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# Book Reviews

## *Risk, Rights, Recovery*

### *The Twelfth Biennial Report 2005-2007. The Mental Health Act Commission*

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To quote the title of the 1969 Country Joe and the Fish album, "*Here We Are Again*". And indeed here we are once more - with the Twelfth Biennial Report of the Mental Health Act Commission, this most recent one covering the period from 2005 to 2007. Not only that but whoever would have expected, or even thought it? On the other hand perhaps one might be forgiven for thinking the near impossible, if only simply on the basis of the quite extraordinary events which have led to the effective demise of what was intended to be wholly new mental health legislation but resulted in something, arguably, but potentially maybe, really quite different.

Be that as it may the Mental Health Act Commission is still going strong, a fact to which their most recent Report attests. They are due to be subsumed, if the Government's plans proceed in that respect at least as announced<sup>1</sup>, into the Care Quality Commission in the early to middle part of 2009. In the meantime this Report suggests that they were, during the two years covered, and still are from my own experiences as a working clinician, very much on post and firing on all cylinders. And thank goodness for that one might add – given the content of some of the chapters and sections. I found myself repeatedly wondering, as I read and re-read through the 250 plus pages of this document, how, in the early part of the twenty first century and in one of the wealthier countries in the world, health services involved in the care and treatment of some of the most vulnerable individuals in our society could still be as they are described in places here. Perhaps it is just that fact in itself? Maybe the very things that characterise the needs of those with mental health problems are exactly what makes it so apparently easy to ignore them. Is there any other branch of medicine in the UK where patients would be expected to sleep in the ward day room on a mattress on the floor with no space for their personal effects? Where else in modern health services would it be considered appropriate, even in the most extreme of circumstances, to nurse a terminally ill individual in the unit's dining room where other patients were eating? These may be relatively uncommon occurrences. If so thank goodness. And yet both, with others, were recorded and reported by Commissioners during visits to hospitals where there were detained mentally disordered patients within the last two years.

The Twelfth Biennial Report is a rather slimmer volume than the Tenth and Eleventh editions, marginally so in the case of the tenth edition and by quite a bit when compared to that covering the 2003–2005 period. I would also say that the content leans rather less heavily towards the analysis of the law, in all its

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<sup>1</sup> See *Health and Social Care Bill*, introduced into Parliament on 15/11/07.

various forms, and across all areas of its place and influence in mental health care, than those two, certainly the former. Despite this it does provide a clear and structured analysis of pertinent issues, and in any event that is almost certainly to do with the fact that there have probably been rather fewer mental health cases coming before and being dealt with by the courts within the last two years than in the preceding four. The main point of reference throughout though is of course the advent of the 2007 Act and it's potential influence on things.

All the same *Risks, Rights, Recovery* does strike at the heart of many important areas that anyone involved in providing for the care of those suffering from mental ill health in the widest possible sense, and not only that but who are where they are against their expressed will or because they cannot object or speak for themselves, should be aware of and know about and be seeking to change. At the very outset in only the second paragraph of the Introductory Chapter, whose title cleverly turns around that of the report itself to *Rights, Risk, Recovery*, perhaps to represent the priorities more clearly, the Commission states its views and purpose:

*“Much of what we say in this report is critical of services provided to detained patients. We are unapologetic about this: our criticism is more useful than our praise, and we do not wish to lose a focus on what needs to be changed by highlighting that which is changing.”*

Some, including myself at times, might take gentle issue with the second half of this paragraph. Telling someone they are doing well, or even just thanking them for what they have done, albeit something that may be part and parcel of their day-to-day work and, therefore, expected of them, goes a long way. That is not in any way to excuse or disagree with the criticisms that are raised, and quite rightly so, by the Commission throughout it's latest report. One is, however, increasingly aware that those working in the Health Service as a whole, let alone in perhaps some of the most beleaguered areas of health care, attract far more criticism, and sometimes outright condemnation, and are certainly subject to far greater public scrutiny, which of course is no bad thing, than they ever do praise and encouragement. Nevertheless it is far more common to be told how poorly one is performing than how well. As someone whose main clinical focus is almost exclusively with detained patients, most in hospital subject to a restricted hospital order or conditionally discharged into the wider community, and with additional major commitments to University work, I once made an approximate calculation of the number of different individuals, agencies and other bodies with some official or formal interest in my work, it's nature, its quality and its quantity. It came to more than twenty, all of whom were concerned with what I should do more of or do better, rather than what I might be doing all right with already. But of course I acknowledge that quite properly the base line for standards of medical care should be at the level of excellence. And that is why potential readers of the Commission's most recent report, particularly those who come from a health care background, should not be put off. What the Commission are saying, I think, is that they recognise, and indeed acknowledge in many places in the text, examples of changes being made for the better and in particular the commitment of most staff in mental health services, even when under terrible pressure and working in difficult and often under-resourced situations, to at least provide something. But they are also concerned to point out that despite what good might already have been done, there is much, much more still to do, and that that work has to be got on with and not ignored further for the sake of offering congratulations on what might already have been achieved, and that anyway just providing “something” is simply not enough. In fact what the Commission are doing, to my mind, is in support of that which the vast majority of mental health care professionals, those I know at least, strive for and seek to attain. That is high quality, humane, holistic, rights-based care of the sort that we would all want for ourselves and those we love in the same circumstances. In my view if one loses sight of that as the goal, it is time to

quit. On the other hand I would make a plea to those coming to *Risk, Rights, Recovery* from any other background or standpoint that they do give some credence to the fact that there are genuinely very large numbers of people working with, and for, those bearing the burden of mental illness and disorder who simply want the right thing for them and labour very hard to achieve it.

