

Mental Health Act Assessment

We believe that the Bill should include a test or safeguards in the Bill to prevent vexatious, malicious or frivolous requests.

The Bill provides that any person can request, from the appropriate authority, a determination as to whether all of the relevant conditions for the use of compulsory powers “*appear to be met in a patient’s case*” (clause 14 (1)).¹ If the authority determines that all the relevant conditions appear to be met it must arrange an examination.

However, it is difficult to gauge how the appropriate authority will be able to form a view on whether the relevant criteria are met. It is likely that authorities will have to tie up considerable resources responding to requests, some of which may be improperly motivated. For example, it may be used by a neighbour who has a grudge against a person with mental health problems who is behaving strangely or causing minor nuisances. This is of concern to the Alliance and we believe that the Bill should include safeguards against vexatious, malicious, or frivolous requests for an assessment. This is in line with a recommendation of the Joint Committee to the same effect.

¹ Department of Health, 2005 *.Mental Health Draft Bill*

The Assessment Process

Proposed changes to the assessment process for treatment under the Mental Health Act raise a number of issues upon which the Mental Health Alliance has developed policy lines. These issues are listed below, and cross-referenced to the relevant chapters of this policy document.

- Who can make a request for an assessment Right to assessment
- Consequences of failure to meet the conditions for treatment under the Mental Health Act Right to assessment
- The role of the AMHP in the examination and assessment process in the first 28 days Role of the AMHP
- Consequences of meeting the conditions for treatment under the Mental Health Act Criteria for compulsion
- The role of the advocate at the examination stage Advocacy
- The appeal mechanism within the assessment period and the disincentive for the patient to apply for discharge for fear of being placed under a long term treatment order Tribunals
- Access permitted to the nominated person during the assessment period Nominated Persons
- The procedure for non-resident assessment, including the role of the clinical supervisor Non-Resident Orders

Right to an Assessment of Health and Social Care Needs

The Government accepts that compulsory powers should be a last resort. One of the central aims of the National Service Framework for Mental Health is, “*To ensure that each person with severe mental illness receives the range of mental health services they need; that crises are anticipated or prevented where possible.*”² For the principle to be matched by practice, the NHS and local authority social services should ensure that a person’s mental health needs are met in a timely fashion. The statistic that one in three people are turned away when they seek help makes clear that this is far from the case at present.³ The likely result for those denied help is that their condition deteriorates, making compulsion more likely. Indeed, people can end up under compulsion in order to receive services.

The Draft Bill provides that any person may request an assessment for the use of compulsory powers and this triggers a duty on the appropriate authority to make a determination. However the same statutory force is not accorded to a request made for an assessment of a person’s health or social care needs. Evidence shows that patients who are able to access appropriate services at an early stage of their illness will be less likely to be admitted to hospital under compulsion, have an increased chance of recovery and a reduced risk of relapse.

The Alliance believes that all people with mental health problems should have a statutory right to a comprehensive, holistic assessment of their health and social care needs with a further right to receive services to meet those assessed needs.

Such a principle would:

- Uphold the principle of the least restrictive alternative;
- Encourage preventive care and earlier intervention, avoiding hospital admissions;
- Remedy the imbalance between psychiatric and non-psychiatric care;
- Reduce dependence on medication;
- Make the system more efficient by intervening as early as possible;
- Support carers in looking after people with mental health problems;
- Be more likely to result in positive outcomes; and
- Combat social exclusion.

Current Law

At present, mental health legislation does not give any right to an assessment nor a duty on authorities to address a request. There is a general right to an assessment for people with both physical and/or mental health needs who appear to be in need of services under section 47 of the NHS and Community Care Act 1990.⁴ Although this is a duty on social

² Department of Health, 1999. *National Service Framework for Mental Health: modern standards and service models*, p41.

³ Rethink (National Schizophrenia Fellowship) 1999. 35% of respondents in the survey conducted. *Better Act Now!*

⁴This provides the right to an assessment where the individual appears to be in need of community care services.

services, the Act also provides that if during the assessment a *“health care need is identified”* the health authority must be notified (although they are not under a duty to respond).

Expert Committee Proposals

The Expert Committee recommended that in accordance with the principle of reciprocity there should be a duty placed on the NHS and social services jointly to assess and meet the needs of people with mental health problems, with reasons if their needs could not be met.

It stated that: *“The proposed right to assessment would supplement any rights contained elsewhere, e.g. section 47 of the NHS and Community Care Act 1990. It would be a right to assessment in relation to mental health needs. It would apply to those in contact with services who might, for example, believe that their condition is deteriorating, and to those unknown to services who believe that they need an assessment in the interests of their own mental health, safety or for the protection of others. The right would reside in the user or potential user and would impose a duty on the relevant health or social service authority. We did not envisage the right as a personal right enforceable by the user in private law, but rather as a right giving rise to a public law duty on the relevant authority.”*

“The individual should be entitled to have those needs assessed by an appropriately trained professional and to be told the outcome. The precise details of how the scheme would work would have to be supplied in the Code of Practice, and would have to include a system for recording any unmet assessed needs and the provision of guidance as to how to deal with those who in effect abuse the right.”

National Service Framework for Mental Health

NSF standard 2:

Any service user who contacts their primary health care team with a common mental health problem should:

- have their mental health needs identified and assessed; and
- be offered effective treatments, including referral to specialist services for further assessment, treatment and care if they require it.

