

Mental Health Act Commission

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A review of the role and function of the Mental Health Act Commission is a natural outcome of the first five years experience of its workings. By the Autumn, when the third Biennial Report will be published, the new direction and operation of the Commission will be determined by the Secretary of State for Health on the basis of the recommendations of the review. It is too early to indicate the changes that are likely to be wrought by this development. It is possible, however, to reflect on the activities to date.

Under the Mental Health Act 1983, the Commission has a three-fold duty as the long arm of the Secretary of State who is accountable to Parliament for the mental health system. The three duties are:

- (a) to investigate complaints made by detained patients about their care and treatment in hospital and the exercise of the powers or the discharge of the duties imposed or confirmed by the Act
- (b) to manage and administer Part IV of the Act (Consent to Treatment)
- (c) to prepare proposals for the Code of Practice which the Secretary of State is under a duty to lay before Parliament.

The three functions can be classified as visitatorial, supervisory of certain treatments for mental disorder and advisory.

Visitatorial

The Commission's visiting to psychiatric hospitals as part of the legislative prescription of protection of the interests of patients has dominated its activities and largely dictated the public image of this newest form of watchdog for the mentally ill. This was inevitable, if only because the visiting of hospitals with detained patients is central to the duties relating to the general protection of such patients.

The Commission was from the outset organised into three regions, whence teams of Commissioners varying in numbers have conducted systematic visits to hospitals (including registered mental nursing homes) and to Social Service Departments in pursuance of the statutory duties relating to detention or guardianship and to after-care under Section 117. It has not always been easy for those involved in the visits – both visitors and visited – to distinguish between the visitatorial function and an inspectorial role which is performed largely by the Health Advisory Service. To this extent there has been an inevitable overlap and hence a concern for an exercise in

excess of power. The Commission has on the whole attracted favourable reaction from hospital management. Here and there misunderstandings have arisen, from which it is clear that the only sufferers have been patients. In performing its statutory duty to investigate, the Commission does not confront hospital authorities, but stands alongside those who likewise have the primary concern for the welfare of the patient. The perception, on both parts, is occasionally different. Better relationships and understanding of each other's problems have developed between hospital and Commission, and will continue to develop where individual hospital staff and Commissioners establish a pattern of working that accommodates each other's duties.

Consent to Treatment

The provisions in the Act which in certain circumstances calls for a second psychiatric opinion involves an intrusion into the professional judgement of Responsible Medical Officer. As such, the functioning of Second Opinion Appointed Doctors (SOADs) calls for delicate handling by the doctors who perform the task. It is said, with justification, that the psychiatric profession's attitude to the Mental Health Act Commission is shaped almost entirely by the manner in which RMOs and the hospital management are handled by SOADs. While this is no doubt true, the reaction to the SOAD system should not be wholly directed at the Commission. It is frequently overlooked that the Commission's statutory duty is to appoint the appropriate doctor, who may not be, and frequently is not, a member of the Commission, and that the Commission is in no way responsible for the work done by the SOAD, who takes personal responsibility for exercising his powers under Section 57 and 58 of the Act. SOADs furnish reports on all cases which they see and this assists the Commission with its task of monitoring the use of the Consent to Treatment provisions of the Act.

The Commission welcomes nominations from the College or from interested individual consultants who would be willing to be considered for appointment as a SOAD.

The Commission has been aware that in many respects the statutory language is obscure and cumbersome. In some respects it is even intentionally inconsistent. Some of the legal problems emerged in

the first case against the Commission to come to the High Court. Somewhat surprisingly, the Court held that a drug called Goserelin, which provided a mode of chemical castration, was not within the regulations under Section 57. A report by a Medical Commissioner and two non-medical Commissioners, on the ground that the consent of the patient was not an informed one and that the treatment was inappropriate because of its unknown side-effects, was questioned. The judgement of the court has pointed up a list of medico-legal problems. The Commission's concern about the control of irreversible or potentially damaging treatments for those mentally incapable to give consent led to its intervention in the sterilisation case heard by the Appellant-Committee of the House of Lords in February/March (the judgement is keenly awaited).

Advisory

One of the first tasks undertaken by the Commission was the drafting of proposals for a Code of Practice. This exercise performed with great skill and zeal by the originally appointed Commissioners has had an unhappy outcome so far. The draft appeared in August 1985 – a very lengthy document that aroused

opposition, not to say hostility, from some professional quarters. Faced with a loud note of dissent, the Department of Health and Social Security decided to draft its own Code of Practice. This appeared in August 1987. The Commission's reaction was critical, partly on the grounds that its own valued work had largely been discarded and partly because the Department's draft seemed little more than a commentary on the Act and provided practitioners with little guidance on how to deal with daily problems for which the Act gave no prescription. As I write, the Department is deciding whether a revision of the 1987 Draft is sufficiently responsive to the calls for detailed guidance. It may be that the draft would not pass muster with a House of Commons whose members would look critically and bi-partisanly at what the Secretary of State had lain before them.

Apart from the saga of the draft Code of Practice, the Commission has produced a memorandum on compulsory treatment in the community, responding to the College's own paper, but so far has not fulfilled its capacity to advise Ministers on a range of problems in the mental health field. Doubtless it will, once there is an official announcement about how mental health will fit into the reformed National Health Service.

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Miscellany

News of Scottish Members

Dr Robert Hunter of the MRC Brain Metabolism Unit at the Royal Edinburgh Hospital has been awarded the McHarg Prize for 1988. The subject of his dissertation was 'Patterns of Regional Cerebral Blood Flow in Presenile Alzheimer's Disease and Korsakoff's Psychosis and their Relation to Neuropsychological Function'.

Dr Alasdair McKechnie, Physician Superintendent at Bangour Village Hospital, Broxburn, has been appointed a medical member of the Mental Welfare Commission in Scotland.

King's Fund Centre

The Centre announces the launch of a new name for what was the Long-Term and Community Care Team. They have decided that a more appropriate title is the Community Living Development Team. Its particular interest is the development of high quality services for people with long-term dis-

abilities, including people with learning difficulties, physical disabilities, and people with mental health problems. Further information can be obtained from: Community Living Development Team, King's Fund Centre, 126 Albert Street, London NW1 7NF (telephone 01-267 6111).

Diploma in Behavioural Psychotherapy

Psychologists, psychiatrists and others with appropriate mental health work experience are invited to apply for the 13-month full-time Diploma Course starting October 1989. In addition to theoretical teaching, practical experience in behavioural psychotherapy will be gained by carrying out treatment under supervision of complex disorders with in- and out-patients. The course is directed by Dr Victor Meyer and Dr Edward S. Chesser. For further details apply to Ms Caroline Selai, Course Secretary, Department of Psychiatry, Wolfson Building, Middlesex Hospital, London W1N 8AA (telephone 01-380 9475).