

The Equality Bill – Royal College of Psychiatrists’ 2nd Reading briefing - House of Commons - May 2009

1. Introduction

1.1 The Royal College of Psychiatrists welcome the Equality Bill, which will strengthen and enhance existing discrimination legislation. Tackling discrimination is one of the Royal College of Psychiatrists’ eight key priorities, as set out in our three year Fair Deal campaign.¹ Significant improvements for disabled people in the Bill include the duty to outlaw age discrimination by service providers (Part 1), the creation of a Public Sector Equality Duty (Part 11, Chapter 1) and measures to remedy the Malcolm Judgement (Part 1, Clause 14).

1.2 This briefing outlines **four key policy areas for the College. Two relate to current provisions in the Bill**, which we believe need to be strengthened through Government commitments and **two are opportunities to tackle areas where discrimination occurs** through amendments to the legislation. These are:

1.2.1 Outlawing Age Discrimination in Mental Health Services

The duty to outlaw age discrimination by service providers (including the NHS), will be an important driver, alongside organisational change at a service level, to address the discrimination suffered by older people in mental health services. We are concerned that the Government has not committed to setting a date for when the provisions in the Bill will come in to force. We are seeking a legally binding timetable for the introduction of age discrimination in the NHS. (See Para. 2, p. 2)

1.2.2 Creating a new Public Sector Equality Duty.

We welcome the creation a new public sector equality duty in the Bill. However, we are concerned that the detail of the duty is not drafted in the Bill. We believe that the Government must make a commitment that the new duty will not be watered down and will contain the key elements of the existing disability equality duty, such as the full involvement of disabled people in the formulation and monitoring of the duty. (Para 3, p.4)

1.2.3 Removing discrimination against mental health in Parliament.

The Equality Bill offers a significant opportunity to scrap laws which discriminate against mental health in Parliament. We are calling for Parliamentarians to remove laws that mean that an MP automatically loses his/her seat in Parliament if detained under the Mental Health Act for a period of six months or more. (Para 4, p. 6)

1.2.4 Removing discrimination in the employment interview process.

There is a serious need to address discrimination in the employment interview process. We are calling for Parliamentarians to table amendments to place a restriction on the use of pre employment questionnaires so that employers cannot ask about a candidate's disability until after they have been offered a job. (para 5, p.7)

2. Outlawing Age Discrimination in Mental Health Services

2.1 The nature and extent of disadvantage experienced by older people in mental health services

2.1.1 Background

Meeting the need of an ageing population will be a major challenge for health and social services in the UK over the next 4 decades.

Independent research on demographic change shows that the only mental disorders to increase in absolute numbers by 2026 will be due to the direct consequence of an ageing population.ⁱⁱ That the number of people with dementia will rise by 150% by 2050 is well known but there is less recognition that those over age 75 with depression will increase by 80% by 2026 and the number affected by all mental disorders will rise by a similar proportion in absolute terms.

In June 2008, the Department of Health commissioned two literature reviews and two research studies on the costs and benefits of eliminating age discrimination in the provision of health and social care.

One of these reviews, *Age Discrimination in Mental Health Services*, by the Personal Social Services Reviewⁱⁱⁱ, draws on extensive current evidence which shows that older people experience serious discrimination in mental health services because of their age. In April this year, a Healthcare Commission study of older people's mental health services in England and Wales, 'Equality in later life', concluded that:

'Despite the significant achievements of the National Service Frameworks (NSFs) for Mental Health and Older People, there has been less emphasis on mental health services for older people than on those for younger adults [the framework for mental health only addresses the mental health needs of working adults up to 65].^{iv}

2.1.2 Access to Services

Specialist Services

Some of the most important improvements in mental health care and treatment in the past decade have centred on the expansion of specialist services, many based in the community.

There is no single policy document which says that people who are over 65 should not receive the same access to treatments, yet independent research commissioned by the Department of Health has demonstrated that older people do not have the same access as working age adult mental health services to a range of specialist teams developed from targeted funding provided by the Department of Health.

A joint report from the Healthcare Commission, Audit Commission and Commission for Social Care Inspection^v stated that older people reported a noticeable difference in their experience of accessing services as they reached and passed the age of 65.

2.1.3 Lack of investment and under resourcing.

Older people have also faced serious underinvestment and under resourcing of Government recommended services. There is evidence that NHS older people's mental health services are losing resources for patients purely to meet financial pressures. While this is not exclusive to older people's services they start from a more limited resource, as described, and the population in need of these services is increasing.

In a Royal College of Psychiatrists survey, members of the Old-Age faculty reported of having been 'told of evidence that specialist services for older people with mental health problems, including dementia, are being cut purely to meet the financial pressures created elsewhere in the NHS, and to meet the demands of the Secretary of State that financial balance must be achieved'^{vi}

The government has invested extra money to fund working age adult mental health services (18-64 years) during the last three years to develop crisis and assertive outreach mental health services but has made no investment for older people. These services are intended to reduce the need to admit a person to hospital and help them recover in their own home. Equivalent services are not available to older people.