NSF standard 3:

Any individual with a common mental health problem should:

- be able to make contact round the clock with the local services necessary to meet their needs and receive adequate care; and
- be able to use NHS direct ... for first level advice and referral on to specialist helplines or to local services

Alliance position

The Alliance believes there should be a duty on the NHS and the local authority jointly to assess the needs of people with mental health problems.

We do not agree with the Government that the right to assessment has no place in mental health legislation, and note that it is provided in the Scottish Mental Health Act. The Bill should include a duty on the NHS and Social Services jointly to assess, and meet the needs of people with mental health problems. The Joint Joint Committee also accepted that there is a compelling argument for balancing the provisions in the draft Bill by including a duty to provide appropriate and adequate mental health services which are easy to access, and which focus on prevention and early intervention. The Committee recommended that the Bill should include a duty on public services to assess and to seek to meet the mental health needs of people with mental health problems.

People with mental health problems meet greater obstacles in gaining access to health and social care services than people with physical health problems. Although entitled to a community care assessment under the NHS and Community Care Act 1990, there is much evidence from individual case histories that this is routinely denied to people with mental health problems. The National Service Framework for Mental Health requires primary care services to assess a person's needs, yet in practice many GPs do not have the time, or skills, to make a full assessment. Unlike people with physical health problems who have direct access to specialist care through hospital A&E units, there are currently few open-access specialist mental health services. A right to seek help directly from specialist services – and to have an initial assessment of needs within a specified time – would help to put this right.

The assessment should lead to statements of health and social service provision

The assessment should lead to statements of health and social service provision to meet that need, similar to the rights accorded in Part 2 of the Bill for patients preparing for discharge or being discharged from compulsory treatment. Such assessments and statements would be provided on establishing a threshold of presenting need and should also apply to prisoners, children and young people.

Any decision to decline such an assessment should be justified in writing

The Alliance believes that the NHS and local authority should be required to justify in writing any decision to decline such an assessment. Local authority social services can prevent hospital admissions by providing support for families under pressure, by offering respite for carers and by combating isolation and social exclusion. The social costs of an emergency hospital admission are high. Although Government policy supports both statutory joint assessments and a Care Programme Approach that integrates health and social care on discharge from hospital, there is nothing in the draft Bill to promote preventive services and early intervention.

Although there are some good examples of jointly provided community mental health care, there is great under-provision of social care to mental health service users. The draft Bill recognises this and makes unique provision for health and social care on discharge. Under this provision hospital managers and the local authority must provide the Tribunal with statements of services needed on discharge, including:

- facilities “for the prevention of illness, the care of persons suffering from illness or the after-care of persons who have suffered from illness”, and

- services provided by local authorities.⁵

By contrast, no such statements would be required or permitted as part of the examination or assessment processes under the Bill when compulsory treatment is *first considered*. The Bill makes no provision for health and social care provision (or, where appropriate, a referral to the Community Mental Health Team) for:

- those who are examined, who are found not to meet all the conditions for compulsory care, but who nevertheless are in need of services;
- those who are assessed for or given compulsory treatment as non-resident patients.

The new Approved Mental Health Professional under the Bill will be a competence, rather than professionally-based appointment. The current Approved Social Worker is a social worker who would have had training in order to, and owe a more general professional duty to, refer mental health clients for a social care assessment. This change could serve to reinforce the absence of a social care dimension to a person's assessment and care.

The Bill should make provision for the following provisions

- Where, on examination, a patient does not meet all of the relevant conditions described in Clause 9, the Approved Mental Health Professional must consider a referral of the patient for an assessment of health and social service need, or alternatively, make a determination to refer the patient to the Community Mental Health Team (or the tier 3 team with reference to children and young people);
- Where a referral has been made by the Approved Mental Health Professional for an assessment of health and social care needs, this must be arranged as soon as practicable after the request has been made;
- Where a determination is made on examination to carry out an assessment under clauses 22 to 33, the care plan made under clause 31 shall include information stating:
 - a) what services in the community the patient will need to support his recovery if the relevant conditions are not met; or
 - b) whether services provided by the relevant local authority and the appropriate authority would secure that the patient could receive treatment in the community other than by order of the Tribunal.

Recommendations of the Joint Committee on the Draft Mental Health Bill

The Joint Scrutiny Committee supported the Alliance's recommendation to include a right to assessment for access to mental health and social care needs. It stated that:

⁵Including accommodation and welfare services under Part 3 of the *National Assistance Act 1948*; section 45(1) of the *Health Services and Public Health Act 1968* and section 21 and Schedule 8 *NHS Act 1977*; section 29(1) *Children Act 1989*. These are some key statutory social care provisions.

“Where the outcome of the examination is that the conditions for compulsion are not met but that the person appears mentally-ill, the examiners have discretion to refer for a mental health assessment.”

“The evidence presented to us of people seeking help voluntarily, only to be turned away and then committing an offence and ending up detained under the Mental Health Act leads us to recommend that service users have a right to ask for an assessment of their need for mental health care as a resident or non-resident patient, and that the authorities be required to justify in writing any decision to decline such voluntary assessment.”

“...the Bill should include a duty on public services to assess and to seek to meet the mental health need of people with mental health problems.”