Mental Health Alliance

A Duty to Assess

House of Lords Report Stage briefing

Purpose of the duty to assess needs

The Government accepts that compulsory powers should be a last resort and that crises should be anticipated or prevented where possible. For this principle to be matched by practice the NHS and social services should have a duty to assess a person's mental health needs and should ensure that they are met in a timely fashion.

The Alliance believes that 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.

The amendment we are putting forward confers a duty on health and local authorities to assess the needs of people with mental health problems where this is appropriate and to respond to written requests for an assessment by certain 'key' people within a fixed period of time, with clear reasons given for a refusal.

Government response at Committee Stage

The Government argued that mental health legislation is 'not about service provision' and that amendments about rights to services are 'unnecessary and inappropriate'. .

We fundamentally disagree with this approach. Undoubtedly mental health law must include provisions which authorise detention and compulsory treatment, and safeguards to prevent their arbitrary use – but it must also ensure that every person a with mental health problem receives the range of mental health services they need, so that crises and detention are anticipated and prevented where possible. Access to mental health services remains patchy and many instances of compulsion could be avoided if patients and carers were given a legal right to access appropriate services at an early stage of their illness. This approach has been adopted in the Scottish Mental Health Act which recognises that in accordance with the principle of reciprocity there should be a duty on services to assess and meet the needs of people with mental health problems.

The Government argued that the amendments tabled at Committee would 'have the effect of forcing the health service and local government to give absolute priority to these services.'

We do not accept that view. The amendment we propose does not create a new legal right to treatment or care; it simply reinforces the existing right to an assessment for care and services which exists in health and community care law. The NHS and Community Care Act 1990 already requires services to carry out an assessment when people appear to be in

need of services. We are concerned that this is not happening for people with mental health problems and therefore this right needs to be underlined in mental health law.

Also, our amendment does not give people with mental health problems more access to services than those with physical health problems. It does not guarantee that a service will be provided; instead it provides a route to have the person's needs assessed, following which a decision about what is provided would be made on clinical and other relevant grounds. This would be the same right of access to services which people with physical health problems would expect when visiting their hospital or their GP.

A duty to assess needs is now enshrined in the Scottish Mental Health Act (section 228). There, health and social services must respond to a reasonable request for an assessment within 14 days, either by arranging for the assessment to take place or by giving written reasons for refusing to do so. It is notable that there has been no suggestion of either health boards or local authorities having been overwhelmed by such requests or of them having to shift their priorities as a result as the Government has claimed would be the case in England and Wales. The amendment we propose is very similar to Scotland's Section 228 and would thus promote greater equality across between the three nations.

Access to mental health services

We acknowledge the achievements of the Government in developing a range of new community-based adult mental health services since the National Service Framework for Mental Health was published in 1999. However access to these mental health services remains patchy. According to research by Rethink, up to one person in four is turned away by services when they or their family seek help. The result for those denied help can be that their condition deteriorates, making compulsion more likely. Research also shows that up to one half of people with psychosis find compulsion their first experience of specialist care. Evidence presented to the Joint Parliamentary Scrutiny Committee showed that people were seeking help voluntarily, only to be turned away, and then committing an offence in order to be detained and therefore eligible for services.

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 time or skills to make a full assessment. GPs are not under a duty to make a referral for a comprehensive 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 assessment of needs within a specified time – would help to put this right.

The NHS and Community Care Act

The Government argues that Section 47 of the NHS and Community Care Act 1990 already provide a right to assessment for vulnerable people and that the key mechanisms for enforcing this are (the soon to be merged) CSCI and the Healthcare Commission.

In practice however Section 47 assessment are extremely limited:

- The assessment is primarily a social care assessment led by social services and focuses on the needs for 'community care services' – which means services which are provided or commissioned by social services such as home help, care homes and mobile meals. This fails to reflect the multi disciplinary nature of mental health care which is far wider than social care and includes psychiatry, psychology, nursing and occupational therapy.

- A community care assessment focuses on physical health needs – and indeed in some authorities they are carried out by a separate 'adults with disabilities team' who do not specialise in mental health care. This often means that such assessments fail to reflect the holistic needs of people with mental health problems.

- Court cases (such as HP and KE v Islington Council (2004)) have shown that mental health services frequently misunderstand community care law and frequently fail to carry out community care assessments. Instead mental health services use the Care Programme Approach which is tailored to mental health care but is a more restrictive assessment process – and therefore excludes people from services.

- Existing service users reported to the Joint Scrutiny Committee (2004/05) that unless a social worker is involved in their care they are denied access to a community care assessment.

It is important to note that the NHS and Community Act 1990 predates the development of multi disciplinary mental health teams and reflects a time when health and social services were totally separate. By placing a duty on both NHS organisations and social services departments to respond to requests for an assessment, our amendment would bring the 1990 Act up to date and reflect the more joined-up nature of these services.

It would also offer the same rights at whatever entry point an individual gets into contact with the system. It means that an assessment can be triggered by an AMHP, for example, identifying an unmet need in an individual with whom they have contact.