Box 1: Old Age Faculty Survey Findings:

Over half of the survey (58%) reported that they had seen cuts to their services in the 2007/2008 financial year, including:

- ward closures (30/74; 40%) with several respondents mentioning the loss of continuing care and respite beds;
- loss of day hospital services (16/74; 22%),
- reduction of community teams (10/74; 14%).¹

2.1.4 Work force

There are a number of specialisms in psychiatry that are not available to older people. These include liaison psychiatry, where mental health treatment is provided in general hospitals, and rehabilitation psychiatry.

This means that older people with mental health problems in general hospitals do not have access to an equivalent specialist service to younger adults. This is despite older people occupying 60% of NHS beds and 50% of older people admitted to general hospitals also suffering a mental health problem.^{vii}

2.2 Measures in the Bill

2.2.1 Delayed introduction for equal access to goods and services on grounds of age

The provisions outlawing age discrimination by service providers (including the NHS) are included in the Equality Bill but they will not come into force immediately and may be subject to exceptions.

Clause 203 sets out when the provisions in the Equality Bill will come in to force. For the majority of the provisions there is no set date for commencement but it will be up to the Minister to bring them in when the Government decides.

We welcome the Ministerial Statement by Care Services Minister Phil Hope on 27 April, which emphasises the Government's desire to 'implement the changes as soon as practicable.'^{viii} However, we remain concerned that the words 'as soon as practicable' are too vague.

The Government has previously stated that 'implementation challenges will be greatest in the health and social care sectors' and that 'this sector will require the longest transition period.'^{ix}

2.3 What the College would like to see happen

It is paramount that the Government fully carries out its commitment to outlawing age discrimination by service providers. In order to do this we believe that the Government must commit to a legally binding timetable for the introduction of regulations to introduce the ban on age discrimination in health and social care.

Unless they can commit to a time-table for implementation, then there is a real danger that the proposals will be delayed or, more worryingly, could become hostage to political fortune.

3. Creating a new Public Sector Equality Duty.

3.1 Importance of a strong public sector equality duty

We welcome the Government proposal to create a public sector equality duty in Part 11, Chapter 11 of the Equality Bill. This will bring together the three existing duties and extend to gender reassignment, age, sexual orientation and religion or belief.

As the Commission for Equality and Human Rights has found, the disability equality duty has changed the profile and the approach towards disability across many public authorities. From the evidence that has been produced there is no doubt that greater priority is being given to disability issues by public authorities and in particular a shift in the perception of disability as being an add-on issue to one of being the core business of what public authorities do. The duty has arguably been a more powerful mechanism for overcoming disadvantage and discrimination in the public sector than the rest of the DDA.

A report commissioned by the Disability Rights Commission commissioned into the equality schemes done by NHS bodies found real benefits in the emphasis on involvement of disabled people. This involvement rather than consultation is unique to the disability equality duty. Those public authorities who had involved disabled people had equality schemes that were robust, detailed and targeted at practical issues. They were also more active in promoting employment of disabled people in their workforce.

5

The College has a particular concern that the NHS should be more proactive in ensuring that people with mental health problems, especially those with fluctuating conditions, should be employed within NHS services and that those employees who develop a mental health problem should where possible, with reasonable adjustments if necessary, be retained. The public sector duty has a key role to play in this regard.

3.2 Measures in the Equality Bill

As drafted, The Equality Bill does not set out the detail of the public sector equality duty but leaves it to regulations. We are concerned that this does not give Parliamentarians the opportunity to fully debate the detail of the duty.

There is concern that the public sector equality duty introduced in this Bill may dilute the effectiveness of the disability equality duty and the momentum that has built to advance the causes of disabled people.

3.3 What the College would like to see happen

On 29th April 2009, the Work and Pensions Select Committee produced a report entitled: *The Equality Bill: how disability equality fits within a single Equality Act*. The report discussed the single equality duty and made the following recommendation:

'We strongly believe that any attempt to harmonise the public sector duties should not dilute the attention that is given to disability discrimination. We recommend that the key elements of the Disability Equality Duty, particularly the requirement of more favourable treatment, need to be preserved.'^x

We fully support this recommendation and **we would like to see a commitment from the Government that the public sector equality duty will contain all of the strengths of the current disability equality duty so it is an effective tool in strengthening and promoting citizen's rights. An integral part of the duty must be the involvement of disabled people in its formulation and it's monitoring.**

4 Removing Discrimination against Mental Health in Parliament.

4.1 Current law

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. By contrast 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 is detained using the authority of the Mental Capacity Act, he or she will not automatically lose their seat.

4.2 Our concerns

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, which was based on a survey of all MPs, Peers, and their staff.^{xi}

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

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. Section 141 has never in fact been used; however it is a

totemic piece of law, which ensures that discrimination exists at the heart of our democracy.

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.

4.3 What the College would like to see happen

We would like to see measures introduced in to the Equality Bill to remove Section 141 of the Mental Health Act to scrap the discriminatory law which means an MP automatically loses his/her seat in Parliament if detained under the Mental Health Act for a period of six months or more.

