Mental Health Alliance
Briefing on the Mental Health Bill

Background to the Bill

The Government has been planning new mental health legislation since 1998. This was for two reasons:

- Parts of the current 1983 Act are not compatible with the Human Rights Act;
- Concerns had been expressed about 'loopholes' preventing dangerous people with personality disorders from being sectioned.

There followed an Expert Committee, reporting in 1999, which recommended a principles-based Act, similar to that which was later passed in Scotland; a Green Paper, White Paper and two draft Bills. The last draft Bill was subject to a Joint Scrutiny Committee of Parliament, which reported in March 2005 and strongly condemned the Government plans. In July 2005 the Government rejected many of the Joint Committee's key recommendations.

The key components of the Government's proposals are:

- Bringing in wider conditions for the use of compulsory powers which will allow more people to be forcibly treated;
- Removing the requirement that compulsory treatment can only be provided if there is a health or therapeutic benefit to the patient;
- Reducing the rights which families have in relation to the exercise of compulsory powers;
- Creating new powers for compulsory treatment of people living in the community;
- Creating new safeguards for patients, including an increased use of Tribunals and access to independent advocacy.

Stakeholder Concerns

The Mental Health Alliance is a coalition of 75 organisations working together to secure a better Bill. It has expressed major concerns about the Government's proposals:

The primary purpose of mental health legislation is to provide a proper framework for the care, treatment and safety of people who are seriously unwell. It should ensure that compulsion is only used as a last resort and that service users and their carers are able to access support when they need it. The draft Bill is unworkable- instead of giving a better framework for service provision, the Bill will bring services to their knees and fail the people it should protect.

- The Bill is focused on addressing public misconceptions about violence and mental illness, and does not do enough to protect patient rights;
- Public safety is best promoted by giving people the right to services when they need them and ensuring that those services are properly funded, responsive and well coordinated;
- Powers to treat people under compulsion are too broad; far too many people could be forced into treatment unnecessarily;
- There are neither the financial resources nor the workforce to implement the Bill;
- The new wider powers of compulsion will scare away from mental health services those people who need help.

The draft Bill, if enacted, would lead to major problems in implementation:

- Legislation in England and Wales would be very different to that in Scotland;
- It is very unlikely that Wales could successfully implement the provisions of the Bill with the resources currently available;
- Staffing levels in services are inadequate to handle the increased workload; they would either have to 'cut corners' in the system or reduce the service they offer to voluntary patients;
- Psychiatrists, nurses, social workers and others will all need re-training on legislation they do not support; many tell us they will opt for early retirement or move out of mental health altogether.

How can the Bill be improved?

The Mental Health Alliance believes that the Government still has an opportunity to redraft legislation that promotes public safety and civil rights; that will be workable and enjoy the support of patients and their families, professionals and the public.

The Government's response offered some welcome proposals:

- Greater use of Tribunals and advocacy for all patients;
- The Government's pledge to examine the use of advance statements to help patients have a say in their care and treatment;
- The exclusion of people who only have drug problems from compulsory treatment.

To enhance the protection of both civil rights and public safety, and to improve mental health legislation for all, the Bill still needs the following key changes:

- People should not be subject to compulsion unless they can gain some health or therapeutic benefit from treatment;
- Compulsory treatment should only be used as a last resort when all other options have been exhausted;
- People who are able to make decisions for themselves should not be forced to take treatment unless they pose a very high, immediate risk to themselves or others;
- Community treatment orders should only be used for a small group of vulnerable patients and in tightly defined circumstances.

Confronting the myths

Some facts about mental health, civil rights and public safety:

- More than half a million people in England and Wales have a severe mental illness. The vast majority do not harm anyone and manage their illness without recourse to compulsory treatment.
- Homicides by people with mental health problems are rare: of 873 homicides in 2002, less than five per cent were attributable to mental illness;
- Violence has not increased as a result of care in the community: the frequency of such homicides has not risen since the 1950s;
- Prejudice about mental illness remains a major social problem: the most recent surveys commissioned by the DH show rising levels of hostile attitudes among the public;
- Most homicides by people with mental disorder are among those not in contact with services. Over a quarter of offenders with schizophrenia, and over half of offenders with personality disorder had never had contact with services.
- Legal loopholes are not responsible for most homicides committed by people with mental illness: independent inquiries consistently find inadequate service provision, human error and lack of communication between agencies are the main failings that lead to tragedies. None have called for the kind of legal changes the Government is proposing.

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