</p>
Definition of a Mental Disorder	
<p>The Government's Bill to introduces a new definition of mental disorder throughout the Act to make it "easier to use" and so that the definition "more straightforwardly covers all disorders and disabilities of the mind".</p>	<p>While not opposed to a simplified definition of mental disorder, we feel that this should be accompanied by strict and tight conditions for compulsion. A major concern is that the Government is removing most of the exclusions from the current Act which prevent behaviours such as 'immoral conduct' or 'sexual deviance' from being seen in themselves as mental disorders.</p>
Treatability Test	
<p>At the moment patients may be detained for treatment under section 3 of the Act if such treatment is likely to alleviate or prevent a deterioration of their condition (the 'treatability test'). The Government proposes to replace this with a requirement that someone cannot be detained for treatment unless appropriate treatment is available (an 'appropriate treatment' test).</p>	<p>We say the 'appropriate treatment' test is too vague and therefore not adequate for use when considering coercion. If a person is detained for treatment, that treatment must provide a therapeutic benefit to the individual.</p>
Nearest Relative	
<p>The Government wants to extend to patients the right to make an application to county courts to displace their nearest relative (NR). The provisions for determining the NR will be amended to include civil partners. In addition the patient, an Approved Mental Health Professional, any relative of a patient and anyone living with a patient will be able to apply to the county court to displace the NR.</p>	<p>We respect the right of patients to displace their NR, but have some concern that the process could be protracted and stressful.</p>
Mental Health Review Tribunal	
<p>Currently people held under the Mental Health Act have a right to have their case reviewed by a Mental Health Review Tribunal after six months' detention. The Government intends to take an order-making power which will allow them to vary the time limit for automatic referral by hospital managers to the Tribunal.</p>	<p>Hafal welcomes new powers which will allow the Government to reduce the time delay before patients get an automatic Tribunal. However we also call for more powers for the Tribunal regarding the use of compulsory powers or further treatment. We would like to see clear targets in place for reducing the time patients must wait for a Tribunal.</p>
Professional Roles	
<p>The Government is broadening the group of practitioners who can take on the role of the approved social worker (ASW) and responsible medical officer (RMO) in the Mental Health Act. Under the proposed changes the ASW will be replaced with the role of Approved Mental Health Professional (AMHP), with the role opened up to a wider group of professionals such as nurses or occupational therapists. The RMO will be replaced with the role of Clinical Supervisor (CS) and the role, which has usually been taken by a consultant psychiatrist, will be open to professionals such as psychiatrists, psychologists, nurses, social workers and occupational therapists. It is also proposed that decisions about treatment can be given by the most appropriate professional (as opposed to the RMO).</p>	<p>The decision to detain somebody against their will when they have done nothing wrong is a very difficult one and we should be wary of giving more people the power to do this. We are concerned that these roles should be regulated and well resourced, with proper training provided.</p>
What the Government is Not Proposing	
<p>The Government is not offering new reciprocal rights to patients as a balance to the coercive elements of the Act.</p>	<p>Hafal believes strongly that there should be a legal right for patients to obtain treatment which they ask for voluntarily before their illness increases to the point where compulsion may be necessary. In Scotland there is a right to assessment; we want to see a legal right to assessment and to a timetabled programme of support and treatment agreed with patients.</p>

What amendments are people in Wales asking for?

Hafal is a mental health charity run by those it supports: people with severe mental illness and their carers. During our years of campaigning for a better Mental Health Bill, Hafal clients from across Wales have made it clear what they expect from a fair and just Bill:

• Patient rights

Hafal clients and carers know from experience that if a person receives early treatment for their mental illness they are much less likely to become so ill that they need compulsory treatment. A sensible Bill would take this into account, giving patients the right to this timely treatment in order to **avoid** compulsory treatment (and its great financial and emotional cost). The Amending Bill offers no such rights. Instead it focuses on powers of compulsion, and on taking away a patient's rights. This is despite the fact that around **half** of people who end up being treated against their will have asked for help before this point but been denied it.

"The Scottish Act gives patients the legal right to have their needs assessed before they reach crisis point. Why can't we have this right in Wales?" asked David Williams, a client at Hafal.