5. Removing Discrimination in the Employment Interview Process.

7

5.1 Current situation

Evidence tells us that people with mental health problems face serious discrimination in the employment process, notably through the attitudes of employers.

This is a particularly serious problem at the pre employment stage. A Royal College of Psychiatrists report from 2008, commissioned by the cross government Health Work and Well-being Programme, points out that:

‘Given the prevailing attitude among employers, it is perhaps not surprising that many people are reluctant to disclose their psychiatric history at the pre employment assessment fearing the job offer might be withdrawn or that they will be treated differently as a result (Stuart, 2006). Although policies vary, this can put the person at risk of the job offer being withdrawn or of dismissal should information about past mental health difficulties emerge subsequently (Chartered Institute of Personnel and Development, 2007).^{xii}

There is no law in place that will actually stop an employer from asking health-related questions. People applying for jobs could face questions about any medical problems they have or even the medication that they might be on.

5.2 International perspective

In the United States, as a response to the problems outlined in 5.1, a process within the Americans with Disabilities Act (ADA) was established to isolate an

employer's consideration of an applicant's non-medical qualifications from any consideration of the applicant's medical condition. This means that an employer cannot ask people if they have a disability until after a job offer has been made.

The prohibition of pre employment questions also exists already in several EU Countries: Spain, France, Italy, Belgium, Portugal and the Netherlands.

5.3 Disability Rights Taskforce and Disability Rights Commission recommendations.

In the UK, both the Disability Rights Taskforce (DRT) and the Disability Rights Commission (DRC) have looked in to the issue of disability related enquiries by employers. In 1999 and 2003 respectively, the DRT and the DRC recommended that enquiries should be restricted to only very limited circumstances. This was rejected by the Government.

In a section on pre-employment questionnaires in the Work and Pensions Select Committee report on the Equality Bill, the Committee comes out in support of the DRT recommendation:

'We endorse the Disability Rights Taskforce's recommendation that disability related enquiries before a job offer should be permitted only in very limited circumstances. As a general rule such questions should only be permitted after a conditional/provisional job offer has been made. There will be cases where a job offer is withdrawn because of health-related concerns or because reasonable adjustment for a disability is not possible. However, the process would then be transparent, and where there is disagreement as to the decision, further consideration or mediation are possible.'^{xiii}

8

5.4 What the College would like to see happen.

The Department of Work and Pensions Minister, Kitty Usher MP, was asked by the DWP Select Committee if the Government would consider banning pre employment questionnaires in the Equality Bill and she said: 'we keep every policy under review and we obviously have the evidence internationally. We think they serve a useful purpose and, as we have both said, it is illegal to discriminate on the basis of disability. Those cases should be taken through the legal system if there is evidence.'^{xiv}

The Equality Bill represents an important opportunity to ensure that the UK introduces safeguards against discrimination for people with mental health problems.

The College would like to see amendments to the Equality Bill to bring UK disability law up to speed with US and European equivalents by restricting the use of pre employment questionnaires in the employment interview process. This would provide a much needed and long overdue safeguard against discrimination for people with mental health problems.

The Royal College of Psychiatrists

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

Find out more information at www.rcpsych.ac.uk

ⁱ www.fairdeal4mentalhealth.co.uk

ⁱⁱ Kings Fund (2008) Paying the Price: The Cost of Mental Health Care in England to 2026.

ⁱⁱⁱ Jennifer Beecham, Martin Knapp, José-Luis Fernández, Peter Huxley, Roshni Mangalore, Paul McCrone, Tom Snell, Beth Winter and Raphael Wittenberg (2008) Age Discrimination In Mental Health Services, Personal Social Services Research Centre discussion paper 2536

^{iv} Healthcare Commission (2009); Equality in Later Life (National study of older people's mental health services)

^v Audit Commission (2006) Living well in later life: A review of progress against the National Service Framework for Older People

^{vi} Royal College of Psychiatrists, Old Age Faculty (2007) Old age psychiatry services in the UK – A questionnaire survey of Consultant old age psychiatrists

^{vii} Royal College of Psychiatrists, Faculty of Old Age Psychiatry, Liaison Psychiatry Working Group (2005) 'Who Cares Wins'.

^{viii} Written Ministerial Statement by Phil Hope MP, Minister for Care Services; Age Discrimination in Health and Social Care; April 27 2009.

^{ix} The Equality Bill: Government response to the consultation. (2008) Cm 7454.

^x House of Commons Work and Pensions Committee (2009) The Equality Bill: how disability equality fits within a single Equality Act; Third Report of Session 2008–09; Paragraph 214.

^{xi} <http://www.rcpsych.ac.uk/pressparliament/aboutourparliamentarywork/allpartygroup/mentalhealthinparliament.aspx>

^{xii} Royal College of Psychiatrists (2008); Mental Health and Work

^{xiii} House of Commons Work and Pensions Committee (2009) The Equality Bill: how disability equality fits within a single Equality Act; Third Report of Session 2008–09; Paragraph 156.

^{xiv} Ibid; Paragraph 155.