Swings and roundabouts

The new statutory right to advocacy under the Mental Health Act may prove a mixed blessing. Richard Shrubb reports

A key concession won from the government in the new Mental Health Act was the last minute decision to grant a statutory right to independent mental health advocacy for all detained patients in England. But advocacy services fear that what at first seemed a major victory for service user rights is not going to prove a bed of roses.

Scotland introduced the statutory right to advocacy back in 2003, when it implemented its own updated mental health legislation. In Scotland, anyone with a mental disorder has the statutory right to advocacy, and staff are required to suggest it if they feel a patient would benefit. In England and Wales, however, the right to advocacy is confined only to patients under section.

Moreover, the right to advocacy won't come into effect until April 2009 in England, six months after the rest of the Mental Health Act 2007 – although in Wales it will come into force from October 2008.

But already fears are being expressed that voluntary patients will lose out, and that advocacy providers will struggle to meet the costs of training (see box). Says Di Barnes, research fellow at the University of Durham and until recently the person at the Care Services Improvement Partnership (CSIP) in charging of turning the law into policy: 'There is no fixed pot of money for advocacy in general. We do not yet know if, or how much, money may be made available for the introduction of independent mental health advocates.'

Rick Henderson, chief executive of the national advocacy organisation Action for Advocacy, hopes there will be new money in England for the new independent mental health advocacy service. 'If not, then we may see a re-prioritisation away from informal patents and towards detained patients, within existing resources, which would be a disaster,' he warns.

Advocacy services in Scotland are already reporting that, while new money was provided by the Scottish Government, the demand soon overwhelmed the system. 'Mental health advocates in Scotland now spend two or three days a week dealing with section tribunals, leaving very little time for their other roles, such as outreach to young men who do not engage with services,' says Shebeen Begum, chief executive of the Scottish Independent Advocacy Alliance. Sectioned patients are inevitably being given priority when resources are short.

That said, detained patients are undoubtedly getting a better deal, she says. 'Previously, advocates could be thrown out of mental health tribunals because they did not have the statutory right to be there. Now that they have, they can represent the client better than the solicitor. This means the client can fight for his complete rights in hospital.'

Moreover, because in Scotland staff in mental health units have a statutory duty to inform all patients – voluntary, inpatient and outpatient, as well as those under section – of the advocacy service available to them, advocates should no longer have to invest time in promoting the service and informing people of their rights. 'However, where a social worker or psychiatric nurse disagrees with what the client wants, they may not suggest an advocate,' Begum warns; the system is only as good as the staff make it.

Di Barnes is concerned that voluntary patients in England and Wales will lose out. 'Not only would it be

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very difficult for patients if only independent mental health advocacy is funded, but it would also be very difficult for staff to distinguish who does and who doesn't qualify for it on a ward,' she believes. It could also create a perverse incentive that it is actually advantageous to be on a section, because it will give a patient access to advocacy.

Peter Munn of UK Advocacy Network (UKAN) also fears that patients sectioned under the new community treatment orders may not be able to access the advocacy to which they are entitled. 'Many advocacy services were originally conceived to be hospital based and have little or no time to work in the community,' he points out. 'Advocacy in the community is scarce and yet the Act has introduced community treatment orders that are coercive means of treatment, infringing on people's liberty.'

Rick Henderson agrees: 'The current provision is patchy and in some areas there is still no provision whatsoever, so an injection of new government funding is vital. I think there is a danger that outpatients may lose out in the same way as voluntary patients if there is no new money.'

He dismisses the suggestion that sectioned patients will not make much use of advocates because they have access to legal advice from their solicitor. 'So much of what troubles inpatients is to do with the general conditions and ambience of the institution and the attitudes of staff, rather than just legal rights. There are few more disempowering and isolated places to be than on section in psychiatric hospital, so personally I think people need all the support they can get.'

'A solicitor will only be engaged if a section is being challenged or if there is an offence. They are not there to safeguard an individual's rights,' Peter Munn agrees.

Back up in Scotland, Shebeen Begum says that advocacy services are at risk of losing yet more money with the recent redistribution of government funding. The Scottish Government is getting rid of ring-fencing, and giving local authorities and health boards a 'health budget' to spend on any and all health-related provision within their remit. Mental health will have to fight for its share, and as mental health – and, within it, advocacy – are Cinderella services, 'they are likely to lose out even further', she warns.

Begum says it is difficult to produce hard evidence of the benefits of advocacy, to convince funders. 'Throughout the UK there is work on how to measure it, but how can you measure someone's confidence being improved, for the benefit of a politician? And what does it mean to a councillor that someone's confidence is being improved and therefore he can give back to the community as well as take? This means nothing to local authorities, who are purely interested in what will get them re-elected and mental health is just not sexy enough for that to happen.'

Says Rick Henderson: 'There is no doubt that the new independent mental health advocacy service will provide a vital safeguard to some of the most disempowered people in society. But this should not be at the expense of more generic advocacy support to all people who use mental health services, whether in hospital or in the community. The government needs to make good on its promise of additional funding for independent mental health advocacy if it is to be seen as anything more than tokenism.' ■