

Current law and legislative proposals

Monitoring of the Mental Health Act is currently executed by the Mental Health Act Commission. The Draft Bill proposes the abolition of this body and the transferral of most of its current functions for monitoring of the Mental Health Act to the Healthcare Commission.

Alliance position

Any change to the standards agency monitoring the Act must not compromise the protection of those under the law

The Mental Health Act Commission has played a crucial role in improving compliance with the Mental Health Act and in safeguarding and ensuring the rights and welfare of people detained in hospital under the Act. These functions need to be preserved in one specialist body. The benefit of a stand-alone Commission is that it has a clear and dedicated focus on the review of the exercise of powers under the Act and has a specific duty towards detained patients. We are concerned that the transfer of powers and responsibilities could lead to a loss of skills and expertise that currently resides with the Mental Health Act Commission and, ultimately, to less protection for people subject to compulsion.

As the Mental Health Act Commission has stated:

*“The benefits of rationalisation amongst health service bodies must be balanced against the need to ensure that the core statutory function and duties towards patients subject to care under the State’s compulsion, including and especially visiting practices, are not lost.”*¹

The Joint Committee recommended that a new reformed Mental Health Act Commission should be given these powers in order to provide a focused stand-alone body with a high profile and clear title. They expressed the concern that monitoring of mental health legislation will become subsumed into a larger body and that experience shows that mental health services rarely do well in competition for resources and attention.

There may be some merit in the Commission being placed in a wider health inspectorate, such as the proposals to transfer monitoring to the Healthcare Commission, so long as its unique statutory functions are replicated and sustained and patients are able to benefit from the available legal safeguards under the Act. However, the Alliance is concerned as to whether the Healthcare Commission will be able to devote adequate attention to its protective duties under mental health legislation, and we fear that the monitoring role could be subsumed under the wider focus of the Healthcare Commission or that resources dedicated to its work would be diverted elsewhere. If a transfer to the Healthcare Commission is implemented, it should be accompanied by specific statutory duties and additional ring-fenced resources to enable the Healthcare Commission to fulfil its specific role in relation to the Mental Health Act effectively.

¹ Mental Health Act Commission, *Report of the Joint Committee on the Draft Mental Health Bill: Volume II*, Nov 2004. Ev 13 para 5.10

The inspectorate should retain its duty to visit and interview patients

One of the most valuable functions of the current Commission is to conduct formal and informal visits to patients and to visit unannounced. The duty to visit routinely and interview patients should be maintained. Under the Bill the Healthcare Commission will have the power to undertake the same visiting functions but it will not be under a duty to visit establishments routinely and interview patients. The Alliance recommends that the power to visit establishments should be a duty to visit to ensure services are regularly inspected.

It is important to distinguish clearly between the role of the Commission and the role of the advocate. An advocate's role is to represent the patient without making judgments about their views. This is incompatible with the scrutiny role of the Commission. An advocate alerts individuals to their rights, takes up individual concerns on instruction and represents that person in a range of contexts. Advocates aim to empower patients to take up their own concerns. However, the role of the Commissioners is to monitor the working of the Act and to visit and talk to individual patients to that end. They use the concerns and experiences of individual patients to highlight general shortcomings in compliance with the Act and to feed back particular or general concerns to local managers so that changes can be promptly made.

It is unreasonable and unrealistic to expect that detained patients should be required to make a complaint before their concerns may be heard. The fact of their ill health and their detention imposes a proactive duty on the public authority to protect their wellbeing. A visiting function is essential to that end.

The inspectorate should be responsible for monitoring the management of restricted patients

We also supported the Joint Committee's recommendation that the responsibilities should include investigating and reporting on the Secretary of State's management of restricted patients. We see no reason why the responsibilities of the inspection body should not include investigating and reporting on restricted patients.

The inspectorate should have accountability for monitoring implementation of other legislation in order to protect patients under the Act

We also consider that the Mental Health Bill should establish in law powers, duties and accountability that would preserve the specialist monitoring focus to protect people detained under legislation. This should extend to review the implementation of other legislation which might affect patients' liability to compulsion, particularly de facto detained patients similar to Bournemouth situations.

The Healthcare Commission would not have the power to review the implementation of other legislation which might affect patients liable to compulsion, such as the Mental Capacity Act 2005. It also does not have any powers in relation to patients detained by the police using emergency powers and in relation to prison authorities where prisoners are assessed for detention under compulsory powers. We believe it is essential that the inspection body should have jurisdiction in these areas.