



Royal College of Psychiatrists

Amendment to the Equality Bill

Committee Stage, House of Commons – May 2009

Removing Discrimination against Mental Health in Parliament

Page 136 line 38 at end insert the following new clause -

Mental Health Act 1983

(1) The Mental Health Act 1983 is amended as follows

(2) Subsections (2) to (7) of Section 141 of the Mental Health Act 1983 are deleted

Purpose

This amendment deletes Subsections (2) to (7) of Section 141 of the Mental Health Act 1983 to remove the discriminatory provisions which mean that an MP automatically loses his or her seat if detained under the Mental Health Act (MHA).

Under this amendment, Subsections (1), (8), (9), and (10) of Section 141 are kept. Subsection (1) relates to the duty to inform the Speaker if a person is detained under the MHA and Subsection (8) to (10) extend the operation of the Act to the other parliaments.

Reason

Under Section 141 of the Mental Health Act 1983 an MP automatically loses his/her seat in Parliament if detained under the Act for a period of six months or more.

The following is written in Erskine May, the guide to parliamentary procedure:

Mental illness is a disqualification at common law. There is also, under the Mental Health Act 1983, s141, a statutory procedure for vacating the seat of a sitting Member of unsound mind.

Under this Act, if a Member is authorized to be detained on grounds of mental illness, the authority or person on whose order or application, and the medical practitioner upon whose recommendation or certificate, the Member is detained, and the person in charge of the place where the Member is detained, are to notify the Speaker; or any two Members may certify to the Speaker that they are credibly informed of the detention. The Speaker, on receipt of the notification causes the Member so detained to be visited by two specialists in mental disorders, who are to be appointed for the purpose by the President of the Royal College of Psychiatrists. The specialists report to the Speaker whether the Member is suffering from mental illness and is authorized to be detained as such; and, if they report that that is the case, six months after the date of the report (or as soon after that period as the House sits), the Speaker again causes the Member to be visited by two specialists. Then, if the specialists again report that the Member is suffering from mental illness and is authorized to be detained, his seat becomes vacant.¹

The effect of the amendment is to keep in place only the duty to inform the Speaker of a detention. This is in recognition that it is legitimate for Parliament to be made aware of the formal change of circumstances of the MP in question. The same reasoning applies to the devolved legislative bodies

Our concerns

The Royal College of Psychiatrists believe that the discriminatory provisions in Section 141 of the Mental Health Act 1983 should be repealed. In order to remove discrimination there must be parity between physical and mental health.

The Equality Bill consolidates and streamlines existing anti discrimination law, including the Disability Discrimination Act. It also updates and improves the law in the light of current knowledge and current values to discrimination and stigma. As such it is an appropriate opportunity to remove discriminatory provisions against people with mental disorder that arise in the Mental Health Act.

By contrast to s141 MHA there are no provisions to remove MPs suffering from physical illnesses which stop them from carrying out their duties and responsibilities for the same length of time. Furthermore, if the MP lacks capacity and is detained for a period of 6 months using the authority of the Mental Capacity Act, he or she will not automatically lose their seat.

As the Clerk of the House of Commons pointed out in a Memorandum to the Joint Committee on the Draft Mental Health Bill (DMH 426) the relevant criterion relating to a disqualification is whether the MP has the ability to attend the House. The ability to attend the House might be equally difficult for a person with a serious physical illness (who may or may not lack capacity as a result) as for one with a mental disorder.

¹ Erskine May, *Parliamentary Practice*, 23rd edition, 2004, pp50-51

During the debate on the 2007 Mental Health Bill an amendment was proposed to remove s.141. This was supported by the Disability Rights Commission and received cross party support. Lord Hunt however stated on behalf of the government that while the provision did appear stigmatising it was for the other House to make decisions about their members. The issue was not raised in the House of Commons.

It is for Parliament to determine if an MP should be displaced after absence from the House through sickness or disability and if so, how long an absence is required. However, the type of illness or disability, and whether the MP has been subject to the Mental Health Act should not be the concern, but rather it should be the effect the particular health problem has on an individual's ability to perform the functions of an MP. The proper place for any provisions to require a seat to be vacated would be in the Representation of the People Act, applying to all manner of illnesses or disabilities or other disqualifying factors. The proper criterion would be whether the person lacks capacity within the terms of the Mental Capacity Act.

The discriminatory nature of the provisions is demonstrated most starkly by a comparison with those relating to people detained in prison. Under the Representation of the People Act 1981 a person who is detained for more than a year is disqualified from sitting and his seat becomes vacant.

As Jones points out "It has been reported that the only occasion when an MP has been removed from the House of Commons on the ground of unsoundness of mind was in August 1916 when the Speaker invoked the Lunacy (Vacating Seats) Act 1886 in respect of a liberal MP Dr Charles Leach (David McKie, "Bedlam on the benches", The Guardian July 12, 2007)".²

Although never used s.141 of the MHA is a totemic piece of law, which ensures that discrimination exists at the heart of our democracy.

The concepts in Section 141 derive from the Lunacy (Vacating of Seats) Act 1886. The law is out of touch with current understanding of the nature of mental illness and modern treatments for illness. By removing the seat of an MP who is detained under the Mental Health Act, the law gives the false impression that an MP cannot recover from a mental disorder. This is a wholly out of date viewpoint and runs counter to the modern approach to recovery in mental health.

Report on Mental Health in parliament

As joint-secretariat to the All-Party Parliamentary Group on Mental Health (APPGMH), the Royal College of Psychiatrists helped to produce a report on mental health in Parliament in July 2008. This was based on a survey of all MPs, Peers, and their staff.³

This survey showed that MPs had a significant experience of mental distress both personally and among friends and family, but they were worried about disclosing this because of fear of the stigma and discrimination that is associated. Repealing Section

² Richard Jones, *Mental Health Act Manual*, Eleventh Edition, p524

³<http://www.rcpsych.ac.uk/pressparliament/aboutourparliamentarywork/allpartygroup/mentalhealthinparliament.aspx>

141 of the Mental Health Act would be a symbolic step towards addressing this stigma.

The Speakers Conference on Parliamentary Representation has noted that representatives from the disabled community have expressed concern that Section 141 is one factor which makes them feel unwelcome in Parliament.

We are particularly concerned about the effect that this might have on people with a history of mental disorder who want to stand as prospective parliamentary candidates, but may be put off if they believe that they will be disadvantaged. As the APPGMH survey showed, even those who do stand, or get elected, feel they have to hide their experience of mental illness.

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