A duty to assess would be of especial benefit to some of the most vulnerable groups of people with mental health problems. The rate of unmet mental health need in prisons is known to be considerable. With the development of inreach teams there is some improvement; however the level of need is far greater than they can manage and a requirement to assess the needs of all individuals who seek help (or whose families do so) would help to reduce the gap further.

The amendment is a means of redressing an imbalance in the health system that makes timely access to care less likely for those with mental health needs.
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Impact of the Bill on service provision

The Bill itself is likely to increase the use of compulsory powers. By widening the gateway into compulsion and extending its use into the community, the Bill is likely to increase the overall quantity of compulsory care required of services. This will affect the care available to voluntary patients, not only in hospitals but also from assertive outreach teams (who may provide the bulk of formal care to people on Community Treatment Orders) and community mental health services more widely.

The knock-on effect will be to reduce access to services for those with lower level needs at an earlier or less serious stage of their illness. In its Second Reading Briefing on the Bill the Royal College of Psychiatrists noted:

> "A law which has the effect of adding to the number of patients under compulsion will also take away resources from voluntary patients – both in terms of bed space and professionals' time in dealing with the procedural requirements of the Act. The College fears that mental health services will be directed away from those services which should reduce the need for compulsion such as early intervention, assertive outreach and other developments" (2006).

The new Approved Mental Health Professional under the Bill, meanwhile, will be a competence-based rather than professionally-based appointment. The current Approved Social Worker is an experienced social worker who would have had training 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.

Support for this amendment

The Government's own Expert Committee, chaired by Genevra Richardson, recommended in 1999 that there should be a duty on the NHS and Social Services jointly to assess and meet the needs of people with mental health problems, and to give reasons if their needs could not be met.

The Joint Parliamentary Scrutiny Committee also accepted that there is a compelling argument for balancing the (draft) Bill by including in it a duty to provide appropriate and adequate mental health services. They 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.

In its evidence to the JSC, the Royal College of Psychiatrists stated that:

> "Enabling people to be able to seek help early, to talk about their fears and difficulties, without feeling scorn, humiliation or loss of status, freedom, job or friends, would result in a marked improvement in care." (2004)

The Disability Rights Commission has stated that the Bill should include a right to assessment and treatment. It argues that such a right would fill:

> "a huge gap in current law where there are no rights to assessment or care/treatment/support for mental health problems. The only concrete entitlement to support is on discharge from hospital where Section 117 provisions on aftercare apply. Currently the threshold for social care support for people with mental health problems is extremely high and many are denied support unlawfully." (DRC Partnerships and Transfer of Expertise briefing sheet, January 2007)

Conclusion

The Alliance welcomes the Government's continued commitment to improving access to mental health services. We believe, however, that a duty to assess a person's needs is necessary as a longer term method of ensuring equality of access to health and social care services. We do not believe that this amendment gives people with mental health problems more rights to NHS care than others: it levels the playing field and provides an important counter-balance to the additional powers of compulsion contained in the rest of the Bill. The amendment is an essential measure to tackle known gaps in service provision and offer a safety net below which no one should fall. A similar duty now exists in Scotland, with no evident extra burden on services. We should not miss this important opportunity to take the same step forward in England and Wales.

Relevant quotes and case studies

S Holt (DMH 126)

I am a mental health service user who has been diagnosed as having manic depression for 14 years. During that time I have been compulsorily detained under the current Mental Health Act many times.

As a mental health service user I instinctively know what I need before I hit crisis point. Often I need to know what is happening to me as I am more bewildered than anything and fear and worry fuel my negative thoughts about the world and myself. Mental Health workers seem to be trained how to deal with people when in crisis, ie admission to hospital or to see a psychiatrist who will add more medication, but this was not what I wanted.

Often I need to talk to someone, who is familiar with my situation, illness, who can reassure me about my options.

Recently I was reaching crisis point. My husband decided to contact the services, as are indicated upon my enhanced after care plan. My social worker was on holiday so he knew that that was not an option, so he telephoned my psychiatrist, he was told to contact our GP, which neither of us felt OK with as she gives me repeat prescriptions only, I see my mental health workers more. My husband then tried the duty social worker as we were informed; however, they did not answer the telephone. In the end I administered an increase of medication myself.

Extracts from evidence provided to Joint Scrutiny Committee 2004.

Lesley Savage, mother of Daniel Gonzalez, who was convicted of killing four people in September 2004, said his family made 100 attempts to get help at various times:

"We cannot list every phone call that went unanswered, every letter that went astray, every contact with a professional who told us they could not help or who passed us on to someone else. We cannot list here the ever changing diagnoses that were offered, the ever-changing advice we were given, the lost and wrongly recorded notes that misled us and the professionals.

It is enough to say that Daniel had been in contact with support services since he was at school. He is now 24. In all that time, he received the help he needed – help that saw him begin to get well - for just one period of six months between 1998 and 1999.

At other times, we and Daniel were left to fend for ourselves, with many of the professionals involved failing to keep us informed and, on occasions, withholding crucial information from us.

We met individual decent, caring professionals who were dedicated and hard-working, but even they could not sustain any support over time as Daniel moved from one service to another. They, like us and Daniel, were failed by a system that is underfunded and seems incapable of providing joined up care over any period of time."

From a statement made following her son's murder convictions in March 2006