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Gay and Lesbian Special Interest Group

Nearest relatives of gay men and lesbians

This discussion document from the Gay and Lesbian Special Interest Group has been welcomed by College's Council. It is intended that the document will stimulate debate in relation to the reform of mental health legislation.

Lesbians and gay men are a hidden, disadvantaged minority in Britain. Little is known about their psychological health, social well-being or needs for care. Unlike people from ethnic minorities, gays and lesbians can blend with the heterosexual majority, but this can be at the psychological and social cost of hiding their lifestyle from friends and even family. Furthermore, they have no recourse to legal protection from discrimination. Partners of gay men and lesbians have few rights and are rarely recognised in law, including within the context of the Mental Health Act 1983. Currently, there is no duty to consult gay and lesbian partners when the Mental Health Act is used, despite the fact that such a partner may be the most appropriate individual. This haphazard recognition of gay and lesbian partners may be perceived as discriminatory and leads to anomalies and conflict in the use of the Act. In addition to the Mental Health Act, these issues may be pertinent to other statutory legislation:

(a) the Childrens Act
(b) law relating to testamentary capacity and power of attorney
(c) employment law
(d) Scotland's Incapacitated Persons Act.

Definitions

Next of kin

The term next of kin has a very limited legal meaning. It constitutes an element of common law relating to the disposal of property to blood relations where an individual dies intestate.

Nearest relative

This term is specific to the civil sections of the 1983 Mental Health Act. According to Section 26 of this Act, the person designated nearest relative follows an order of precedence, depending upon the availability of people higher up in that order. Identified nearest relatives have a number of potential rights. They can apply for the patient to be detained under Section 2, 3 or 4; they can apply for a patient's discharge under Section 23; and they must be informed of admissions under Section 11 and proposed discharges under Section 133 of the Act, unless the patient objects. Perhaps the requirement most frequently applied is that the nearest relative should be consulted before a Section 3 admission, if 'reasonably practicable'. Same-gender partners are not construed as being equivalent to spouses, who are the first-named 'nearest relatives' in the Mental Health Act.

Same-gender partnerships

The status given in English law to same-gender partnerships or relationships is limited. It is significantly different from that given either to heterosexual marital relationships or heterosexual unmarried partnership relationships. Similar differences in status pertain in the European Court of Human Rights, which has not yet accepted arguments that same-gender partners are entitled to respect for 'family life' although the relationship may be 'a matter affecting private life'.

Co-residence with an individual for 5 years or more means that a gay or lesbian partner can be construed as the nearest relative, but they would come last on the list. The net result of this is that same-gender partners are significantly less likely to qualify as a 'nearest relative' than opposite-gender partners. Also, the biological family of origin is (always) likely to take precedence over social relationships. At present, the patient detained under the Act has no right to influence who is construed as the nearest relative. However, a case recently brought before the European Court of Human Rights (J. T. *v.* United Kingdom, 2000) has gone some way to suggest that this situation might change. The consequence of this would be that patients would have some room for advance directives.

The proposed new Mental Health Act White Paper has introduced the term 'nominated representative' rather than nearest relative. This designation will be the responsibility of approved social workers, who are in a position to consult close relatives or main carers and to take into account any views that the patient has expressed in a recent advance directive. The role of this person may be rather different in that his/her capacity to object to admission and his/her capacity to discharge are removed. It is anticipated that he/she would be involved more closely in in-patient care. The proposed new Act may or may not affect same-gender partnerships in particular ways. Given the power that continues to reside in approved social workers, their attitude, as representatives of mental health services, to same-gender partnerships will be crucial.

Practical issues in clinical care relating to same-gender partnerships

Gay and lesbian users of mental health services face a number of common difficulties.

- For some service users, the experience of growing up gay or lesbian leads to feelings of exclusion and experience of homophobia within their family and results in mental distress.
- Those users presenting to mainstream services encounter difficulties such as feelings of isolation, reluctance to disclose their sexual orientation and avoidance of services, all of which can contribute to insufficient or inappropriate care.
- Gay and lesbian users of mental health services face issues in relation to the gay and lesbian community, where being a mental health service user is not welcomed and can lead to further discrimination.
- Mental health service users admitted to in-patient services may encounter homophobia in staff and other patients (as well as that arising in their family of origin and in the wider community). Such individuals are poorly placed to resist these prejudices.
- The essential problem for gay and lesbian mental health service users is that their partners tend not to be treated by such services on an equal basis. One obvious example of this is in the recording of next of kin in in-patient notes. The Royal College of Nursing recommended the alternative term 'contact person' for use in recording information about all patients' relationships (Royal College of Nursing, 1998). They suggested a range of ways in which appropriate information should be gathered in a confidential manner from gay and lesbian service users.
- Other common experiences appear to be: the role of the approved social worker in the Mental Health Act in contacting biological parents who have been out of contact with their relatives for some time; difficulties finding out about the death of a partner; assumptions about partnerships, for example lesbian partners being treated as 'friends'; the discomfort of professionals unused to and uneasy with dealing with same-gender partnerships; maintenance of non-disclosure of sexual orientation by gay

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and lesbian service users who have difficulty obtaining private space in in-patient settings.

