Dudley Metropolitan Borough Council

Agenda Item No.7

HEALTH AND SOCIAL CARE SELECT COMMITTEE – 22nd NOVEMBER 2007

REPORT OF THE DIRECTOR OF ADULT COMMUNITY AND HOUSING SERVICES

THE MENTAL HEALTH ACT 2007

PURPOSE OF REPORT

1. To brief Health and Social Care Select Committee on the new Mental Health Act 2007.

2. Parts of the Act become law on 1st October 2007 but the main provisions will be implemented from October 2008.

BACKGROUND

3. The Mental Health Act 2007 is the first major legislation on mental health since 1983. The new Act has been made necessary by a number of significant developments in mental health care over the last 10-15 years:

   - The National Service Framework in 1999 which introduced new ways of delivering services such as assertive outreach and crisis resolution/home treatment.

   - New treatments for mental illness, and a drive to deliver more services in Primary Care.

   - Specialist Mental Health services are now delivered mainly in integrated organisations, often a NHS Mental Health Trust, to which local authority social care staff are seconded.

   - The impact of the Human Rights Act and the growth of effective self-advocacy groups for patients and carers.

   - Public concern about a number of high profile cases, where patients who had been discharged into the community have committed serious offences, particularly those with a dangerous

personality disorder who could not be detained because they were not deemed 'treatable'..

4. Previous Mental Health Bills had failed and the Act was only passed after several years of contentious debate and active campaigning by groups who felt that the government was introducing draconian measures too focused on public safety and clinical control at the expense of patients' rights.

5. The main effect of the 2007 Act is to amend the Mental Health Act 1983, but large parts of the 1983 Act remain in force. For example, the main provisions for detention of patients for assessment and treatment remain Sections 2 and 3 of the 1983 Act.

6. Section 8 of the 2007 Act sets out the fundamental principles which should inform decisions about the care of patients which are made under the 1983 and 2007 Acts. These principles include:

   - Respect for patients' past and present wishes and the views of carers; and involving both patients and carers in decision-making.

   - Respect for diversity of religion,culture and sexual orientation; avoidance of unlawful discrimination.

   - Minimising restrictions on liberty.

   - Public safety

   - Effectiveness of treatment

Key Measures in the Mental Health Act 2007

Definitions of Mental Illness

7. The Bill has a single definition of mental disorder, and references to different categories are abolished. The definition is broadened to include people with personality disorder. A person may no longer be considered to be suffering from a mental disorder simply as a result of having a learning disability.

Compulsory treatment

8. Treatment must be of 'therapeutic benefit'. Patients can only be detained if appropriate treatment is available for their mental disorder. Treatment may now include psychological therapies, rehabilitation and

care. There are also new safeguards on the use of electro-convulsive therapy.

Supervised Community Treatment (SCT)

9. SCT replaces supervised after care and gives new powers whereby patients who have been detained in hospital can be required to comply with treatment in the community, such as taking medication or restrictions on where they live. People can only be placed on SCT to ensure they receive treatment to prevent the risk of harm to their health or safety or to protect other people. Such conditions will form part of the patient's Community Treatment Order (CTO). Patients on supervised community treatment may be recalled to hospital for treatment, should this become necessary.

Children

10. Children and young people aged under 18 admitted to hospital as a result of mental disorder must receive treatment in an environment suitable for their age and needs.

Advocacy

11. Statutory advocacy services will be provided to support patients detained under the Mental Health Act. Independent Mental Health Advocates (IMHAs) will have similar responsibilities to IMCAs appointed under the Mental Capacity Act.

Professional roles

12. The group of practitioners who can take on the role of the Approved Social Worker (now known as an Approved Mental Health Practitioner - AMHP), and Responsible Medical Officer (now known as Responsible Clinician) is broadened. For example, a nurse, psychologist or OT, as well as a Social Worker, will now be able to act as an AMHP

Nearest relative

13. Patients have the right to make an application to the county court to displace their nearest relative. Civil partners will be eligible to act as nearest relative.

