

**HEALTH AND SOCIAL CARE BILL 2007**  
**2<sup>ND</sup> READING BRIEFING - HOUSE OF COMMONS**

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and the Republic of Ireland and is the professional and educational organization for doctors specializing in psychiatry.

**TOP LINE BRIEFING**

**Care Quality Commission**

The Royal College of Psychiatrists welcomes the creation of a new 'super-regulator' for health and social care, but hopes that it is fully resourced to ensure that care is not only both safe and of good quality, but is protective of the rights of all patients and other users of services.

The new regulator will take on and continue the vital work of the Mental Health Act Commission (MHAC). The Royal College of Psychiatrists hopes that under the new regulator with greater powers that the functions of the MHAC are not only protected, but are also broadened and enhanced as follows:

- regular unannounced visits to people detained under the Mental Health Act;
- engagement with mental health service users actively as full partners in health and social care assessment, monitoring and inspection;
- monitoring of and reporting to Parliament on the needs and rights of detained patients;
- notification of admissions, discharges and deaths of detained patients and other relevant information;
- having an overarching principle of equality and human rights, focusing at all times on the civil, legal and human rights of patients.

We believe that the Care Quality Commission staff carrying out the functions above should be adequately and appropriately trained. A specialist mental health team or department within the Care Quality Commission should also be established, which incorporates the present MHAC staff and Commissioner Team.

**Care homes: Protection under the Human Rights Act**

The Royal College of Psychiatrists will also be pursuing amendments to this Bill to ensure that Care Homes are protected under the Human Rights Act.

**FURTHER BRIEFING ON THESE ISSUES BELOW**

## **Part 1 – The Care Quality Commission (CQC)**

The Royal College of Psychiatrists welcomes the strengthening of the regulation of health and social care through the creation of the Care Quality Commission in Part 1 of the Health and Social Care Bill.

We hope that this will create a more flexible, streamlined system which supports and reinforces the roles of commissioners, of Strategic Health Authorities and of providers themselves to ensure that care is both safe and of good quality.

We are, however, particularly keen to see that the functions of the Mental Health Act Commission (MHAC), which will be merged in to the Care Quality Commission, will be given full priority and that the Care Quality Commission is fully resourced to enable it to carry out these functions effectively.

The MHAC currently carries out the crucial role of 'safeguarding the interests of all people detained under the Mental Health Act' - protecting a group of very vulnerable people – through, for example, visiting patients regularly, providing independent second opinions when patients do not or cannot consent to treatment, investigating complaints, and monitoring the Mental Health Act

The reason that these functions are so important is that patients detained under the Mental Health Act are in a different position from all other patients in that they are deprived of their freedom to leave hospital when they wish, and their freedom to make their own decisions about their treatment. They may also be subject to seclusion, control and restraint as part of their treatment for mental disorder. We were pleased to see that the Government acknowledged the importance of the current work of the MHAC in its response to the consultation on 'The future regulation of health and adult social care in England'.

We were pleased to see that the Government outlined the importance of the current work of the MHAC in its response to the consultation on 'The future regulation of health and adult social care in England'.

We are aware that the Bill can not prescribe all of these functions that the Commission will carry out or outline how resources will be allocated, and that this will be left to Ministerial statements.

Therefore, we hope that the Ministers in the Commons and Lords will be able to provide concrete assurances that the Government are fully committed to ensuring that the new body will be required to devote sufficient resources for monitoring the Mental Health Act and protecting the rights of those detained under the Mental Health Act.

**We have outlined below the key functions which must continue to be carried out by the Care Quality Commission:**

### **Regular unannounced visits to people detained under the Mental Health Act**

One of the most important functions of the MHAC has been the regular and frequent visiting of people who have been detained under the Mental Health Act.

This is a crucial tool in ensuring that patient's rights are protected, the potential for abuse is minimised, and appropriate care is provided at all times.

Some 45,000 people are detained on admission or following admission each year, and the Care Quality Commission must continue to, as the MHAC currently does, make regular unannounced visits to these people.

Recent scandals in Cornwall and Merton and Sutton demonstrate the need for a regulatory body which has the resources and the “teeth” to investigate and intervene. The MHAC currently has only the equivalent of 15 whole time staff in its Commissioner body yet comes across abuses of patients and misuse of the law on a weekly basis.

