PUBLIC POLICY COMMITTEE

Interim report of the Working Party on the conduct of Committees of Inquiry

Following the meeting with Dr David Owen on 10 December 1974 the Executive and Finance Committee had invited the Public Policy Committee to make recommendations about the conduct of Committees of Inquiry for consideration and transmission to the Council on Tribunals. The Committee accordingly set up a Working Party under the chairmanship of Professor A. K. M. Macrae and its interim findings are summarized as follows:

In considering their remit the Working Party found themselves focusing on a number of 'areas of concern'. The principal one was that as a result of these Inquiries the mental health services and the professional teams operating these services had come to suffer from a general climate of opprobrium. It was at once recognized that such a reaction was probably inevitable, since all the Inquiries had been set up to examine *prima facie* examples of bad practice, and that we should not be too sensitive about such revelations, even if their effects on the morale of staff and on the confidence of the public were damaging. Our concern centred on the emphasis of the reports. All of them instanced administrative and managerial errors and a chronic shortage of resources of equipment, staff and finance, and yet these failings, which are fundamental, get scant mention against the more dramatic human errors of practice and judgement which may have their origins, at least in part, in administrative neglect. The most blatant example is the Rossendale Inquiry, where the Report becomes an appendix to the Health Authority's apologia, findings of guilt and determination of punitive action on its employees—a form of presentation which must have given offence to the committee members.

Many Inquiries arise from complaints from patients or relatives. There is a well recognized channel for such complaints, emphasized by the Davies Report. The majority can be dealt with at ward level; only a few warrant the attention of the District Management Team or the Area or Regional Authority; a tiny number reach the DHSS either through persistent relatives or the press or through Parliamentary pressure, and in such cases the DHSS institutes either a local investigation or a Section 70 Inquiry, or, if appropriate, a professional Inquiry.

Working as we do with people whose perceptions may be distorted, whose emotions are labile and whose understanding is sometimes limited, it would be surprising if our actions were not occasionally challenged, especially when the practice of our specialty is often not seen by the public to be established on such a clearly scientific basis as with other specialties. Usually we welcome the opportunity to demonstrate that our actions are taken, within the limits of contemporary knowledge and available resources, for the benefit of our patients. In many parts of the country the quality and numbers of junior medical staff and nursing staff are far from ideal, and in such situations it may not be possible to provide the high standards of patient care that we would normally aspire to.

However, by no means all complaints come from disturbed people in a state of stress, and indeed some of the Inquiries we have studied have arisen from complaints by concerned and responsible members of staff.

It seems to us that much of the uneasiness and concern that has been expressed stems from the form of the Inquiry. Reading the Reports leads us to the conclusion that such Inquiries are more accusatorial than judicial in manner. It appears that accusations have been laid which must either be sustained or rebutted and yet there is no requirement to respect the rules of evidence as in a Court of Law. Except in purely professional Inquiries the Chairman is usually a learned QC. He is in a very powerful position, because by the nature of the form of the Inquiry he can stamp his own personality on it and can be not only judge but prosecuting counsel as well. We understand that he has the right to object to any member of the team chosen for the Inquiry and if he wishes he can interpret the remit in very wide terms. While there are many advantages in having a legally qualified Chairman, it occurs to us that in some instances, for example, where the question at issue is that of management of the hospital it might be appropriate to have as Chairman someone experienced in management (e.g., in a nationalized industry). If the accusatorial pattern is to be followed we would prefer to see the Chairman limited to his role as judge and impartial arbiter, and the accusations led by an official solicitor. This would immediately alert the witnesses who may be actually or implicitly accused to engage expert legal advice on their behalf. In the past witnesses have too often given evidence without legal support. Doctors have the advantage of being able to call upon their Defence Unions in such situations, but nurses, who are equally vulnerable,

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are often without expert legal protection. Legal Aid is available to them and they should be encouraged to use these facilities.

Staff morale and recruitment and consequently the quality of service to the patient can suffer as a result of such Inquiries. These effects can be attributed to the publicity attendant upon them, either at the time or when the Report is published, and to the delay either in setting up the Inquiry or in the publication of its findings.

We understand that it is for the Chairman to decide whether or not the hearing shall be in public or in private, and clearly there may be occasions where the hearing must be in public. In such circumstances the participating parties are subject to the judgement of journalists as to what is newsworthy, and it may be that more attention will be paid to sensational accusations than to sober rebuttals, and there is little protection or redress in such situations. More serious is the publication of the full Report which may give a distorted emphasis on certain aspects of the Inquiry. We hope that our recommendations on legal representation and on defining more clearly the powers of the Chairman may help to offset the more damaging features. We considered whether we should press for anonymity of witnesses in Reports. We can see that there might well be practical difficulties in this and also acknowledge that, while an individual might be protected in this way, anonymity might result in every member of the staff, whether implicated or not, being suspect.

Delay in setting up Committees of Inquiry and in publication of the Reports can have a serious effect on staff morale. Such delay is often due to there having been a series of ineffectual and unconvincing local inquiries. Where there is any allegation of a criminal nature the Police must be brought in immediately; if they decide they have no evidence on which to proceed, the District Management Team should decide whether a different inquiry—into professional standards—is appropriate. If they so decide, they should seek advice from Area or Regional Authorities who in turn, if they consider the matter serious enough, should seek advice from the DHSS at an early stage as to what form the Inquiry should take. The aim should be to set up a definitive and acceptable inquiry as quickly as possible. All the members of such a Committee of Inquiry should come from outside the Region concerned, and in addition should include members from the nursing, social work and management professions as well as those from law and medicine. It is clear from some of the Reports that the committees have not been aware of the changes in responsibility and autonomy that have developed over the last decade. Too often the Consultant is seen as being totally responsible, whereas he is dependent upon other members of the multi-disciplinary team for the proper care of patients, although he has the ultimate clinical responsibility while the patient remains in hospital; he may have had no say in the selection of the other members of the team.