Mental Health Review Tribunal (MHRT)

14. The Act reduces the time before a case has to be referred to the MHRT by hospital managers. Automatic referral of a detained patient will occur six months from the first day of detention.

Changes to the Mental Capacity Act – the Deprivation of Liberty Safeguards (DoLS)

15. The Act addresses the 'Bournewood gap'. The Bournewood case concerned an autistic man with severe learning disability who was informally admitted to hospital under common law. The European Court of Human Rights found that he had been deprived of his liberty unlawfully, i.e. without a legal procedure with safeguards and speedy access to a Court of Appeal – this is known as the Bournewood gap.

16. DoLS are introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007 to authorise the deprivation of liberty of a person resident in a hospital or care home who lacks capacity to consent and needs care in circumstances which amount to deprivation of liberty to protect him/her from harm; these cases could include people with dementia and those with severe learning disability

17. The hospital/care home (the managing authority) will have to apply to the PCT/Council (the supervisory body) for a 'standard' authorisation for deprivation of liberty, which may not exceed 12 months.

18. The supervisory body must assess each case and agree/refuse authorisation. Six different assessments are required, the most important of which is the Best Interests assessment. The purpose of the Best Interests assessment is to determine whether deprivation of liberty is occurring and if so, whether it is in the client's best interests and necessary to prevent harm.

Victims' Rights

19. Victims of violent and sexual crimes committed by mentally disordered offenders will now know when offenders are discharged back into the community and will have the right to make representations about their discharge.

Implications for Services in Dudley

20. A Steering Group has been formed comprising representatives of both the PCT and the Council to oversee work on implementation of the Act in Dudley.

21. The Council will still be responsible for the approval and training of Approved Mental Health Professionals, even though some of them may be employed by the NHS. One of the sections of the Act which has been implemented from 1st October 2007 authorises Councils to begin training programmes for AMHPs. It is not clear yet though how many of these other professionals will want to become AMHPs; how many of them will be competent to undertake other tasks on behalf of the Council such as community care assessments and adult protection investigations; and whether an adequate supply of AMHPs can be assured.

22. It is difficult to quantify the additional workload which may follow from the Act, and theregore whether more staff might be needed. The main areas are likely to be supervised community treatment; advocacy; new requirements relating to Mental Health Review Tribunals; and assessments under the Deprivation of Liberty Safeguards.

23. 80% of the DoLS assessments will be the responsibility of Councils. The Best Interests assessments must be carried out by AMHP or specialised worker who has undergone DoLs training.

24. The Council will need to estimate the number of people already 'in care' in the Council and independent sector, who may have to be made subject of DoLS and the number of new cases likely to follow and to determine the process/officer by which the authorisation will be granted in the Council.

25. However, every effort should be made to avoid deprivation of liberty wherever possible; it may be better to change the care regime instead. It should only be applied for if it is genuinely necessary and for a person to be deprived of their liberty in order to keep them safe.

26. The Best Interests Assessor carrying out a DoLS assessment must not be employed by the organisation, which is caring for the client. This means that assessments of people living in Council care homes, will have to be carried out by someone not employed by DMBC e.g. independent worker; PCT

27. Some Mental Health Trusts are apparently considering placing people on SCT for extended periods or even for life, which would have significant implications for Council Social Care support services.

28. It is possible that some sections of the Act may not be implemented because of the resource implications, such as advocacy, which would be funded by central Government.

29. Implementation of the Act in Dudley will coincide with the setting up of the Dudley Walsall Mental Health Trust, subject to Cabinet and Secretary of State approval. It will be essential to keep a clear focus on this important legislation during a period of organizational change.

FINANCE

30. The Government has not yet announced whether any additional resources will be provided to Councils for implementing the Mental Health Act 2007 although it is thought there may be some additional money available for training.

LAW

31. The Mental Health Act 2007 becomes law between 1st October 2007 and 1st October 2008. The other relevant legislation is the Mental Health Act 1983.

EQUALITY IMPACT

32. The Mental Health Act 2007 safeguards the position of people who lack capacity – including older people, people with a learning disability, people with mental health needs.

RECOMMENDATION

33. Select Committee is asked to note and comment on this report

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List of Background Papers