Title:

Giving evidence before the First-tier Tribunal (Mental Health): What is the role of Inpatient Mental Health Nurses?

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The importance of mental health and well-being forms an integral component of an individual's ability to lead a fulfilling life; together with the capacity to develop and maintain relationships, engage in study and employment opportunities, participate in leisure activities as well as the power to make decisions and choices daily. The social determinants of mental health are the same as those considered as risk factors in chronic physical health conditions, for example, low educational attainment, material disadvantage, unemployment, and social isolation (WHO 2018). Therefore, determinants of mental health and physical well-being are influenced not only by a person's genotype (Taquet et al, 2021), but also individual attributes and social conditions in which people find themselves, including the environment in which they live. These factors interact and can jeopardise or safeguard an individual's mental health state (Porter 2020).

Mental health nurses provide care to people with complex care needs and must exercise awareness of the various risks and vulnerabilities experienced by this patient group, including increased risk of suffering from physical-medical co-morbidities and premature mortality, social exclusion, discrimination, stigma, and apparent health inequalities (Mwebe 2021). Mental health risk factors can manifest during any of the stages of an individual's life course, and can include, substance use in pregnancy, malnutrition, family violence in childhood and insecure attachment, physical, psychological, and emotional abuse, traumatic events, and poverty (Kousoulis, 2019). All these risk factors and others can influence mental well-being or predispose towards mental disorders. Mental health professionals, especially mental health nurses who are the largest front-line staff group in mental health care settings, need to have a good understanding of the relationship between these risks and the symptomology associated with the development of mental disorders. Staff insight into this reality can help facilitate conversations when planning care and undertaking vital screening and management interventions for individuals admitted to mental health care facilities (Coffey et al., 2019).

Most common mental health problems presenting in primary care are managed by General practice (Naylor et al., 2020). These include stress reactions, anxiety, mild-moderate depression, post-traumatic stress disorder (PTSD), and obsessive-compulsive disorder (OCD). On the other hand, more severe mental disorders (e.g., Schizophrenia, Schizoaffective disorder, Bipolar disorder, Severe depression, personality disorder), including a range of symptomology for example, delusions and hallucinations, paranoia, mood swings with manic and depressive features, impulsivity, incoherent thoughts, and pressured speech; often require assessment, treatment, and management in a psychiatric hospital setting. As well as screening for the symptomology outlined in this paragraph, a mental health assessment also considers other key illness features including: risk to self for example an individual's health and safety (suicidal ideation, self-harm, putting self in risky situations, retribution from others, road safety, vulnerability, physical health (self-care, neglect of medical conditions), and risk to others (physical or verbal violence and aggression), risk of damage to property, an individual's insight into their mental health needs and willingness to engage with treatment, and whether the individual is capacitous (Care Quality Commission, 2023).

Since the range of risks to mental health is broad, responses to these need to be multifaceted and multi-sectoral including the use of legislation to care manage individuals with a mental disorder (Jones 2022). The Mental Health Act 1983 (as amended in 2007) (MHA) is the legal framework that gives power for Health and social care providers, by working together to detain and treat individuals who have a mental illness and require protection for their own health or safety, or the protection and safety of other people (Care Quality Commission 2022). The overriding principle when considering whether an individual requires assessment and/or treatment under the MHA is the degree of risk that the individual with a mental disorder poses to 'self or others'- this is central to the decision on whether the individual is assessed and made subject to a compulsory order. The most applied legal frameworks (sections) when detaining individuals with a mental disorder are

referred to as civil sections or sometimes also called part 2 sections in the MHA (Jones 2022). Broadly, part 2 patients are those assessed and detained under section two and three and cared for within psychiatric inpatient units by mental health nurses and others i.e., Support workers, Psychiatrists, Occupational therapists, Psychologists, Activity workers and social workers (Haines et al 2018). Mental health nurses play an important role in inpatient settings to implement evidence-based strategies and interventions, with the aim of safeguarding the needs of patients under their care, including screening, and monitoring of psychiatric symptoms, activities of daily living, mitigating against the risk patients pose to others and themselves, administration, and monitoring of medications, and encouraging patients to actively participate in other recovery orientated interventions.

