

The Mental Health Bill and renewal of detention.

There has been considerable discussion recently amid reports of the 'break-up' of the Mental Health Alliance. The College has resisted commenting until now in order to take a measured view of the issue.

The College continues to be a member of the Mental Health Alliance and to support its principled approach to mental health law reform (the Alliance includes 75 mental health organisations representing patients, carers, mental health and social work professionals, management and numerous other healthcare bodies). The five professional and trade organisations which have suspended their membership have stated that their only disagreement is in relation to professional roles and renewal of detention.

1. It may be argued that there should not be such a process as 'renewal', which may be considered an out-dated concept.
 - a. Much 19th century mental health legislation authorised indefinite detention unless the person could convince visiting magistrates that they were now sane and should be permitted to leave the asylum.
 - b. Whilst the initial detention, even under section 2 (to detain a person for 28 days) requires three opinions (two registered medical practitioners and an approved social worker); renewal of detention, for 6 or 12 months, is authorised on the opinion of just one person. This appears to be based on the view that once a person has suffered from a mental disorder it is reasonable to assume they will continue to do so. (The same approach - once mentally ill, always mentally ill until sanity can be proved - was also reflected in section 73 MHA 1983. Until amended in 2001, it put the onus, at a Mental Health Review Tribunal, on the patient to prove s/he was sane rather than on the detaining authority to prove the patient still warranted detention).
 - c. In relation to this Bill, the government takes the view that a different, and much higher, standard is required in relation to the initial detention of a person than to subsequent renewal. Whether or not this is due to the belief that once it has been determined that a person suffers from a mental disorder any future signs of ill-health may be assumed to be due to continuing mental disorder is immaterial. It certainly encourages this type of thinking. This is medically inappropriate and potentially dangerous, it may contribute to the high rates of poor physical health of people with a mental illness, and is highly stigmatising.

2. The 'Bournewood' amendment to the Mental Capacity Act, which authorises deprivation of liberty under that Act, does not have a 'renewal' provision. If detention is to continue after the first period of detention expires then a new authorisation is required. Each new authorisation has the same elements i.e. six assessments made by two professionals, one of whom must be a registered medical practitioner.
3. The College supported the proposal in the 2002 and 2004 draft Bills that all detention beyond 28 days would require a) the clinical supervisor (now, responsible clinician) to make an application b) a medical member of the 'expert panel' to support it c) a three person Tribunal to authorise it. In other words the standard required for continuing detention was, rightly, higher than for the initial detention.
4. The College supported the Alliance amendment to this Bill, in the Lords, which would have required the same personnel (2 doctors and an AMHP) at renewal as required for the initial detention.

Section 20 renewal

1. The College believes that no detention or compulsion should be permitted on the authority of one individual alone, other than for a short-term emergency.
2. The College recognises and supports the ECHR requirement that no-one should be detained on the grounds of mental disorder unless there is objective medical evidence of such a disorder and such evidence must be provided by a professional qualified to provide 'objective medical expertise' (*Winterwerp v the Netherlands*, 2 EHRR 387).
3. Therefore, the requirement for renewal of detention must be two professionals, from different professional backgrounds, one of whom must be able to provide 'objective medical expertise'.
4. The same requirement should apply in relation to revocation of community treatment orders, as this starts a further 6 month period of detention.

Tony Zigmond
Honorary Vice-President
June 2007