

The College

Towards a New Mental Health Act: Mental Health Commissions for England and Wales

The Case for Commissions

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Historical background

The first step towards the establishment of an independent body to supervise standards of care for psychiatric patients was taken with the appointment in 1774 of Commissioners in Lunacy with the responsibility of licensing and inspecting private madhouses in London. It consisted of five physicians elected annually by the Royal College of Physicians. They were replaced in 1828 by a body of Metropolitan Commissions, consisting of fifteen members appointed by the Home Secretary, of whom only five were physicians and most of the rest were Members of Parliament. Their powers included (with respect to London) the supervision of 'subscription hospitals for the insane' in addition to private madhouses (but with the exception of Bethlem). For a short period from 1842 their jurisdiction widened further to include provincial hospitals as well as those in the Metropolis.

The Lunatics Act of 1845 replaced the Metropolitan Commissioners by Lunacy Commissioners appointed by the Lord Chancellor, with a permanent full-time inspectorate and central secretariat. In addition to the powers of inspection held by the Metropolitan Commissioners they were given the right to visit the insane in whatever institution they were confined and the Lord Chancellor could order special visits (including a visit to Bethlem). The Lunacy Commission was reconstituted as the Board of Control in 1913 with a continuing responsibility to inspect and supervise standards in all hospitals for the mentally disordered (including the present Special Hospitals) and to scrutinize documents relating to compulsory admission. The Board had the authority to order the discharge of a patient on medical evidence.

The Mental Health Act 1959 abolished the Board of Control. The Percy Commission which preceded the Act considered that there was no continued need for the Board since all hospitals were now managed by the Ministry of Health which would be responsible for maintaining standards and allocating resources. The appeal functions of the Board were vested in Mental Health Review Tribunals.

Scotland, however, had its own Mental Health (Scotland) Act 1960. It retained a judicial authority for compulsory admission, and although the General Board of Control was abolished there was established a Mental Welfare Commis-

sion with a duty to exercise protective functions in respect of the mentally disordered. This involves making inquiry into the care and treatment of the mentally disordered and where applicable, the circumstances of their detention in hospital. It requires the regular visitation of patients detained in hospital or subject to guardianship. Any patient, whether subject to detention or not, is afforded a private interview on request. The Commission may call upon a hospital or local authority to take all necessary steps to prevent a patient being ill-treated or to remedy any deficiency in his care or treatment. They may require them to terminate his detention, if improper; if this is not done the Commission may themselves terminate the detention, (except patients who are subject to an order restricting discharge). Since 1972 (National Health Service (Scotland) Act 1972) the Commission has been given additional powers to hold an inquiry with authority comparable in some respects to a court of law. The Commission also has a duty to inform the Secretary of State of any matter arising out of the 1960 Act which it considers appropriate. Since 1972 the maximum number of Commissioners is eleven. One Commissioner must be a woman; there must be no fewer than three medical commissioners; one must have a legal qualification (the Chairman is, in fact, a High Court judge). No person employed in the civil service of the Crown may be appointed. In practice, a majority of members are non-medical.

In England and Wales the continued need for some form of inspection of psychiatric hospitals has been made evident following a series of Inquiries into allegations relating to a number of hospitals. The Hospital Advisory Service (now the Health Advisory Service) was established. Complaint may also be made to the Health Service (parliamentary) Commissioner or "ombudsman".

Review of the operation of the Mental Health Act

The College (and previously the RMPA) has always regretted that the Board of Control was disbanded or was not replaced by some body of comparable function. The College recommended in evidence to the DHSS Interdepartmental Committee reviewing the Mental Health Act that Commissions should be established with similar functions to the Scottish Mental Welfare Commission (*News and Notes*,

October 1974). The Department's consultative document (*A Review of the Mental Health Act 1959*, 1976) gave a cool response to this proposal, arguing that in England a variety of other bodies now perform some of the functions of the Scottish MWC, that doctors may not welcome their clinical judgement being questioned by Commissioners (although this is accepted in Scotland), that the financial implications would be significant and that it was doubted whether staff of sufficient calibre could be recruited to the Commissions or that the clinical services could stand up to such a drain on their resources. The Commissions might be regarded as too paternalistic and establishment-based for modern acceptance.

