

How is Mental Health protected by the Law and is it enough?

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Public awareness of mental health is greater now than ever before. Each year, Mental Health Awareness week supported across national media. People known to us through film, television, music and sport speak openly about their own mental health and encourage conversation about it.

It can be frightening to experience a mental health problem whether it is your own health or that of someone you know. It may be that your only knowledge of what happens to people who are ill is from films or television. It is important that we understand the reality of how those with poor mental health access treatment.

The Mental Health Act 1983 (MHA) is the law that tells people with a mental health disorder what their rights are and how they can be treated. The Act is accompanied by a Code of Practice which offers statutory guidance and professionals who do not follow it can be challenged in court.

The MHA applies to anyone with a "mental health disorder" which is defined in the Act as 'any disorder or disability of the mind' but what does that mean? We can all think of examples - Bipolar disorder, depression, anxiety, anorexia. However, there are other problems which many may consider to be an illness but which do not fall into this definition such as drug and alcohol use unless they impact mental health, eg., leading to depression.

Anyone with a mental health disorder may be admitted to hospital. Many of us know that someone can be 'sectioned' and made to stay in hospital without their consent but this is not always the case. It is possible to voluntarily admit yourself to hospital for assessment or treatment; no compulsory detention is required.

Someone can be 'sectioned' if they need to be assessed or treated for their mental health problem, if their health would be at risk of getting worse, or their safety or someone else's safety would be at risk, if they did not get treatment, or their doctor thinks they need to be assessed or treated in hospital. The individual must be assessed by health professionals to make sure the section is necessary.

Once in hospital, the MHA outlines what happens to an individual. Section 2 deals with assessment which may be followed by treatment. It normally applies to someone who is not previously known to mental health services. Admission can only last up to 28 days and they can be discharged at any time

Section 3 MHA deals with longer periods in hospital for treatment. It can only be used once someone has a formal diagnosis of a mental health disorder and must involve treatment. To help protect against this becoming an indefinite period of admission, it must be reviewed periodically.

During detention, the Code of Practice requires hospital managers to take steps to ensure that patients understand important information about how the Act applies to them. Ideally decisions should be agreed with the patient. Where a decision is made that is contrary to the patient's wishes, that decision and the authority for it should be explained to the patient using a form of communication that the patient understands.

Depending on an individual's situation, there are several ways in which they can leave hospital. They can ask to have your section lifted. Their responsible clinician or hospital

managers can discharge them. A nearest relative can apply to discharge them or the individual can apply to a Mental Health Tribunal to be discharged from their section

Given that an individual can be detained against their will, it is important to consider how the MHA interacts with the Human Rights Act 1998 (HRA). What about Article 5 which protects the right to liberty and security of person? Article 5 is a qualified right and allows that 'persons of unsound mind' can be lawfully detained. In addition, the state must take positive steps to provide safeguards for detained individuals. The detention has to take place in accordance with a procedure prescribed by law, the detained person must be promptly made aware of the reasons for their detention, should be able to challenge the lawfulness of that detention speedily, and be released if the detention is unlawful. The MHA makes provision for all of these conditions.

Article 6 protects the right to a fair trial. Someone in hospital either voluntarily or under the MHA can access free, independent legal advice. An individual detained under the MHA has the right to challenge their detention before a Tribunal who listen to them, their legal representative and their medical team to decide if the detention should continue or not.

With respect to Article 8 (the right to respect for private and family life), the Code of Practice places an obligation on the hospital to consider the individual's circumstances which includes distance from and continued contact with family. This includes the ability for the patient and/or the hospital to refuse those visits if that is in the patient's best interests.

At first glance, it seems the MHA does enough to protect the Human Rights of those with mental health disorders but this is not the opinion expressed by everyone. Having just discussed Article 8, it is interesting to read a report by the Care Quality Commission (May 2019*) that found some patients who needed specialist care were placed in a hospital that was, on average, 87km away from their home address.

In 2016, the Mental Health Alliance** commissioned research involving over 8,000 people who used mental health services, carers, and professionals working in the field. Half of those who responded to a survey did not think that people were treated with dignity and respect under the MHA. Article 3 is an absolute right protecting against torture, inhuman or degrading treatment or punishment. While a majority of respondents agreed that there are circumstances when being treated against your will in hospital may be necessary, the survey revealed deep concerns that people's dignity, autonomy and human rights were being overlooked.

The Mental Health Alliance is concerned that there are parts of the Act which are out of date. For example, if sectioned, a 'nearest relative' is given a say over treatment and detainment. The patient may have a difficult relationship with the person given control of their health and have no say in it.

The chair of the Mental Health Alliance, said:

"The Mental Health Act is 34 years old, in which time there have been major changes in terms of the rise in mental health problems and detentions under the Act. As it stands the Mental Health Act is not fit for purpose, (review must) take into consideration the thousands of people who voiced their concerns in this survey... (to) protect the rights and improve care for some of the most vulnerable people in the health system."

Is the law protecting mental health enough? If it is at the expense of Human Rights then the answer has to be 'no' and it must do more. The reasons for the shortcomings are many and varied but, as with all law, it must develop and adapt to meet the changing needs of society.

*Care Quality Commission - Review of restraint, prolonged seclusion and segregation for people with a mental health problem, a learning disability or autism Interim report
Segregation in mental health wards for children and young people and in wards for people with a learning disability or autism - May 2019

**The Mental Health Alliance is made up of over 75 organisations working in the mental health sector.