



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**“Human Rights and Equality of Opportunity
– Consultation Report”**

**Comments by the Northern Ireland Human Rights
Commission to the Bamford review of Mental Health and
Learning Disability**

June 2006

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomed the creation of a specialist sub-group of the Bamford Review of Mental Health and Learning Disability to focus on human rights and equality of opportunity. The Commission in its own work prioritises the protection of the rights of vulnerable groups, including persons with mental health difficulties or learning disability. The Commission has in particular sought to highlight the rights of persons with mental health difficulties and has produced research and policy submissions on the issue.
3. The Commission welcomes this opportunity to contribute to the consultation on the Report on Human Rights and Equality of Opportunity (the Report). It commends the work done to produce a document addressing very many of the key issues. There are a number of issues that the Commission would suggest require further consideration by the Human Rights and Equality Group. While it would not be appropriate to offer any re-drafting of the substantive content of the Report, which must represent the views of the Group, Commission staff have met, and provided preliminary observations to, representatives of the Review and we hope that these, along with the more detailed views set out below, will be of assistance to the Review in reaching its final recommendations.
4. Generally, the Report gives a good overview of some of the concerns and potential breaches of human rights of persons

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

with mental health difficulties and learning disability and the acceptance of recommendations included in the Report in any future reform of services provision would make a welcomed improvement on the current situation. The Commission would, however, raise some concerns that may require further consideration by the Review.

5. Some of the chapters, such as Chapter 7 discussing involuntary detention, are very well structured, giving the overview of main issues in specific areas, the legal framework governing a specific area, related human rights standards, and potential breaches arising from current legal and practical arrangements, addressing these with recommendations. The Commission feels that such a structure makes this part of the Report very accessible and it should be replicated throughout the Report for each right (or sets of rights). Where equality considerations have been identified, these should also be added and legal standards with any accompanying jurisprudence explained. Where shortcomings or non-compliance with human rights or equality standards have been identified, recommendations should be made in every instance to address them or explanation provided as to why recommendations are not made.
6. The Report lists, in Chapter 2, many of the applicable domestic and international standards in relation to equality of opportunity and human rights for persons with mental health difficulties. The analysis in the chapters, however, seems to concentrate on the requirements of the European Convention on Human Rights (ECHR), incorporated into the domestic system by the Human Rights Act 1998 (HRA), and makes little or no reference to other applicable standards; for example, the UN Convention Against Torture is not mentioned, and the International Covenant on Civil and Political Rights only in the context of advocacy. It is useful to recall that, with very limited capacity-related exceptions, persons with any form of mental health difficulty or learning disability possess the full range of human rights, including the non-discrimination rights set out in, for example, the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Elimination of all forms of Racial Discrimination (CERD).
7. The Commission recognises that in terms of enforceability of rights in the courts, and the statutory duties on public authorities, the HRA should form a central part of the analysis. We were disappointed, however, that more

emphasis was not placed on other international standards in this area – standards that may be more useful in their understanding of issues of human rights and equality for this specific groups of persons. Every opportunity such as the Review should be used to promote awareness and application of the range of international standards which, while not enforceable through courts, do form part of the international and national framework of rights, in some cases forming part of the state's international obligations. Reference to these standards would also support the development of good practice for mental health and learning disability services.

8. With regard to the analysis of human rights issues in the Report, the Report should stress that the implementation of equality provisions and of human rights standards stemming from the Human Rights Act is a legal obligation on service providers. While this obligation is alluded to in Chapter 2 under "Guidelines" for the Review and in discussion on resources, the Report would benefit from a statement at the beginning of this chapter to this effect.
9. The analysis of the implications of duties under Article 2 of the ECHR is brief, contained in only three paragraphs. The Commission recognises the complexity of the ethical, medical, legal and moral issues. At the same time, issues around the right to life – not only regarding the ending of life, capacity to refuse treatment, but also in relation to the duty to protect life, are of utmost importance. The Report should link the duty to protect life to the prevention of suicide and self-harm, as well as issues such as provision of help and support after release from institutional care, and the full investigation of deaths arising in care or after release from care (noting, for example, the incidence of suicide among persons recently discharged from psychiatric hospitals). The Commission feels that more attention should be afforded to this most important of rights and that recommendations should be made in the Report in this respect.
10. Similarly, it is regrettable that the Report does not include any analysis of Article 3 (the right to freedom from torture, inhumane and degrading treatment or punishment), which has particular implications in relation to the treatment of persons with mental health difficulties and others living in institutional settings. This analysis would be of particular importance in relation to involuntary detention for assessment or treatment, including issues related to the process of detention and the provision of treatment such as ECT, but

concerns about potential violations of this right should underpin the analysis of any services that are provided to persons in a position of vulnerability.

