

Mind welcomes the Pre-legislative Scrutiny report MPs and peers prescribe a radical overhaul of the Mental Health Bill

The Parliamentary Committee examining the draft Mental Health Bill has endorsed almost all of the Mental Health Alliance and Mind's key objections to the Bill. In a report published on 23 March 2005, the joint committee of Peers and House of Commons MPs gave details of the "radical overhaul" that the government's bill needs. The Committee's view is that, in its current form, the new legislation would force too many people into compulsory treatment and erode civil liberties.

Mind and the Mental Health Alliance, as well as many individual witnesses and other organisations, gave oral and written evidence that has now been published in two additional volumes running to 1,212 pages with the Committee's main report. The Committee's recommendations agree with nearly all of our proposals for improving the Bill. If accepted the changes would reduce the range of people automatically falling within the scope of possible compulsory powers and they would give more rights and opportunities to exercise choice and autonomy to those who were sectioned under new legislation.

How the recommendations could improve the draft Mental Health Bill

Mind believes that compulsory treatment should be used only at a last resort. If the Government accepted the Joint Committee's recommendations this would be much more likely because –

- Treatment could not be forced on someone who consents voluntarily.
- Compulsion could only be used if the patient's ability to make decisions about the provision of medical treatment was significantly impaired by reason of mental disorder,
and he was likely to cause himself serious neglect, self-harm or cause others serious harm,
and his mental disorder was of a nature or degree warranting medical treatment under compulsion,
and the proposed treatment would be beneficial to him.
- Even if all these conditions were satisfied additional qualifications and exclusions would apply to special groups, such as people with learning difficulties or communicative disorders.

Mind welcomes these recommendations. They would enable service users who are able to give consent to treatment a real option of refusing treatment, and restricting compulsion to those whose mental capacity was impaired and who could not make their own decision.

What the Committee recommends

- **Fundamental principles should be stated in the bill.** The Government has said that principles would be published in the code of practice to the bill. The Committee is opposed to this, recommending that principles are permanently enshrined in statute. The Committee's report also criticises the government for failing to publish a draft code of practice with the draft bill.

Mind's evidence condemned the unwritten principles that seem to underpin the draft bill. Mind set out seven essential principles that should be part of any new Act of Parliament. The Committee did not define potential principles in detail, but said that the new Mental Health (Care and Treatment) (Scotland) Act 2003 should be a starting point.

- **A right to care and treatment**

Treatment when it's needed. The Committee recommended that the Bill should place a duty on public services to assess and to seek to meet the mental health needs of people with mental health problems. It also recommended that that a normal community-based needs assessment be made available when compulsory treatment is not found to be necessary; and that the authorities should be required to give written justification for refusing a statutory assessment to a person at risk who refers him or herself for treatment.

Discharge planning and free aftercare. The committee says there should be a duty on health and care providers to draw up a discharge plan and a subsequent social care plan, and that current provision for free aftercare under section 117 Mental Health Act 1983 should continue – in opposition to the government's plan to abolish it under the new bill.

These recommendations are right in line with Mind's policy. Any new mental health legislation should be about making care and treatment available to vulnerable people. People suffering severe mental distress need access to care and are often refused help until it is too late to prevent a crisis. Mind also believes that better care should be available on discharge, opposing the government's intention to abolish section 117.

- **Substantial curbs on proposed powers to assess or give compulsory treatment without consent**

Limiting the definition of people with mental disorder. The Committee would keep the current definition of mental disorder in the draft bill. But some people who would fit the definition should not come under the powers of the bill. Therefore, there should be exclusions or exceptions from the definition, similar to those in the current Act. Chief among the exclusions should be people whose problems arise from misuse of alcohol and drugs, or because of their sexual orientation, if they would be caught in the definition for that reason alone. Otherwise, as the committee says, the legislation could be "used inappropriately as a means of social control".

The committee believes that the definition would unnecessarily draw in **people with learning disabilities or communicative disorders**. Additional qualifications should apply (as in the current Mental Health Act) before they could be sectioned just because of the impact of their disabilities and disorders on their behaviour.

Tightening the conditions for compulsory treatment. The Committee believes that too many people could be drawn unjustifiably into compulsory treatment. Recommendations for new conditions would **limit compulsory treatment to those whose ability to make decisions about accepting medical treatment was significantly impaired**, and then only if treatment was necessary to protect themselves from **serious self-harm or neglect** or other persons **"from significant risk of serious harm"**.

