



Mental Health Alliance

## Community Treatment Orders - Right to Appeal Against Conditions

House of Commons Committee stage amendment briefing

Clause **32**, page **22**, line **7**, at end insert—

‘(8) A community patient or his nearest relative may make an application to the Mental Health Review Tribunal to vary or suspend any or all of the conditions imposed under section (3)(a), (b), (d) and (e) within the relevant period or if substantial variations have been made by the responsible clinician under subsection (4) above.

(9) In subsection (8) above “the relevant period” means—

(a) six months beginning with the day on which the community treatment order is made; and

(b) the period or periods for which the community treatment period is extended by virtue of the report.

(10) Where application is made to a Mental Health Review Tribunal by or in respect of a community patient under subsection (8) above the tribunal—

(a) may recommend that the responsible clinician consider whether to vary or suspend any or all of the conditions imposed under sections (3)(a), (b), (d) and (e) of the Mental Health Bill [Lords] 2007 (c. ); and

(b) may further consider the patient’s case if the responsible clinician does not make all or some of the changes recommended.

(11) Nothing in this section restricts the power to make applications to tribunals under section 66.’.

Schedule 3, page **63**, line **27**, at end insert—

‘(d) Where application is made to the tribunal by or in respect of a community patient and the tribunal does not direct that the patient be discharged, the tribunal—

(i) may recommend that the responsible clinician consider whether to vary or suspend any or all of the conditions imposed under section (3)(a), (b), (d) and (e); and (ii) may further consider the patient’s case if the responsible clinician does not make all or some of the changes recommended.’.

## **Purpose of the amendment**

- This amendment would allow a patient on a CTO order to appeal to the Mental Health Review Tribunal (MHRT) against any of the conditions imposed.
- The MHRT could recommend that the responsible clinician should change the conditions and to order a further hearing if this is not complied with.

## **Reasons for the amendment**

### **1. Safeguard against unreasonable conditions**

- CTOs give clinicians wide powers to impose conditions on patients behaviour and lifestyle – for example that the patient must live in a certain institution, is subject to a curfew and must not engage in specified conduct.
- It is important that any conditions are reasonable and that the patient has the power to challenge any requirements that are unreasonable.
- The responsible clinician and the AMHP may not have met the patient before their crisis and are unlikely to have a great deal of knowledge about the patient's home life, or the needs of their carers. This could lead to assumptions made about the patient and unreasonable expectations on the carers to supervise the patient, transport them to specified meetings, police the conditions or even house the patient.
- Examples of conditions which may be unreasonable:
  1. A person required to live in a certain place might experience abuse or stigmatisation from their neighbours and wish to move.
  2. A person placed under a curfew might find this too restrictive if they find a job which requires them to work after the specified curfew time.
- Whilst the supervising clinician to be sympathetic to any such case made to them by a patient, the right to challenge restrictions should not hinge upon the goodwill of a clinician.

It is when the clinician maintains that the need for the condition to remain is more important than the negative impact it might have that a challenge might need to be pursued – and this right to appeal must be to a body independent of the clinicians making the order.

### **2. Human rights issues**

- The Joint Committee on Human Rights concluded in its report on the 2006 Mental Health Bill that to ensure compliance with the Human Rights Act a patient should be entitled to seek review of the conditions before an MHRT.
- The Joint Committee argued that given the breadth of the conditions that might be put on a CTO, there is the potential for the restrictions to culminate into a deprivation of liberty which would breach the Human Rights Act. They concluded that providing a right to appeal is an important safeguard to their proper use.

### **3. Support from abroad**

- John Lesser who is the President of the Mental Health Review Board in Victoria, Australia recently expressed concern that the UK government's proposals for CTOs lacked a right for

the patient to appeal against the conditions. The Australian experience of CTOs suggests that patients place great importance on the ability to challenge conditions – and the tribunal devotes much time to dealing with this.

### **Government response**

- The Government argues that the need to obtain the agreement of the AMHP when making a CTO and setting the conditions will provide protection against arbitrariness. The Government relies on the fact that both the responsible clinician and the AMHP are required to act in accordance with the Human Rights Act.
- The Government has stated that the Codes of Practice will provide guidance to the effect that conditions attached to a CTO will be kept to a minimum consistent with ensuring that the patient gets the treatment he needs and to protect the patient and others from harm.

### **Alliance response**

- AMHPs may not be an effective safeguard – particularly when they work in the same team as the responsible clinician. The Government is relying on the training for Responsible Clinicians and AMHPs to emphasise the need for independence.
- A requirement in the Code of Practice that conditions must be kept to a minimum is not sufficient – and would not prevent the imposition of a curfew or similar restrictions which cumulatively might amount to a deprivation of liberty.
- The only option available for patient to challenge the conditions is through judicial review – which is an expensive and limited legal option.
- The lack of safeguards contrasts with other areas where the Human Rights Act is engaged, such as the Regulation of Investigatory Powers Act 2000, and control orders under the Prevention of Terrorism Act 2005.