**We would like the Minister to:**

- **outline the arrangements for a programme of regular unannounced visiting of detained patients for the Care Quality Commission**
- **give assurances that the Care Quality Commission will be adequately resourced to undertake this function..**

### **Engagement with mental health service users actively as full partners in health and social care assessment, monitoring and inspection**

We believe that all health and social care provision must involve the fullest possible engagement with those who are using services. This is especially important when patients are detained without their consent under the Mental Health Act.

Furthermore, involving service users is an essential step towards a full understanding of the impact of detention and the quality of care at individual providers. The Mental Health Commission has made real progress on user involvement and it is vital that this progress is driven forward in the Care Quality Commission.

This must involve ensuring that patients/service users are able to contact the regulator at any time and to be treated with sympathy and understanding. The role of the Commission is to get to the heart of the patient experience, to understand the way the Act impacts on their lives, and to ensure as far as possible that the Act is operated encourages and facilitates improvements in care rather than the reverse. It is only by engaging users as the true voice of experience that the effect of detention can be assessed.

### **Monitoring and reporting to Parliament on the needs and rights of detained patients**

We believe that a specific duty should be placed on the Care Quality Commission, either on the Board, the Chief Executive or an identified member of the Board, to be responsible personally to Parliament for the monitoring of the Mental Health Act, for the protection of the rights of detained patients, and for reporting to Parliament regularly (annually) on the condition of services for detained patients and those subject to compulsion in the community.

### **Notification of admissions, discharges and deaths of detained patients and other relevant information**

The Care Quality Commission must continue the work of the MHAC in reporting admissions, discharges, deaths, and other relevant information of detained patients.

Gathering this information is vital in order to get an accurate impression of how the Mental Health Act is being used. Furthermore, it reassures both patients/service users and carers that these matters are being regularly monitored.

To undertake its functions adequately, the new regulator will need high quality information on which to base decisions, for instance when to intervene having identified a deterioration of care or the likelihood that patients' rights are being abrogated.

We are aware that this is not an issue that can be decided upon in the legislation, but we understand that the government does intend to give the new organisation the power to obtain information on mental health services.

**We would seek assurance from the Minister that those powers will include:**

- **a notification of all deaths of detained patients and those notified to the coroner;**
- **a notification of all serious and untoward incidents and deaths of informal patients from unnatural causes;**
- **all homicides by detained or informal patients;**
- **all incidents of serious injury to patients receiving in-patient care; howsoever caused;**
- **a notification of all formal admissions and discharges including discharges to community treatment orders and compulsion in the community;**
- **notification of all mental health review tribunal decisions whether for continued detention or for discharge.**

**For all of these categories it will be essential to have information on age, gender and ethnicity.**

**Having an overarching principle of equality and human rights, focussing at all time on the civil, legal and human rights of patients**

One of the most useful features of the Mental Health Act Commission, as evidenced by their biennial reports, has been their expertise on, and concern to foster understanding of, human rights principles.

This has been instrumental in giving a voice to those who are detained, those who provide care, and those who campaign for better care. It also links directly with the recent Department of Health initiative to create a human rights framework.

**The Royal College of Psychiatrists are keen to see that the Care Quality Commission staff carrying out the functions above are adequately and appropriately trained. A specialist mental health team or department within the Care Quality Commission should also be established, which incorporates the present MHAC staff and Commissioner team.**

It is essential to the effective monitoring of mental health care that the Care Quality Commission has an expert body of appropriately trained staff equivalent to the current body in the MHAC.

The tasks that will be undertaken are not simply bureaucratic or organisational; they involve protecting vulnerable people who have been detained compulsorily, against their will. The Care Quality Commission will need to be staffed by people with an understanding and appreciation of the unique circumstances of detained patients.

**We would like the Minister to:**

- **give an assurance that the Care Quality Commission will be encouraged to have a nominated individual at Board level with personal responsibility for Mental Health Act matters.**

### **Care homes: Protection under the Human Rights Act**

The Commission will regulate the standards of care for all people in residential care. While those detained under the Mental Health Act are covered by the Human Rights Act (HRA), all voluntary and informal patients (by far the majority) are not. This is as a result of the recent judgment of the House of Lords in YL, a decision the government itself regrets.

For vulnerable people who lack capacity to protect their interests and complain about their standard of care – and this may include people with learning disabilities, those with dementia or Alzheimer's disease or those with chronic mental health conditions- the protection given by the HRA is crucial. The gap in protection for non detained patients is indefensible.

The current Bill is an excellent opportunity to address this problem. It would be possible to amend the Bill to ensure that all residential homes that are regulated by the Commission are considered public authorities for the purpose of the HRA

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