The College in response, (The College's Comments on 'A Review of the Mental Health Act 1959', *Bulletin*, January 1977) considered that the Department's reservations were, in part, based upon misconceptions of the functions of the Scottish Mental Welfare Commission. It considered that the Department had failed to give sufficient recognition to the wide powers held by the Scottish Commission, many of which are not exercised by any alternative body in England. The College pointed out that psychiatric patients continue to require a special form of protection and that the present machinery, shared between a number of bodies, has not operated efficiently. Since 1960 there has been only one official Inquiry into psychiatric patient care in Scotland (and that was of doubtful comparison to the Inquiries held in England and Wales). The College again commended the principles of the Scottish system and proposed that analogous bodies should be established in England and Wales.

In September 1978 the Government published its White Paper (*Review of the Mental Health Act 1959*, Cmnd. 7320, HMSO) with its proposals for an amending Mental Health Bill. It rejected proposals for the establishment of Mental Welfare Commissions in England and Wales. The Government of the day thought it was wrong in principle to re-introduce a system for psychiatric patients fundamentally different from that for other patients and contrary to the aims of the Percy Commission. It was again considered that patients have general opportunities to make known their views on services and to make complaints to the various available statutory bodies, and the White Paper again referred to the drain on scarce manpower resources and to the financial implications. It was proposed to introduce an experimental scheme of 'patient's advisers' to safeguard the interests of individuals.

In addition, the White Paper made specific proposals regarding consent to treatment and the circumstances in which a second opinion should be obtained, and recommended that Area Health Authorities should establish multi-disciplinary panels to provide it.

These suggestions were rejected by the College and by the

rest of the medical profession and alternative proposals are now strongly urged upon the present Government.

The present proposals

The College's present proposals are for the establishment for England and Wales of Commissions analogous to the Scottish Commission, though differing from it in a number of aspects. The College's formal recommendations are set out in the appended document. It is clear that the present protective functions in England and Wales which are the responsibility of a variety of disparate bodies do not adequately or efficiently protect the welfare and rights of the individual patient. The Hospital Advisory Service is concerned with the promotion of good practice and management in relation to hospital and local authority services; the Mental Health Review Tribunals are concerned with matters relating to detention; the National Development Team deals with mental handicap hospitals; the Court of Protection with the administration of patients' affairs (in collaboration with Lord Chancellor's Visitors), while the various arrangements for complaints are often seen as remote from the individual and sometimes inarticulate patient. These bodies vary in their degree of independence. The concern for the individual patient, the monitoring of the grounds for commitment and independent power of investigation and review held by the Board of Control and the Scottish Mental Welfare Commission are not encompassed by any of the existing bodies. There is a need, therefore, for an independent and authoritative body to look after the general welfare of all individual psychiatric patients whether detained or informal. Moreover, if it is agreed that an independent opinion is required in connection with consent to certain treatments and in particular circumstances, especially in relation to the detained patient, then the bodies recommended would be the most appropriate to be responsible for this procedure.

Since the proposed Commissions should be seen as fully independent of the hospital managers and the DHSS, it is suggested that members should be appointed by the Lord Chancellor.

Among the most important of the recommended functions of the Commissions are those relating to the monitoring of admission documents and the visiting of individual patients, and to the provision of independent second opinions where necessary. In this connection, the Commissions would themselves be able to advise in what circumstances second opinions should be obtained. Commissions constituted as recommended would attract the confidence of both patients and doctors in their authority.

The College is convinced that if the recommendations which follow are adopted a more efficient and independent method of protecting patients' welfare and rights would be provided than by any of the alternatives that have been put forward.