As with all the Commission's two yearly reports, this one presents a multitude of facts and figures on various aspects of the operation of the 1983 Act concisely and clearly and in a way that makes what might otherwise seem rather dry or routine, quite fascinating. And their scope and range means there is something of note and importance for everybody, from mental health service commissioners to hospital managers, from Mental Health Review Tribunal (MHRT) members to Second Opinion Appointed Doctors (SOAD) and from lawyers and mental health professionals working in the field to prison governors. Some of the tables and their accompanying text require more concentration to understand than others but that is simply a product of the richness and complexity of the information presented. There are just one or two minor typographical errors, almost inevitable in such a sizeable and detailed document, but these are easily resolved by careful reading.

The report is at its strongest when it provides an overview of a particular issue and the numbers and statistics, but perhaps even more so when it describes individual patients and carers and their experiences. So for example at Chapter 3 there is a section entitled *Length of hospital stays* which is quite hard going but well worth the effort. There the issue of *de facto* detention of informal patients in locked or other secure settings is raised. In addition the fact that those detained with learning disability in the private sector are placed on average more than four times further away from home than those admitted to an NHS hospital is identified. There also we see that on the day of the *Count Me In* census there were apparently no fewer than 17 patients detained in terms of section 2 of the *Mental Health Act* each of whom had already been in hospital for in excess of five years. They had not, of course, been detained for that length of time on that order, but had either been in hospital informally or subject to some other form of compulsion during the intervening period seemingly for between six and 41 or more years in each case. This did lead me to wonder just how long clinicians actually need to establish a diagnosis, to formulate an agreed treatment and care plan and to feel that they have an established understanding of the patient's needs, thus enabling them to move to the use of Section 3? I was struck by the data also presented in Chapter 3 showing the small, but by no means insignificant, number of patients detained for the treatment of personality disorder who were deemed incapable of giving consent to treatment. By contrast earlier in the same Chapter there is a brief, but no less thought-provoking for that, and certainly deeply affecting, account of the case of a woman admitted under Section 2 to a private hospital paid for by her father and the potential ramifications of such a desperate situation.

Of course with a publication like the Mental Health Act Commission's report, it is impossible to do justice to the entire content and my opinion remains unchanged from previously, namely that it is of value to those who wish to search, and research, a specific area or issue, to those whose concern is with the welfare of all detained patients, particular aspects of the law as it applies, or will apply in future, to their care, and to those with any sort of personal or professional involvement. It is also such a good starting place for other reference material in the field of mental health law and practice, coming as it does, based on the foundation and tradition of earlier volumes. The part that deals, for instance, with Medical Treatment is, in my judgement, vital reading for all those discharging the duties of a Responsible Medical Officer and also anyone else trying to come to terms with the changes to the SOAD's role in considering consent to treatment for those who are placed on the new Community Treatment Order. There is a Chapter specifically dealing with the Act and its use in Wales and another on forensic psychiatry. And as well as

what one might consider coverage of such “mainstream” matters there are also brief sections addressing rather more uncommon, but no less important concerns such as the prescription, or administration or taking by detained patients, of herbal remedies and fish oils and their certification under the Act, the matter of mental health service users consenting to having a photograph taken for incorporation into leave care plans and documents, the position of a school governor detained under the Act who is then required immediately to relinquish that position as compared to a Member of Parliament who is only compelled to abandon his or her seat in the House after a period of at least six months detained in hospital or on leave, and the potential minefields of access to mobile phones and the internet, both now so much a part of ordinary everyday life, for involuntary patients.

There are many concerns raised and, as they make plain at the outset, the Commission are not there to offer a pat on the back at the expense of time spent in identifying shortcomings and stating them. They are right in what they do and in the reasons for doing it. Lastly one or two things struck a particular chord with me. Why is the issue of voting and the right to vote for patients detained under the Act not fully sorted out? It still isn't. How can anybody possibly justify patients being denied their entitlement to leave for want of appropriate escorting staff? They can't. Where will detained patients obtain expert legal advice and support at Mental Health Review Tribunals and in other circumstances, most particularly in the most complex cases, with the so-called “rationalisation” of legal aid funding of solicitor's MHRT work? They won't. What is the basis for the cessation of all benefit payments to those transferred to hospital for treatment of mental disorder as sentenced prisoners? That can't be right.

The Mental Health Act Commission's Twelfth Biennial Report, possibly, one might even go so far as to say probably, their last but not one, has the same strengths and certainly gravitas as its predecessors. Its content should, I would argue, be taken as a whole, although there is also a separate summary document of *Key findings about the use of the Mental Health Act*, and seen as a logical progression and extension of the work contained in the earlier volumes. That doesn't mean that it has to be read in its entirety to make sense of some of the most important aspects of the treatment of compulsorily detained patients and the ways in which all of those concerned with their care must remain constantly alert to the need to improve on standards. As Lord Patel in his capacity as Chair of the M.H.A.C wrote to the Secretary of State for Health in his letter of 30th July 2007, (reproduced at Appendix 1 of *Risk, Rights, Recovery*):

*“We are worried that their” [detained patients’] “protection will not be given sufficient attention in the new regulator, and look to you to assure us that our concerns will be addressed in legislation and in the performance framework you give to Ofcare<sup>2</sup> once established.”*

Hear! Hear!

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2 The Office of the Health and Adult Social Care Regulator