11. While we recognise that there are differences of opinion regarding the use of particular methods of treatment (such as ECT), the fact remains that health care providers have particular duties under the law to protect persons subject to such treatments, and safeguards and guidelines for compliance with human rights standards should be central to good practice in this area. The Report would benefit from a detailed analysis of implications of Article 3 in relation to provision of treatment and recommendations should be made on guidance for service providers.
12. While some of the rights or aspects of rights (such as the right to liberty or to fair trial) are well discussed in the Report, the lack of discussion of the implications of mental health difficulties or learning disabilities on the enjoyment of other rights seems to be insufficient. The Commission is of a view that the Report would benefit from a wider discussion around issues such the right to respect for private and family life (going beyond sexual relations), freedom of religion and freedom of expression (including the right to receive information).
13. Respect for the equality of persons with mental health difficulties has been recognised as an overarching consideration of the Review and any reform of the system that will follow from its work. The Commission is of the view, therefore, that more consideration should be given in each chapter to equality issues arising in each of the areas identified for recommendations.
14. In the report *Connecting Mental Health and Human Rights*, published by the Commission in 2003, a number of equality issues were identified, including that:
 - a) mental health varies markedly by social class;
 - b) the use of psychiatric, especially in-patient hospital services is positively correlated with high levels of deprivation and unemployment;
 - c) suicide is more common in men than in women, and in lower socio-economic groups;
 - d) caring for young children in disadvantaged circumstances, particularly as a lone mother, carries with it an increased risk of poor mental health;

- e) race was identified as a significant factor, with services not adequately meeting the needs of black and ethnic minority communities;
 - f) age has significant impact on the availability of services and kinds of treatment that a person can receive in Northern Ireland;
 - g) the impact of the 'Troubles' and sectarianism on mental health is a further consideration;
 - h) the combined impact of these differentials, i.e. where particular individuals are affected by more than one factor, should also be considered.
15. The consultation Report has very few comments on this range of issues and equality analysis is often missing from the individual chapters, despite many of the difficulties being identified in the discussion paper attached to the report in Annex 2. While the Report states in the introduction that some of equality issues will be discussed in other reports by the Review (such as the Promoting Social Inclusion report), the Commission feels that drawing together and addressing issues such as difficulties in access to health services, employment opportunities, etc. in the Human Rights and Equality of Opportunity Report would give the Report greater coherence and strengthen the final recommendations.
16. The mental health difficulties and specific needs of lesbian, gay, bisexual and transgendered persons (LGBT) are not mentioned in the Report. There is a wealth of research findings available in Northern Ireland about the specific problems faced by those groups in relation to both recognition of specificity of issues around sexuality and the lack of appropriate services and care in the health care system. The *Connecting Mental Health and Human Rights* report mentioned above identified discrimination on the basis of gender and sexual orientation as one of the factors leading to inequalities in mental health. One of the most important issues is the high rate of self-harm and suicide among this particular group. Considering this, the absence of any recommendations in this area is disappointing, as is the lack of recommendations for inclusion of the needs and rights of the LGBT community into the regulatory framework for future reform (for example, the recognition of the right to form civil partnership ought to be dealt with on an equal basis with the right to marry, currently addressed in Chapter 4).
17. The Report does not address sufficiently the issue of enjoyment of rights and equality by migrant communities,

refugees and asylum seekers, ethnic minority groups and non-English language service users, despite recognising in the introduction to Chapter 4 that these groups experience particular difficulties. The discussion of this issue should feature more prominently in the analysis in individual chapters throughout the Report.

Conclusions

18. While the Report identifies and addresses some very significant issues around access to rights and equality of opportunity for people with mental health difficulties and learning disability, there remain some significant gaps that really need to be addressed by the Review. Given the very substantial investment made in the whole of the Bamford Review, which has the potential to bring about very far-reaching changes that may be felt over decades, the Commission very much hopes that the Group will be able to build on its achievements to date to secure the resourcing, and devote the additional energy that will be required, to expand this Report into the areas that we have identified.
19. The discussion of the issues, and the recommendations that follow, should be based on the legal obligations of the state and the care providers as enshrined in human rights and equality law, but should also encourage the implementation of other human rights standards and good practice in mental health services.
20. The Commission's view is that it is of utmost importance that the Review is seen as an opportunity to provide a comprehensive overview of the difficulties faced by persons with mental health problems and/or with learning disability in one report with strong recommendations, which can then be linked to the reform of legal and institutional framework for the provision of services in Northern Ireland.

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