- **Compulsory treatment in the community: "non-resident treatment orders"**

The committee accepts plans for compulsory treatment in the community in principle, but recommends that the use of "non-residential" treatment be **limited to a "clinically identifiable group of patients" who are clearly defined in the statute**. They would include people who had previously been hospitalised and who had shown previous responsiveness to and co-operation with the proposed treatment.

Mind believes that compulsory treatment should only be provided under detention – and not in the community

- **Compulsion only if treatment is therapeutic**

The draft bill dispenses with the requirement, under the current Mental Health Act, that compulsory treatment must have therapeutic benefit. The Committee disagrees, stating: “the purpose of mental health legislation must not be to detain people for whom no beneficial treatment can be found.”

Mind gave evidence in support of retaining the condition that treatment should confer therapeutic benefit.

- **Separate legislation to deal with people who pose exceptional risks, but who are not “treatable”**

The committee rejects provision in the draft bill to detain compulsorily people who appear to pose a high risk to others but for whom no therapeutic treatment exists. The recommendations state that: “people with serious mental disorders who cannot benefit from treatment pose a very challenging problem, but recommend they be dealt with under separate legislation”.

The committee also recommends scrapping the condition in the draft Bill that permits compulsory detention to be imposed on people thought to be particularly dangerous to others, even when they voluntarily consent to treatment.

- **Advocacy**

The Committee recommends a wholesale extension of availability of **independent advocacy services to all people with a mental disorder**. It makes recommendations to ensure that there should be proper funding for these services and for them to be accessible to patients.

The draft bill contains a requirement that, at the initial “examination” stage when compulsory powers are being considered, a carer only should be consulted. During consultations on the bill, Mind and others urged the government to make advocacy available at this point. This proposal was rejected by the Government. The Committee recommends that **patients should have the right to an independent mental health advocate from the start of the initial examination stage or upon arrival at a place of safety; and that authorities should be obliged to remind patients of the availability of the advocacy service at key stages.**

- **The nominated person**

Many patients have already been in contact with services and know who they would like to represent their interests, particularly in the critical early stages of decision-making on possible use of compulsory powers. The Committee recommends that patients should be able to appoint a permanent representative in the form of an “**enduring nominated person**” who could exercise his or her powers and duties from the examination stage onwards.

The Committee would give **the same rights and powers to the nominated person as are currently exercised by the Nearest Relative under the Mental Health Act**. In the draft Bill the government removed the power of discharge available to the nearest relative under the Mental Health Act. Mind objected to this.

The Committee has recommended that the powers over choice over the nominated person given to the new Approved Mental Health Professional in the bill should be reduced.

- **The Tribunal**

The Committee makes several recommendations to improve the power of the new Mental Health Tribunal and to make it fairer. It recommends that a distinction should be drawn between the tribunal as a detaining body and the tribunal that reviews a detention. This would mean that **a member of the tribunal imposing an order could not hear the review of or an appeal against that order.**

- **The care plan**

Even though compulsory treatment dispenses with the need for consent, the Committee recommends that patients are given the opportunity to see, discuss and sign their statutory care plan, and to indicate any disagreement with aspects on the care plan itself. The Committee says that the bill should contain an obligation on health and social care authorities to provide the care specified on the care plan, provided it is in line with normally accepted national standards.

- **Treatment safeguards**

The draft Bill provides for detailed safeguards in the use of ECT. Two other categories of treatment are safeguarded: “type A” (including psychosurgery) and “type B” (to be specified in regulations). Safeguards for B treatment are largely to be left to regulation. The Committee disagrees with this, stating that Type B protections should be explicitly written into the bill and should be modelled on the new ECT safeguards.

The Committee recommends that patients with capacity should only be given two emergency treatments of ECT without their consent. This is an improvement on the draft Bill. But it is not what Mind and the Mental Health Alliance lobbied for: that no ECT should be given to patients who are able to give consent, but who do not consent.

The Committee recommends that records be kept of treatment given with the **consent** of the patient, as well as compulsory treatment. This would mean that complete records of medication will be maintained. Medication above British National Formulary levels should be authorised by tribunals **only when all other options have been exhausted.**

Treatment and patients who lack capacity

The Committee states that Type A treatment should never be given to a patient that lacks mental capacity, not even under an order of the High Court.

The Committee recommends that the current safeguarding functions of the Second Opinion Additional Doctor system is transferred into the new Bill, including the power to veto proposed treatment.