



## **Royal College of Psychiatrists:**

### **Proposed Amendment to the Health and Social Care Bill at Grand Committee in the House of Lords**

#### **Amendment**

#### **Schedule 3**

**BARONESS MURPHY  
LORD PATEL OF BRADFORD**

**95** Page 116, line 30, at end insert—

"(d) patients deprived of liberty under the Mental Capacity Act 2005 (c. 9)."

#### **Purpose of the amendment**

Amendment 95 adds a new category of patient to those who must receive regular visits from the Commission. These patients are those who are detained under the Mental capacity Act, the so- called " Bournewood" patients.

#### **Reason for the amendment**

The Mental Capacity Act 2005 was amended by the Mental Health Act 2007 in order to give effect to the decision in HL v UK in which the European Court of Human Rights held that people who were deprived of their liberty but not detained under the Mental Health Act(MHA) needed to have certain rights and protections , similar to, but not as extensive as, those which the MHA provides.

This is on account of the fact that the group of patients involved are particularly vulnerable, unable to act for themselves and also they are likely to have special needs that may not be forthcoming in busy care homes or hospitals. They are typically those with moderate or severe learning disabilities, older people with dementia and people with mental illness who need to be in residential care but who also need to be deprived of their liberty in their best interests, for their own safety or care. They may be trying to leave the premises when it is not safe for them to do so or they may wish to leave the residential care when it is not considered possible for them to return home.

Infringements of their liberty in this circumstance is a serious issue. Under the MCA there are some specific and detailed rules that determine when they can be detained and for how long it could persist . The practice of residential institutions in interpreting the powers and duties under this Act and in ensuring that the human rights of this vulnerable group are protected is likely to be variable.

The recent Healthcare Commission Report into people with learning disability criticised the services in residential care. The Commission's audit covered 72 NHS trusts and 17 independent organisations providing 638 individual services, including long-stay hospitals, campus-style accommodation, acute assessment and treatment centres, short-break and secure facilities (Healthcare Commission

2008). It concluded that insufficient attention is paid to safeguarding vulnerable people across all aspects of their care. They found care to be poorly planned and not involving the individual, a lack of stimulating activities and opportunities and little opportunity to develop friendships or relationships.

“Until there are appropriate proper policies, procedures and training in place in all services, the Commission cannot be assured that the human rights of people with learning difficulties are being upheld”.

Advocates on behalf of people with learning difficulties play a crucial role in safeguarding their rights but the Commission found that only a quarter of people in the services visited as part of the audit had spoken to an independent advocate in the previous six months. Services are not properly monitored by the primary care trusts and local authorities that commission them; most services involved in the audit said the commissioning body had not visited in the previous six months. In the few services that reported good involvement by commissioners, this relationship was said to have improved the quality of services. It was found that training of staff was poor.

The Recommendations of the Report call for urgent measures by Govt, PCTs, SHAs and providers including that commissioners improve their practices so that learning disability services are no longer overlooked.

### **Conclusions**

For the particular residents who have their liberty taken away under the MCA a more active and more detailed examination of individual patients and of their records is required if we are to be satisfied that the Act is being properly enforced. Furthermore it is clear that the duties of the state under the Optional Protocol to the Convention Against Torture (OPCAT) require this to occur – the duty to monitor the deprivation of liberty provisions, by perhaps a visit from the CQC, every 5 years would be totally inadequate protection for these patients and inadequate in terms of our obligations at international law under this Convention.

Under the Optional Protocol to the Convention against Torture the UK is required to establish a National Preventative Mechanism (NPM). This is a system of regular visits to places of detention by independent expert bodies, in order to prevent torture and other forms of ill-treatment.

The MHAC has written that: ‘a model of generic inspection without a strong emphasis on training in these areas and sufficient experience would not meet the requirements of the Optional Protocol.

It is understood that this amendment carries resource implications. It is not clear how many people will be brought within the new MCA provisions and estimates vary from an estimate of 20,000 to well over 100,000. In any event it will be important for the government to recognise the need for funds to be provided.

Rowena Daw  
Head of Policy Unit  
Royal College of Psychiatrists  
[rdaw@rcpsych.ac.uk](mailto:rdaw@rcpsych.ac.uk)

Neil Balmer  
Public Affairs Officer  
Royal College of Psychiatrists  
[nbalmer@rcpsych.ac.uk](mailto:nbalmer@rcpsych.ac.uk)  
0207 235 2351 x149