

## The Mental Health Act Commission Tenth Biennial Report 2001–2003

Published by the Stationery Office (2003) £16.50

Reviewing published work requires a particular form of discipline and is perhaps a responsibility that should be more widely distributed. It necessitates and requires attention to detail in reading which, in the modern era of information technology and preoccupation with circulating copy correspondence, data and reports, particularly in the present day health service, may not always be possible to achieve elsewhere given the sheer volume of material that each of us seems to be required to assimilate. On the upside, however, one learns so much more than perhaps one might otherwise. That said, for anyone with even half an interest in mental health law, and certainly readers of this Journal, the *Mental Health Act Commission Tenth Biennial Report 2001–2003* should not pose any sort of difficulty in terms of information overload. Even if one finds oneself at odds with some of the views put forward or recommendations made, and there are no fewer than seventy of the latter, there is no doubt that this book, for that is what it is, is well written and constructed, wide-ranging, clearly thought-through and both stimulating and challenging to all those involved with the operation, management or provision of mental healthcare services at whatever level, from hospital ward staff to Government Ministers. I confess readily that to an academic forensic psychiatrist with a major area of interest in mental health law, like myself, it is a fascinating and absorbing piece of work.

The Report has as its sub-heading “*Placed Amongst Strangers*” which are words taken from John Perceval’s 1840 description of his own confinement with mental health problems written in the early part of the reign of Queen Victoria. The quotation from his work entitled “*A Narrative of the Treatment Experienced by a Gentleman During a State of Mental Derangement*” is both apt and well chosen and, albeit regrettably, may still today ring true with many who have been involved, in whatever capacity, with those detained in hospital against their will under compulsory legal powers.

The principal author of the 2001–2003 Report, as stated at the outset is, as in previous years, Mat Kinton of the Commission’s Policy Unit<sup>1</sup>. He is to be congratulated once again on the production of such an important document, and on this particular occasion, at so crucial a time in the history and development of Mental Health related law in the UK. As the Chairman, Professor Kamlesh Patel, says in his Foreword, the Commission itself is set for change, and we now have the *Human Rights Act 1998*, and the *European Convention of Human Rights*, both hugely influential and important in relation to the operation of the *Mental Health Act 1983* and other, allied, legislation. In addition, with the judgement in *R (Munjaz) v Mersey Care NHS Trust*<sup>2</sup>, the status of the Code of Practice<sup>3</sup> has changed in a way that quite rightly makes it so very much more important, even than previously, in day-to-day clinical practice. There will of course also, and almost inevitably now, be new legislation, probably at least in its preliminary form sooner rather than later. Not only that but

1 For a summary of the Report by Mat Kinton, see *JMHL February 2004*, pp 44–51.

2 [2003] EWCA Civ 1036. See ‘Judicial recognition of the status of the Code of Practice’ by Anna Harding

*JMHL February 2004*, pp 66–74.

3 *Mental Health Act 1983 Code of Practice*, The Stationery Office (1999).

there has been a huge increase in case law rulings relevant to the field of mental health law in recent times, so much so that the Report suggests, probably correctly, that practitioners, in attempting to use the 1983 Act, may have come to feel overwhelmed by the various changes that have been made, even to the point where, as the Commission points out, some seemingly well and long established previous judgements have actually been reversed. One of the other very striking things about the content is the number of times reference is made to cases still being heard, awaiting definitive judgements or simply unresolved “at the time of going to press”. So this Report necessarily covers a huge range of issues encompassing recent change and future potential developments.

In the past the issue of the statutory remit of the Mental Health Act Commission has been raised in relation to the scope of its previous Reports<sup>4</sup>. I would not be so concerned. Now, as then, the 2001–2003 “edition” covers a vast area and goes well beyond just the description and presentation of figures for the number of compulsory admissions to hospital or episodes of Second Opinion Appointed Doctor involvements in issues relating to consent to treatment or indeed the day-to-day operation of the Commission itself, its various constituent parts and its individual members and employees. And it is this, to my mind, that makes it of most interest. It remains, of course, vital that good quality data relating to the operation of the Mental Health Act are collected and analysed critically and that all the other required duties, functions and responsibilities of the Commission are comprehensively and properly fulfilled. That, one has to assume, goes without saying and would not be a matter for dispute. What the Biennial Report offers in addition, however, is an opportunity for those with an intimate, detailed knowledge of all areas of the law in this sphere, and also of the ways in which it is so rapidly developing, to offer analysis and opinion from an essentially unique standpoint. Nevertheless, in my view this is not a dense, impenetrable, purely academic or overly analytical, document. Neither is it by any means simplistic, or, in the main, naïve to the realities of, as it were, day-to-day life. In most areas it does not presume the need for expert knowledge or understanding of the underlying principles or detail of the law in order for the reader to be able to approach and grasp the subject matter of the various sections and sub-sections and comprehend their meaning and potential importance. The Report is therefore appropriately, and one imagines quite deliberately, designed to be accessible to all interested parties, not just those from a legal, psychiatric or other professional background. It makes the links between the law and its operation and the reality of the real practical situations encountered in providing services for those subject to involuntary powers quite explicit. It also shows simple good sense and in some areas in particular is extremely effective in offering clarification of complex, difficult concepts and their application.