This work is vital to ensure that patients, especially those under civil sections are cared for in environments which promote recovery and helps to prepare patients for successful discharge back into the community. Mental health nurses, therefore, are an important safeguard and also function as advocates, for all patients, but especially where this concerns involuntarily detained patients. Imposing a detention under the MHA lessens a patient's ability to make choices about their care, and thus reduces their autonomy. Some critiques of the MHA consider the 40-year-old legislation as draconian and out of date (Brown 2021). Yet one must recognise that a compulsory order under the MHA is an action of last resort, after community treatment and voluntary admission have been considered and/or failed, and formal detention is considered necessary for the protection of the affected individual or others. Therefore, an important safeguard that reviews the decision to detain patients in hospital and the rights of detained patients, is the First-tier Tribunal (Mental Health); an independent body made up of a judge, medical member (consultant psychiatrist) and a specialist member with considerable experience of mental health care (Courts and Tribunal Judiciary, 2022). Patients submit appeal applications directly to the First-tier Tribunal (Mental Health) or applications are made by hospital managers or patient relatives, also sometimes known as 'a reference'.

The three-membered First-tier Tribunal (Mental Health) panel consider the evidence provided in written reports from the hospital psychiatrist (normally the Responsible clinician), mental health nurse (inpatient ward nurse), community mental health nurse or social worker (care coordinator) and the patient themselves. It is necessary that all the attending clinical members of the multidisciplinary team have a good knowledge and understanding of the patient's health status, and are in position to give factual evidence, on a range of care elements for the patient, regarding the four set statutory criteria outlined below (1-4). At the case hearing, the panel will ask the attending clinical staff to confirm that they have read all the submitted reports, as the panel's questioning will be based on the content of the reports. If the patient has a legal representative, normally a solicitor with background experience in mental health law, he/she will pose questions to the patient and examine the clinical expert witnesses to assess whether continued detention, is still necessary. It is therefore important that mental health nurses prepare well for the formal court hearing. The First-tier Tribunal (Mental Health) reasons and decisions following the hearing are based on the submitted reports and heard evidence of the patient and the clinicians, delivered normally via virtual or face to face formal meetings in a secure setting. It is important to emphasise that the panel considers whether to discharge or to not discharge a section at the time it meets for the formal hearing, and in doing so, the panel tests whether the evidence provided by the detaining authority (NHS or private hospital), meets the statutory criteria outlined in the MHA and the code of practice (CoP) of the Mental Health Act (Department of Health and Social care (DHSC) 2015).

The First-tier Tribunal (Mental Health) acts as an independent body from the detaining authority and has no direct or indirect involvement in the care assessment and management of detained patients. The information obtained via interviews with the patient and the professionals involved in the care of the detained patient, helps to inform the panel's deliberations and decision making on, whether to agree with the detaining authority or to discharge the patient's section. The panel's line of questioning is focused on evidence submitted, for example, the detaining authority must provide adequate and straightforward evidence which meets the statutory criterion in Section

1(2), in Mental Health Act 1983 (Jones 2022) for continued detention of the patient. It is more likely than not that continued detention may be upheld by the First-tier Tribunal (Mental Health) if the evidence provided by the detaining authority can be tested and proved that:

1. The patient is suffering from a mental disorder.
2. The patient's Mental disorder is of a nature or degree (Jones 2022, p 71)
3. There is available appropriate medical treatment.
4. That detention is necessary for the patient's health, safety, and protection of others.

Mental health nurses play a key role during case hearings, by giving up-to-date information on the patient's health status including any clinical progress made. Given mental health nurses' active role in undertaking daily care management of patients on inpatient wards, by bringing their specialist knowledge and experience, this provides the panel with invaluable insight and understanding of the current patient's health status and whether the nature and the degree of the mental disorder, still warrants detention as interpreted in 'Part 2 and 3 of the Mental Health Act' (Jones 2022). Adequate preparation and understanding of the role of the First-tier Tribunal (Mental Health) by mental health care professionals, who are required to give evidence helps to enhance the role and credibility of the work undertaken by three-member Tribunal panel.