Shane Stachera, a client at Hafal, said: *"There has always been a fair deal available to the Government: people with severe mental illness have always offered their cooperation in coming up with a reasonable solution. For Hafal's clients it has always been about creating a balance, with the right to early treatment in place alongside the rare use – with safeguards – of compulsion, usually when people are a danger to themselves. But the Government has so far failed to take this fair-minded route."*

• Legislation that supports Wales' National Service Framework

One of the key issues for people in Wales is how the amendments would affect the Assembly Government's plans for improving mental health services in Wales. The Assembly Government's **Adult Mental Health National Service Framework** provides plans to create services that are "effective, comprehensive and responsive" (Standard 6) and that promote "service user and carer empowerment" (Standard 2). However, the compulsion-led Mental Health Bill that skimps on patient and carer rights contradicts these aims.

Andrew Mullholland, a carer at Hafal, said: *"The Welsh Assembly Government has really listened to carers and service users and come up with a Service Framework that promises much-improved services. But the Amending Bill has put these plans in jeopardy. Perhaps the Welsh Assembly Government could come up with something more in tune with the Framework: laws that are focused on empowerment as much as on compulsion, and on early treatment as much as compulsory treatment."*

• Our own legislation?

In light of the new law-making powers for the Assembly, many of our Members have called for Welsh mental health legislation similar to the Scottish Bill (this will require "enabling" legislation by Westminster).



Brian Mitchell, a client of Hafal, said: *"We need law that supports Wales' National Service Framework and is specific to Wales. Why shouldn't we? Scotland has its own Act, and it's much fairer and more balanced than the one the UK Government is proposing. If we had a Welsh Bill we could develop laws that improve the service to patients in Wales – laws that are not dictated by the tabloid media in London."*

Left: Hafal Members Jo Roberts and Vicky Yeates travel to Parliament to deliver evidence on the draft Mental Health Bill (2004); the Joint Parliamentary Committee scrutinising the shelved Bill quoted Hafal's evidence in their report several times, particularly comments about how the aims of the Bill were incompatible with Welsh services and Assembly Government policy.

What are people saying about the Amending Bill?

"The College is particularly concerned that any compulsory treatment should have a clear clinical purpose, and be of benefit to the patient."

Professor Sheila Hollins, President of the Royal College of Psychiatrists

"The Mental Health Bill is out of step with the Government's modernisation of the NHS. People subjected to compulsory treatment should all have access to advocacy and a chance to say in advance how they wish to be treated. Without these steps the Bill will do little to reduce the exclusion of those with mental health problems."

Angela Greatley, Chief Executive of the Sainsbury Centre for Mental Health

"It is disappointing that after so many years and extensive discussion and consultation, and particularly following the report of the Joint Parliamentary Scrutiny Committee, the Government has decided to ignore widely held views and concerns about key issues. Our main concerns are that the legislation fails to uphold the human rights of patients, and provide access for care for people with mental illness, with compulsory treatment used only as a last resort."

Fiona Woolf, President of the Law Society

"High profile inquiries that have looked into cases such as John Barrett and Michael Stone haven't recommended a change in legislation; but rather have highlighted the lack of resources, beds and appropriate treatment."

Paul Corry, Director of Public Affairs, Rethink

"Despite the advice of many mental health groups the Government's proposed amending of existing legislation does not provide us with a twenty-first century Mental Health Bill that supports well-being and helps people to achieve their potential."

Liz Felton, Chief Executive of Together

"Our concern, like that of many others, is that the new proposals have been driven by public safety without giving positive rights to care and treatment both for people with mental illness and their families. While a few people may be protected by supervised community treatment in the right circumstances, the majority of those needing help will still be failed when beds, units, day centres, community and therapy services are being closed or reduced. We need care and compassion, not coercion."

Marjorie Wallace, Chief Executive of SANE

"It's quality health services that will protect people, not this legislation, opposed by mental health experts across the board. We hope that the widespread concern in Parliament will lead to the essential changes that must be made to give any chance of providing an effective mental healthcare system. It is vital that health legislation is focused on benefiting and treating health problems. Treatment that cannot improve or treat a person's health, should not be forcibly given to them."

Paul Farmer, Chief Executive of Mind

"I am concerned that vulnerable people who lack capacity do not have access to advocacy under this proposed legislation. The bill must provide people with mental health problems the statutory right to access advocacy services. It is hard to understand why government has dropped this basic principle."

Andrew McCulloch, Chief Executive of the Mental Health Foundation

For the latest news on the Mental Health Bill, visit: www.mentalhealthwales.net

To support Hafal's campaign please get in touch:

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