The Reform of the Mental Health Act 1983
The Mental Health Foundation’s response

SUMMARY

In November 1999 the Government published ‘Reform of the Mental Health Act 1983 - Proposals for Consultation’ (‘the Green Paper’) and sought responses to the proposals by 31st March 2000.1 The main features of the proposals in the Green Paper are as follows:

- Guiding principles to be included in mental health legislation
- A broad definition of mental disorder
- Formal assessment to proceed a compulsory care and treatment order
- A tribunal to decide whether a compulsory order should be made
- The compulsory order may apply in hospital and in the community.

BACKGROUND

In July 1999 the Government announced the appointment of an Expert Committee (‘the Committee’), headed by Professor Genevra Richardson, to advise on the review of the Mental Health Act 1983 (‘the 1983 Act’). The Committee was told that they were expected to make definitive proposals on the requirement to comply with treatment in the community.

The Green Paper proposals are based on the Committee’s report. Although the Government has accepted some of the Committee’s recommendations, others have been rejected, significantly modified or, on some issues, the Government has suggested alternative proposals.

OVERVIEW OF THE PROPOSALS

Key features of the Government’s proposals and the response of the Mental Health Foundation (‘the Foundation’) are as follows:

Guiding principles

The new Act will incorporate guiding principles. The Committee proposed a wide range of principles but the Government’s suggestions are more limited:

- Informal care and treatment should always be considered before recourse to compulsory powers

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1 The proposed legislation applies to England and Wales only.
Patients should be involved as far as possible in the process of developing and reviewing their own care and treatment plans.

The safety of both the individual patient and the public are of key importance in determining the question of whether compulsory powers should be imposed.

Where compulsory powers are used, care and treatment should be located in the least restrictive setting consistent with the patient’s best interests and safety, and the safety of the public.

The Foundation prefers the broader principles suggested by the Committee. These include the enhancement of patient autonomy, participation, effective communication and reciprocity (if an individual is required to comply with a care plan there should be a parallel obligation on the health and social care authorities to provide appropriate services).

**Broad definition of mental disorder**

The new Act should be based upon the broad term of ‘mental disorder’, defined as ‘any disability or disorder of mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning’. The Foundation considers that this definition is too broad. The new Act must include a more specific definition of mental disorder than currently proposed, with further guidance set out in the Code of Practice.

**The formal assessment process and compulsory care and treatment**

All patients should undergo a formal assessment before an order for continuing use of compulsory powers is considered.

The Government sought views on whether the applicant for the formal assessment should be an approved social worker (ASW) or whether another mental health professional could undertake this role and whether it would be sufficient for two, rather than three mental health professionals to be involved in the procedure. The Foundation considers that the application process should continue to involve three professionals and the role of the ASW should be maintained.

**The tribunal**

There should be an independent decision-maker to authorise the imposition of compulsory care and treatment beyond the initial assessment period. The Green Paper sought views on various proposed models for the tribunal.

The Foundation prefers Model 2 in which the tribunal has a legal chair and two other members with experience of mental health services. The tribunal would have access to a panel of approved independent doctors (one of these doctors would examine the patient and report to the tribunal) and access where necessary to a panel of people with social care expertise.

**The criteria for compulsory care and treatment**

Two possible sets of criteria for deciding whether a person should be subject to compulsory care and treatment are suggested - the Committee’s ‘capacity model’ and the Government’s alternative model.
The Committee's criteria for the compulsory order draws a distinction between individuals with capacity to make treatment decisions and those who lack the capacity to make such decisions. The Government's alternative model makes no such distinction.

Although the Foundation supports the principles of a capacity-based approach we have concerns about how this model will be applied in practice. For example we are concerned that linking powers of compulsion to incapacity may lead to people with mental health problems being deemed to lack capacity because they object to aspects of their treatment plan and are considered to lack insight. The alternative model is unacceptable as the criteria are far too broad.

The Foundation believes that a detailed debate on this issue is required before the proposed reforms are taken any further.

Compulsory treatment in the community

The tribunal will have the power to make a compulsory order, which can apply either in hospital or in the community. The Foundation is opposed to the introduction of compulsory treatment in the community. For example we believe that such powers will drive people away from services, will be focused on medication rather than providing care and support, and are likely to be applied disproportionately to black people.

IMPLICATIONS

The Foundation is concerned that the Green Paper places too much emphasis on public safety without any reciprocal development in the role of care and healing. Many of the proposals will hinder rather than help us achieve better services for people with mental health problems (mental distress) and people with learning disabilities.

People with long-term incapacity

The House of Lord's decision in Bournewood that people who lack capacity to agree, but do not object, to their admission to hospital for treatment for their mental disorder without the need to detain them under the 1983 Act, highlighted the lack of safeguards for such patients. For example there is no independent review of the decision to admit them to hospital nor do the special procedures for the administration of medication for mental disorder or ECT (Electroconvulsive Therapy) apply to them.

Although recognising the need to introduce safeguards for such patients, no firm proposals are included in the Green Paper.

The Foundation cannot support the Government's suggestion that the new tribunals appoint a health care manager who would be under a duty to ensure that decisions on provision of care and treatment for a patient's mental disorder are in that patient's best interests. The Foundation can see no benefit from such an appointment as this would provide none of the necessary safeguards.

The Foundation believes that legislation to provide adequate safeguards for this group of people must be introduced as soon as possible.
The new Mental Health Act

The Foundation believes that the new Act should include the following:

- An enforceable right for individuals to have a comprehensive assessment of their needs and to have their identified needs met with good quality and effective services.

- The right to a trained independent advocate for every person who is subject to, or is being assessed for, compulsion. Adequate resources must be made available to ensure that such services can be provided.

- Advance agreements (directives) should be given formal recognition in the new Act and the practice of making advance agreements encouraged.

REFERENCES


Mental Health Foundation (March 2000) ‘Reform of the Mental Health Act 1983: Response by the Mental Health Foundation.’ The Mental Health Foundation: London.

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