During the hearing, the nurse may acknowledge that the patient may not agree with evidence presented but the nurse should avoid talking to the patient directly for example 'we have discussed this previously with patient X and I am aware he or she does not agree'. As part of preparation to give evidence before the First-tier Tribunal (Mental Health), mental health nurses must read the nursing report in advance and highlight any areas of risk as well as referencing parts which do or do not confirm the statutory criteria. It is useful to read the reports produced by other professionals (Care Co-ordinator, Responsible Clinician) before the hearing to ensure that evidence presented is consistent, coherent, and factual. The expert witnesses including mental health nurses should be prepared to explain any differences of opinion arising from the written reports or the oral evidence.

Other key considerations (or requirements) for inpatient mental health nurses to be aware of to aid adequate preparation of good quality and accurate, oral, and written evidence before the First-tier Tribunal (Mental Health) are outlined below.

- Mental health nurses must have good understanding of mental health needs assessment and care planning including treatment and recovery orientated approaches.
- The mental health nurse's evidence explores medical issues from a nursing perspective, bringing understanding and insight into the daily management plan of the patient. It is expected that the mental health nurse will do this with clarity and confidence arising from the expertise, skills and experience he or she brings.
- The nurse maybe asked to state how long he or she has worked with the patient when giving evidence and whether he/she has consulted the patient's views regarding their care plan and any management plans. To help promote trust and engagement, it is important that the nurse creates a safe space where if practically possible, the written report is shared and discussed with the patient before the hearing. If there are any aspects of the report the patient is challenging, the nurse will explain to the patient that their legal representative will have the opportunity to bring this before the hearing provided the patient has appointed legal representative or if one has been appointed for them if they are found to lack capacity.
- In preparation of the written evidence, the nursing report should aim to focus on evidence-based recovery strategies available to the patient in the setting, and efforts by the nursing team to have encouraged patient engagement with these activities. It maybe that the

patient is unable to engage due to current degree of symptoms or where positive engagement maybe interpreted as possible signs towards recovery.

- Views of the carers including family members is important to understand areas around risk to self, others, safety, and health of the patient. Line of questioning on these areas might seek to explore any concerns around these areas and most importantly, the mental health nurse's role in engaging with these stakeholders.
- If the submitted reports are more than a week old, the mental health nurse will be expected to give an update on facts and their professional opinion.
- Knowledge of the current degree of mental disorder, including symptom severity, quantity, and manifestation, for example delusions, overvalued ideas, suspicion and paranoid beliefs, grandiosity, low mood, apathy, anhedonia, memory and learning issues, thoughts of harm to self and others, violence, and aggression towards others and/or property (Mwebe 2021).
- The mental health nurse should consider whether the patient's current degree of symptoms interfere with the patient's ability to relate with other patients and staff.
- The Tribunal may enquire about the nature of the patient's illness, for example, whether it is a chronic enduring mental illness or remitting and relapsing nature. The mental health nurse could be asked to give a view on the prognosis and response to treatment.
- A clear inpatient treatment management plan (chapter 24 CoP) includes nursing, psychological intervention, and specialist mental health treatment with knowledge of strong evidence base for example NICE guidelines, BNF maximum doses (DHSC 2015)
- The First-tier Tribunal (Mental Health) panel may want to explore whether patients are offered the best opportunities and facilities to recover. For example, interventions to support deficits in activities of daily living (i.e., sleep, eating and drinking, personal care), support with medication management, response to escorted or unescorted leave and family visits, safeguards against financial exploitation, and maximising mental capacity (Taylor and Perera 2015).
- If unescorted leave or escorted leave has been allocated, the mental health nurse could be asked whether there are any issues with this, for example, whether the patient returns to the ward on time and if there have been any episodes of absence from the inpatient unit without clinical guidance and permission (AWOL).
- An update of information regarding the patient's attitude to medication and whether there are any problems staff encounter when administering medication to the patient. For instance, whether the patient takes their medications willingly (physical and/or psychiatric medications) or whether this is done under restraint where antipsychotics are concerned. The mental health nurse can also highlight whether there is evidence of excessive use of 'when required' (prn) medications to manage sleep, or during periods of extreme agitation or anxiety.
- When suitably prepared, the mental health nurse can present a considered view on whether the patient has insight into their condition, whether they seem to understand the benefits of taking medication and if one foresees potential concerns with medication compliance in the community if the patient's formal section were to be discharged and the patient self-discharged from the ward.
- Level of observation, monitoring, compliance, social skills and whether this is affected by the degree of the mental disorder.
- Psychological work offered and relapse prevention work undertaken and patient's attitude. How long this is likely to have an effect?
- The nursing evidence can help to reflect concerns of communities about risk and dangerousness, for example views of nearest relative and other community carers. Also,

one should consider whether there is evidence of risks being controlled, for example, through improvements in the patient's insight and medication adherence.