Recommendations by the special interest group

Principles

(a) Same-gender relationships should be treated in the same way as heterosexual relationships for the purposes of receipt of mental health services.
(b) Lesbian and gay patients are entitled to the same care and treatment as heterosexual patients.
(c) Lesbian and gay staff working in NHS settings should have the same rights, and corresponding responsibilities in the conduct of their work, and protection from discrimination as all other employees.

Legal practice

The Gay and Lesbian Special Interest Group would support the introduction of 'nominated representatives' into the new Mental Health Act, if nomination was made by the patient. Allocation by a professional would only occur if:

(a) there was no advance directive;
(b) the patient lacked capacity;
(c) the patient refused; or
(d) the patient's choice was clearly harmful to his/her well-being.

Future codes of practice should include same-gender partners as de facto next of kin or nearest relative, if these terms are retained.

Clinical practice

NHS guidance on information obtained from patients should not include next of kin but should include a contact person.

NHS in-patient facilities need to accommodate the requirements of gay and lesbian patients in the same way as they accommodate the requirements of other identified patient groups with particular needs.

Research and training

(1) Undergraduate teaching for medical students should include information on gay and lesbian sexuality and lifestyle.
(2) NHS trusts need to provide training on gay and lesbian issues in the same way as they provide cultural-awareness training.
(3) More research is needed on:
   (a) gay and lesbian service users' experience of mental health services
   (b) professionals' knowledge about and attitudes to homosexuality
   (c) the practice of mental health professionals with regard to gay and lesbian patients.

Endnote

This paper is a summary of a debate attended by members of the Gay and Lesbian Special Interest Group, focusing on next of kin and nearest relative issues for gay men and lesbians, entitled *Whose Relative is it Anyway*? The purposes of the meeting were to clarify the issues regarding nearest relatives and recommend ways of improving the current status of gay and lesbian nearest relatives. It was held at the Royal College of Psychiatrists on the 28 September 2001 and was preceded by presentations on the key issues by: Angela Mason – Executive Director, Stonewall; Polly Mann – Senior Advocate, PACE; Simon Foster – Principal Solicitor, MIND; Ben Wright – Specialist Registrar in Psychotherapy.

J.T. *v* United Kingdom (2000) Times Law Report, 5 April.

ROYAL COLLEGE OF NURSING (1998) *Guidance for Nurses on "Next of Kin" for Lesbian and Gay Patients and Children with Lesbian or Gay Parents*. Issues in Nursing and Health 47. London: Royal College of Nursing.

Annie Bartlett, James Warner, Michael King Gay and Lesbian Special Interest Group

obituaries

Gwyn Roberts

Former Professor of Learning Disability, Queen's Medical Centre, Nottingham

Professor Gwyn Roberts was a thoughtful, caring doctor of considerable ability, which he used to improve the quality of life for people with learning difficulties. He was witty and wise, erudite, innovative and always reassuring and supportive. He was a team builder who inspired great loyalty and affection from his colleagues. He desired change for the benefit of his patients and their families but was always realistic about what could be achieved. Despite his dry humour, he was a quiet and contemplative person, in many ways understated and at times troubled by self-doubt. However, he will be remembered as a leader and an enabler who made a lasting impression in his field.

Gwyn Roberts was born in 1933 and brought up in North Wales (with Welsh as his first language). He went on to train at the Welsh National School of Medicine in Cardiff where he graduated in 1956. After qualifying he worked at Whitchurch Hospital and gained the DPM in 1961. He then worked at Great Ormond Street Children's Hospital, researching inborn errors of metabolism. After further research and clinical experience at Oxford, he moved to Cambridge in 1965 to commission the Ida Darwin Hospital, in its day a progressive establishment for the care of children and adults with learning disabilities. Using a multi-disciplinary approach, Gwyn helped change attitudes and set new standards for these most vulnerable of people. Perhaps his greatest gift was his gentle, unpatronising manner with patients and their families, to whom he always listened so carefully.

In 1971, he was a major contributor to the Government White Paper *Better Services for the Mentally Handicapped*. Subsequently, he was appointed to lead the first Government Hospital Advisory Service team, which visited hospitals across the country to improve standards of care. Locally, he identified a need for, and created, the Child Development Centre, one of the first of its kind in the country.

In 1995, Gwyn left the Ida Darwin to take up the first Chair of Learning Disabilities at the University of Nottingham. Here, he set about the complicated and overdue task of re-shaping clinical services as well as establishing his new department. He attracted high quality researchers and inspired several trainees from the area postgraduate psychiatry training scheme to specialise in learning disabilities. Beyond the department, he shared his knowledge of medical ethics and made an important contribution towards building academic chairs in other parts of the UK. He also served on numerous committees for the Royal College of Psychiatrists, of which he was a Fellow, and was medical advisor to MENCAP for many years.

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