
Book Reviews

Coercion and consent

Monitoring the Mental Health Act 2007–2009

The Mental Health Act Commission

Thirteenth Biennial Report 2007–2009

The Stationery Office (2009)

£25.00

The thirteenth biennial report from the Mental Health Act Commission is, of course, its last. The review copy arrived with the cover bearing its familiar style and characteristic logo, as well as being illustrated with the most extraordinary evocative and haunting portrait in oil pastels by a woman who underwent two leucotomies in the 1950s, but accompanied also by a Care Quality Commission compliments slip.

Plus ça change? Well, all one can say at this point in time is that it remains to be seen. Reports from around the Country, and not only those originating with mental health services, suggest that the new regulatory body is not going to shy away from being critical, and quite vehemently so, of what it sees as unacceptable practice or below par standards of care. As has been suggested in previous reviews here before¹, this is as it ought to be. But one hopes that the opportunity which this change offers will be seen as one that includes being able to take up the challenge of looking at the bigger picture, the wider horizon, the entire canvas, rather than the focus being on individual elements of what is, after all, a huge and complex construction.

That said, this, the valedictory from the outgoing Commission is, in my judgement at least, rather gentler, perhaps a little less hostile as it could sometimes seem previously even, and more conciliatory, particularly towards mental health services and those doing their best to run, maintain and better them. On page 21 there is reference to being able to “celebrate and appreciate the hard and demanding work undertaken by professionals in acute psychiatric care over the life time of the MHAC.” Also that the most important thing “is the simple human compassion, humour and capacity for hope ... as expressed by both staff and patients alike”. It is vital too though that we all remain mindful of the burden of mental ill health upon those suffering it, and never forget the sense of hopelessness and desolation that accompanies it for some.

As with previous biennial reports the main component of the opening sections deal with the statistics of the detained population and the operation of the Act itself during the relevant period. These I found quite hard going in a way that their equivalent numbers in preceding reports did not seem to be. This is of course a matter of opinion but one for which I confess I am unable to account in any specific way on the basis of objective evidence. Nevertheless they took a deal more concentration than previously. At the same time there is an awful lot contained in them and just the variety of data presented and attendant

¹ *The author reviewed the 12th Biennial in the Journal of Mental Health Law May 2008 and the 10th Biennial in September 2004. Anselm Eldergill reviewed the 9th Biennial in the JMHL February 2002.*

issues raised are potentially overwhelming. So perhaps there is a sense in which they seem both potentially too intense, but also diverse, to make for easy reading. In Chapter One for instance, following on from the presentation of what are still vitally important data relating in the main to numbers of detained patients, there are sections centred on matters concerning bed occupancy, the use of security, in the form of locked doors, as a means of clinical, or in some cases non clinical management, others on ward based activities, staffing levels and mixes, the hospital environment, and observation levels, restraint, police involvement in handling potentially dangerous situations on in patient units, and seclusion, as well as ward based telephones, access to computers and pornography, patients' correspondence and emails. And these across all different levels of security, from open units to the special hospitals. This is not to make less of the material. These are important areas. But one needs one's wits about one in assimilating and thinking about these different topics in such quick succession. The secret possibly lies in reading each part as a discreet entity. But then one risks losing any degree of continuity, for these are not all as different as they might superficially seem to be and are certainly not all entirely unconnected subjects. I was left wondering if this was a result of a need and desire to cover so many topics in what is, after all, a limited amount of space, but also at a time when there might have been a sense of this possibly being the last opportunity to do it.

The section on patients' leave from hospital, and indeed absence without leave, I found particularly interesting. It extends across all aspects of what might seem, and certainly should be in most circumstances, a fairly straightforward process. Not so when one must take into consideration definitions of what constitutes leave and where this can be taken, forward planning, risk related issues, recording and communicating decisions, and the availability, or more importantly potential (and actual lack) of availability of escorting staff where they are needed. And this is without the limitations and administrative extras that go with the legal status of restricted patients, where the Ministry of Justice must also be involved which can mean that there are political, as well as Political influences to be taken account of. There is too increasing emphasis placed on victim related matters for those subject to both restricted and non-restricted hospital orders, the latter as a result of the 2007 Act.²

There is an important, though complex, sub section devoted to Supervised Community Treatment (SCT). It looks at all aspects of the powers and includes some initial data and analysis as well as an attempt to assess the early impact of SCT through the experiences of patients placed on the new Order. Suffice it to say that this needs reading by all those involved in using SCT now or contemplating using it in the future. There are already problems arising, around functionalised services and who does what at the point of discharge from hospital and the initiation of the SCT as well as in relation to the requirement for the already over stretched Second Opinion Appointed Doctors service (to which there is an entire section of it's own devoted later) to approve treatment plans for patients subject to SCT, even if they have capacity and are consenting³. Despite these and other issues, there does, from some very early and as yet unpublished findings, seem to be more enthusiasm among psychiatrists for the use of SCT when compared to the now no longer available Supervised Discharge.

The chapter on mentally disordered offenders will be important to those working in their day to day practice with this group of people but it is disappointing that some issues that the Commission has repeatedly raised and referred to in the past are still unchanged. Chapter 6 entitled "Deaths of Detained Patients" is both informative and thought provoking.

2 *Schedule 6 of the Mental Health Act 2007 amends the Domestic Violence, Crime and Victims Act 2004.*

3 *See Sections 64B and 64C Mental Health Act 1983.*

So the Mental Health Act Commission has finished its work, although not completed it as there is always more to do. Its successor comes to the arena at an extraordinary point in time, during which the Government has been seeking views on potential emergency measures and, one might argue, quite significant changes to the safeguards which bind the 1983 Act into what it is if, in the face of the influenza pandemic becoming more serious and widespread, there is a significant temporary or even permanent reduction in the mental health services workforce⁴. Interesting times.

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⁴ See 'Pandemic influenza and the Mental Health Act 1983' Department of Health (September 2009).