- The mental health nurse is expected to have up-to-date knowledge of issues related to Health and Social care matters and management of risk in the inpatient setting and the community, for example Multi Agency Protection Panels (MAPPA) and Fixated Threat Assessment Centre (FTAC) (Taylor and Yakeley 2019). Knowledge of availability and involvement of other services in the care management of patients, for example, Home treatment and Crisis teams, Drug and Alcohol services, Housing, Benefit and Employment support and community rehabilitation centres would also be beneficial to the court hearing discussion.
- A highly important consideration is reviewing safeguarding concerns for any vulnerable adults or children. The nursing evidence can highlight whether the patient has children, who is caring for them (local authority or family), and whether the children are subject to child protection care plans or children in need (CIN) plans (Child Law Advice 2022).
- The mental health nurse should be aware of the role of the Independent Mental Health Advocate (IMHA), reviewed whether they have seen the patient, and considered their rightful role in attending hearings if requested by the patient.
- All patients (only applies to civil sections) have an assigned nearest relative. This is a vital statutory role in safeguarding a patient's rights and they have a significant role in both the detention process and discharge planning. The nursing evidence can help to clarify whether the nearest relative has been identified and consulted (MHA 1983 s26; Jones 2022).
- Nursing evidence can provide insight into current discharge arrangements being arranged and whether these are robust and adequate to allow or progress the discharge of patients if the care package was in place (Tyler et al., 2019).
- The panel considers evidence of planned aftercare for the patient, in line with the MHA Code of Practice (CoP) on the duty to provide this under the MHA 1983, section 117 and policy guidance on the Care Programme Approach (Directors of Adult Social services 2018). The nursing evidence can assist the panel members to understand details emerging from a s117 meeting or reasons for why this has not yet taken place. In some cases, it may be that the absence of timely and active discharge planning is the limiting factor that is keeping the patient in hospital. Hence, as well as having powers to discharge patients off formal section, in some circumstances the First-tier Tribunal (Mental Health) can make legal recommendations 'to facilitate discharge' from hospital.
- Discharge planning could also include those patients living in the community but subject to legal restrictions under the Mental Health Act for example patients on extended section 17 leave.
- After the hearing, it is understandable that the patient might be upset or unhappy about information shared or discussed during the hearing or if their detention has been upheld following the Panel's deliberations and feedback. Although the patient's legal representative has a duty of care to liaise with patient to explain/discuss the decisions, nurse to patient interactions should be encouraged and developed as part of the patient's care plan to allow the patient to express any views, concerns, fears or worries, generated from engaging in the process.
- Finally, it is important to stay calm when giving evidence before the First-tier Tribunal (Mental Health) panel. The Panel is not out to catch you out but will expect that the nurse has adequately prepared for this meeting and can respond to key questions for the panel to assess whether continued detention for the patient remains in their best interest. To

help you find information during the hearing, number the pages and/or paragraphs and do not be afraid to concede points where there is lack of clear evidence to back your arguments. Avoid falsifying or making up information as this can be detrimental to the patients progress and remember that you can only answer what you know.

Conclusion

Understanding the function of the First-tier Tribunal (Mental Health) is an important aspect of an inpatient mental health nurse's role when undertaking care activities concerning detained patients who have had their liberty restricted under the Mental Health Act 1983 (as amended 2007). The presentation of coherent and factual evidence before the First-tier Tribunal (Mental Health) by mental health nurses and other health and social care staff attending, helps to ensure smooth running of the case hearing. As discussed in this paper, evidence provided before the First-tier Tribunal (Mental Health) can assist the panel to confirm or refute, whether the patient's current detention meets the statutory criteria as set out in the Mental Health Act 1983 (as amended in 2007). Other potential areas of concern around patient's behaviour, insight, medication adherence, and leave arrangements can inform the Tribunal's decision-making process, as well as the consideration of collaborative working efforts between inpatient and community services to facilitate discharge planning for patients whose care could be replicated safely in the community, without the need for them to remain formally detained in hospital.

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