As it does cover such a diverse range of subject matter it is difficult to pick out specific parts to highlight. There are, however, some areas that may be of particular interest to particular groups. I found the discussion of VBP, or Values Based Practice, both interesting and enlightening. Here this approach, which is intended to foster an understanding and balance of different value perspectives in decision-making in mental health care, and in particular in relation to those surrounding removal of the individual’s liberty, is compared and contrasted with Evidence Based Practice. It did seem to me that while the evidence base in its true scientific sense in psychiatry at least is relatively sparse compared to some other areas of medical practice for instance, the

---

<sup>4</sup> For example, see ‘*The Mental Health Act Commission, Ninth Biennial Report 1999–2001*’, by Anselm Eldergill, *JMHL February 2002*, pp 85–92 @ p 87.

value-based approach is one which has, hopefully, been espoused in many ways already but which will obviously be further strengthened from being made explicit.

The Report makes much of the fact that there have been a number of important judgements, and others pending, in relation to the use of the *Mental Health Act 1983* and suggests that this may be in part a result of lawyers and the judiciary being willing to pursue different approaches in the light of the likelihood of new law. There is a particularly good, if brief, section in Chapter Six ('Achieving a human rights-based service') which rehearses some of the most important matters to do with compulsory hospital care and stigma.

An issue that should concern us in reading the Report has to do with a number of surveys the Commission has undertaken in relation, for instance, to hospital practice, an example being that concerned with detained patients' access to telephones. What is most regrettable in each of the potentially very important, but nevertheless simple, questions being asked in each of these, is the very disappointing response rates that were obtained. One cannot help but wonder what this means about how the Commission and its work are perceived and how the care of compulsorily detained patients is viewed.

Much of the Report inevitably is written in the context of the human rights background and there is, as one would expect, due weight placed upon the vital issue of user involvement, advocacy and the dissemination of information to patients. Again, there is a particularly instructive section on the role of social workers under the current Act and the potential for the widening of the ASW role to involve other professionals and thus the potential for a considerable change in approach. For anyone interested in either unidisciplinary or multidisciplinary education in mental health care the contrast between the requirements for Section 12 approval of medical practitioners under the 1983 Act and the rigorous teaching and evaluation of social workers in preparation for the role of ASW, which is alluded to in Chapter Eight, is a stark reminder of the evident differences in standards and previous concerns expressed and identified around the whole issue of training of doctors in the use of compulsory powers<sup>5</sup>.

Throughout the Report there is the very clear suggestion of the need for better reporting systems for gathering data on the use of the Act nationally when new legislation finally emerges. One can only hope that this will indeed improve and that recording and monitoring will be centralised in some sensible, practicable way, especially to allow for research and audit to improve practice and standards of clinical care.

For those working in the forensic field there are some important areas of discussion around, in particular, liaison with the police over the use of Sections 135 and 136, the place of the *Police and Criminal Evidence Act 1984* and the involvement of police officers at the time of mental health assessments.

Regrettably, there are old concerns raised still which seem to have changed little over the course of time. These include patients contact with their Responsible Medical Officer and, in some cases, the difficulties in identifying the latter. Those regarding the use and practice of secluding patients seemed, to me at least, to be unaltered.

In Chapter Eleven there is a discussion of the use of mechanical restraint. This is interesting in the context of recent recommendations which have emerged in relation to the use of physical restraint

---

5 See 'Psychiatrists' knowledge of Mental Health Legislation' by Martin Humphreys, *JMHL* October 1999 pp 150-153

of patients by staff<sup>6</sup>. There are, of course, some parts of the world where mechanical restraints are still used in preference to physical methods or sedation by the use of drugs. While I would not wish to argue in favour of the use of the former it is of note that, anecdotally at least, patients have been said to report a preference for this at times rather than having hands laid upon them or being subjected to the degrading experience of the administration of intramuscular injections.

There are two specific points made which exercised me especially. One, on page 127 at sub-section 9.27, is about the use of the term “RMO” to refer to the doctor in charge of any patient’s treatment, be they subject to compulsory powers or not. I strongly concur with the view that this should be corrected wherever possible and actively discouraged. It is inaccurate, inappropriate and shows a lack of understanding of the law. Secondly, in Chapter Thirteen, which addresses the *Mental Health Act 1983* and the criminal justice system, it is suggested, within the discussion of the making of hospital orders under Section 37 of the current Act and in relation to the problem sometimes encountered in identifying a bed within the prescribed statutory period, that “28 days to arrange hospital admission is a considerable length of time, ...”. Unpalatable and regrettable though it might seem, in reality this is not the case, particularly when it comes, in the present day, to finding a placement in a medium secure facility. This is not the result of poor standards of clinical practice or dilatory management anymore than it is the fault of the courts. At its most simple it is the result of there being too many mentally ill and mentally disordered people who require this sort of placement.

The *Mental Health Act Commission Tenth Biennial Report 2001–2003* is in many ways a monumental piece of work. There will be those who will take the time to read it in its entirety and, in my judgement, this will repay the labour many times over. It lends itself equally well to those who may take an alternative approach and use it as a reference document to dip into at particular times and for a particular reason. It should certainly be included in the library of every psychiatric unit in England and Wales where there are detained patients.

Dr Martin Humphreys,

Senior Lecturer in Forensic Psychiatry, University of Birmingham and Honorary Consultant Forensic Psychiatrist, Birmingham & Solihull Mental Health NHS Trust

The Biennial Report can be obtained from

The Stationery Office.

Tel: 0870 600 5522

Fax: 0870 600 5533

E-mail: [book.orders@tso.co.uk](mailto:book.orders@tso.co.uk)

---

<sup>6</sup> See ‘*Report of the Inquiry into the death of David Bennett*’ (Chair: Sir John Blofeld QC) (Feb. 2004) (Norfolk, Suffolk and Cambridgeshire Strategic Health Authority).