



Mental Health Alliance

Renewal of Detention briefing

Background to the renewal issues

The Amendments in the House of Lords on renewal of detention and Community Treatment Orders (CTOs) gave rise to differences of view among the professional bodies within the Alliance. As a result some members felt it necessary to suspend membership in order to be free to pursue their line, at the same time making clear their continued support for many of the other policies we have agreed on for 7 years.

While the Alliance has decided that members are free to pursue their own cause on this issue, we wish to assert the principles upon which we supported the Lords amendments and which have informed our policy on renewals over the last 7 years. We remain committed to these principles and will support amendments that are broadly in line with them.

1. No detention or compulsion should be permitted on the authority of one individual alone. This is an essential patient safeguard

The decision to renew a patient's detention for 6 or 12 months is a very serious step involving an infringement of the patient's personal autonomy and a deprivation of liberty, with all the consequences for the patient's life, home, employment and social relations that may ensue. Under the 1983 Act the responsible medical officer (RMO) takes this decision on their own – they are required to examine the patient, consult with another member of the team and submit a report to the hospital managers. This minimal and outdated procedure is maintained in the Bill, with the RMO replaced by the responsible clinician. The Alliance remains opposed to the situation whereby a single professional can take the decision on their own to renew a detention. No-one, whatever their expertise or professional background, should have this power.

Until the abandonment of the 2004 Bill the government had proposed, and the Alliance had supported, a Tribunal system which would have provided an independent authority of 3 persons to make all decisions to detain or renew the detention of patients, based on the reports of the patient's responsible clinician, the medical practitioner from an Expert Panel who had examined the patient, and other evidence presented to the Tribunal – including that of the

patient's legal representative. When the 2004 Bill was abandoned the Alliance looked at various alternatives to provide an adequate safeguard for patients whose detention is being renewed and concluded that as an absolute minimum this decision should be taken by two professionals.

Under the current Bill at least two professionals – and normally three professionals - must agree at all times before a 28 day, 6 or 12 month period of detention or compulsion in the community can be imposed -

- At a person's first detention 2 Registered Medical Practitioners and an approved mental health professional must agree;
- before a person is placed on a CTO or the CTO is renewed the agreement of 2 professionals is required;
- To revoke a CTO and recall the patient to hospital the agreement of 2 professionals is required.
- Before a person can be detained under the new provisions for Bournemouth patients in the Mental Capacity Act or a new period of detention authorised there must be the agreement of a medical practitioner and another professional.

The **only** situation in which this does not apply is the renewal of detention under the Mental Health Bill (for either 6 or 12 months), which is based on the view solely of the responsible clinician. We believe this is discriminatory and that it is essential that this crucial decision is not left to one professional.

2. The principle of multi disciplinary working including support for the new responsible clinician role

In accordance with this principle there would be much merit in a position in which the 2 professional opinions would come from different professional perspectives.

Under the Bill the vast number of renewals would continue to be made by psychiatrists acting on their own – which would reinforce the medical model – and we therefore believe that all decisions to renew detention should be multi disciplinary.

3. Compliance with the Human Rights Act which requires that a deprivation of liberty must be based upon objective evidence of unsoundness of mind provided by a person capable of providing objective medical expertise.

The Joint Committee on Human Rights Report has again taken their view that doctors are needed to comply with Article 5. Ultimately the issue of which professional groups are able to provide 'objective medical expertise' would be

settled by the courts and we do not take a view on how they will decide. Our overriding concern remains a total opposition to the notion that just one practitioner should make such an important decision as keeping a person in hospital for up to a year.

The government view on renewal

The government defence of the current Bill (the responsible clinician alone determines the renewal) 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. (This is also the underlying policy of the 83 Act which is out of date and stigmatising to patients. It leads to patients remaining detained for longer than is necessary.)
- that it will be easier to determine whether a person meets the condition at renewal than when the patient was detained initially. (This is untrue. Once a patient's condition has stabilised after a period in hospital it is a much harder decision as to whether s/he is still ill enough to require continued detention than at the outset when the illness was untreated.)
- that the responsible clinician will have good knowledge of the patient. (This is the very reason there needs to be someone with a different, more independent, perspective). – it is important to have someone with good knowledge of the patient involved in the decision, but it is also important to bring in an independent perspective, as would have been achieved by the tribunal system in the 2004 draft bill. A minimum of two opinions allows for an independent perspective as well as a different professional view than that of the responsible clinician.