Emergency Detention

For a variety of reasons the 2003 Mental Health Act makes it too easy for an individual to be detained in hospital. One reason is that the Act permits any GP to grant an emergency detention certificate if he or she considers it is likely “that it is necessary as a matter of urgency to detain the patient in hospital for the purpose of determining what medical treatment requires to be provided to the patient”. Note that the 2003 Act is based on the premise that after a consultation which might last only a few minutes any GP is able to determine whether medical treatment for a patient’s supposed mental disorder is required and, if so, whether it is urgently required.

The 2003 Act requires the GP to have regard to “the present and past wishes and feelings of the patient” and to the views of various others such as the patient’s named person, carer and welfare attorney. Regrettably, when it comes to mental health matters some GPs and others ignore those basic principles which are meant to underpin the 2003 Act. Obviously when a GP grants an emergency detention certificate the patient’s wishes and feelings are being ignored. It should not be taken for granted that this action on the part of a GP can always be justified. The 2003 Act gives too much power not only to psychiatrists; it also gives too much power to GPs. The Health and Sport Committee should acknowledge that inevitably some mistakes are made when individuals are detained but that the 2003 Act provides no remedy for those who are wrongly detained: they are wrongly stigmatised for life as having had a detainable mental disorder. This is quite apart from the effect on them of the unpleasant and potentially harmful forced treatment to which they are liable to be subjected. (The press reported recently on the fact that the ombudsman has upheld a complaint that a young man was ill-treated while a patient in a mental health facility in Fife. I could provide other examples of mental health patients being ill-treated.)

Another case that was reported in the press recently should also provide grounds for concern. According to the reports, an anorexic teenager, Miss X, was sectioned by her GP even though she was reported as claiming that “I’ve never been this healthy” and even though her father made it clear that he was totally opposed to her being detained in hospital.

The reason for the GP deciding to section Miss X has not been reported; it may have been for no more than the GP being aware that Miss X was anorexic and being of the opinion that her weight was below what is considered desirable. However, given the statements made by Miss X and her father it seems certain that her mental condition posed no immediate significant risk either to herself or to anyone else. Thus it seems certain that there was no valid reason for a court not determining prior to her detention whether it was necessary to detain Miss X in a mental health hospital,
something that would have happened had Scotland adopted the Council of Europe Recommendation, Rec (2004) 10, concerning the human rights and dignity of persons with mental disorder. The Health and Sport Committee should consider whether, in order to minimise the risk of an individual being unnecessarily detained as Miss X might have been, this part at least of the Recommendation should be incorporated into Scottish mental health legislation.

The Council of Europe Recommendation does allow for the emergency detention of a person with a mental disorder. However, emergency detention is to be “for the minimum period necessary in order to determine whether he or she has a mental disorder that represents a significant risk of serious harm to his or her health or to others”. By contrast, in the 2003 Act emergency detention is for a period of 72 hours and there is an assumption that the patient’s mental disorder will be such that it is a matter of determining “what” rather than “whether” medical treatment is necessary. The Health and Sport Committee should consider carefully whether the section on emergency detention in the 2003 Act should be amended to take account of the Council of Europe Recommendation.

As far as forced treatment is concerned, patients with a mental disorder are treated differently from patients with a physical disorder. For example, although the actress Lynda Bellingham has announced that she intends to stop having chemotherapy for her cancer, there is no possibility that she will be detained in hospital and given chemotherapy against her will. The difference between the treatment of patients with a mental disorder and the treatment of patients with a physical disorder is yet another matter which the Health and Sport Committee should discuss during its consideration of the Mental Health (Scotland) Bill. If it does so then it should take account of Article 14 ECHR. This prohibits discrimination on any ground and hence would seem to imply that people with a mental disorder should have the same rights relating to consent as do people with a physical disorder. Even although the UK has ratified the UN Convention on the Rights of Persons with Disabilities and even though Article 12 of this legally binding international treaty guarantees people with disabilities equal recognition before the law, people with a mental disorder obviously do not have the same rights as do those with a physical disorder. However, the SHRC, in its submission, stresses that “...it is clear that the requirement for genuine and demonstrable respect for the autonomy of all individuals, whether or not they are subject to compulsion, is paramount”. The Health and Sport Committee should not ignore this requirement nor the evidence that, in reality, there is no genuine respect for the autonomy of mental health patients. The Committee should ensure that Parliament does more than minor tinkering when it amends the 2003 Act, something that Walter Buchanan called for in his informative and thoughtful submission.

W. Hunter Watson
October 2014