Delay in publication is another matter which prolongs anxiety and lowers staff morale. Our inquiries suggest that there may be many reasons for such delay. It would be helpful if an Interim Report could be published where there is likely to be delay in publishing the full Report.

In Scotland the Mental Welfare Commission are empowered to inquire into any allegation of neglect or ill-treatment of individual patients. Like the old Board of Control, they are familiar with the way in which hospitals operate. The members are drawn from a wide variety of experience. There is thus readily available an experienced team who have the power to compel witnesses, to take evidence on oath, and have a High Court Judge as chairman. An inquiry by the Commission can be set up quickly and report quickly.

Another area of concern is that many of the Reports of Committees of Inquiry are subject to Parliamentary privilege, and therefore any adverse comments on an individual's professional competence or personality characteristics cannot be challenged. The Working Party strongly recommends that some machinery be found to allow appeals against an Inquiry's findings in spite of the privileged status of a Command Report. It is suggested that the same opportunity at present afforded to Regional Hospital Authorities to scrutinize and comment on the Report before publication should be extended to the hospital staff concerned.

We have already referred to the fact that in many instances administrative failures and lack of resources had largely contributed to the situation under inquiry. We urge all Consultants to keep careful notes of their repeated efforts to bring such failings to the notice of the appropriate authorities.

It would seem—and we are both impressed and depressed by this—that Reports of such Inquiries tend to stress only the negative aspects of their investigations. The good work being done, often in most unfavourable circumstances, tends to be taken for granted and is insufficiently emphasized, especially in press reports.

The Report of the Committee of Inquiry on St Augustine's Hospital, Canterbury, came out after we had finished our main deliberations on which this report is based. It is encouraging to see that many of

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the procedural problems which we have outlined above have been carefully dealt with in this particular report. Almost all the witnesses were represented by counsel. Letters of the alphabet are used rather than people's names, and while the individuals will be identifiable locally they will not be identifiable nationally. The Report emphasizes that although they were working in difficult conditions with inadequate guidance many members of the staff were doing their best, and the Report has praise for much of what is being accomplished at St Augustine's and cautions the press to report with responsibility. The Report examines the allegations very critically and does not accept them without corroboration. The Report also says, 'We are all satisfied that a private hearing is to be preferred to one in public.'

While this is very encouraging and welcome, there are other aspects of the St Augustine's Report which could have very far-reaching professional implications, and it seems necessary to continue the Working Party's existence in order to give very careful consideration to these particular aspects so as to give sound advice to the membership of the College.

The Working Party is indebted to Dr Peter Ford (Medical Protection Society) and Dr John Wall (Medical Defence Union) for their help and advice.

[*Note:* A review of the St Augustine's Inquiry Report appears on pp 15 and 16 in this issue.]

MEMORANDUM ON THE RESPONSIBILITY OF THE PSYCHIATRIST IN INSTITUTIONAL MANAGEMENT

This short Memorandum was produced by a working party consisting of Drs G. C. Timbury (Convener), M. Markowe, B. Ward, W. A. L. Bowen, J. Reid and J. Fraser-Steele at the request of the Executive and Finance Committee of the College and was subsequently endorsed by Council for publication in *News and Notes* in the hope of stimulating discussion on the management of psychiatric hospitals and units with particular emphasis on the contribution of the psychiatrist. The document suggests that in each unit or hospital a member of the medical staff should have clearly defined duties in medical administration. Comments on the Memorandum would be welcomed and should be addressed to the Registrar.

Recent developments in the organization of the Health Service have fundamentally altered the management of psychiatric hospitals. Although their ultimate future is uncertain it is now clear that such hospitals will continue in use for many years (*Better Services for the Mentally Ill* Cmnd 6233, October 1975).

The psychiatrists who will work in mental hospitals for the next twenty years or more are therefore concerned that these institutions should be managed in the best possible way—to the advantage of the patients and in keeping with current developments in psychiatric practice.

The post of Physician-Superintendent has disappeared from many hospitals (particularly in England and Wales), and even where it has been retained the Chairman of the Division of Psychiatry will often have assumed some of the duties formerly performed by the Superintendent.

Present arrangements for nursing management have also altered the responsibility of the former 'Matron', and on the administrative side there has also been an extension of 'line management', so that the post of hospital secretary has disappeared and in most cases the day-to-day administration of the institution is in the hands of a sector or unit administrator. The sector administrator will usually be involved in some duties outside the psychiatric service. While these managerial developments may have improved the running of hospitals and the maintenance of hospital property and may have improved aspects of the 'hotel service' to patients, it has become increasingly difficult to co-ordinate departments in the hospital, and in this sense the achievement of integration of services at local level and a 'therapeutic community' has become more difficult—some might say impossible.

It appears, therefore, that there is a need for closer study of the leadership role of the psychiatrist in institutional management and a definition of his functions in relation to members of other disciplines.

Shared responsibility—when this ensures the optimum contribution from staff of all disciplines—is essential, but committees do not execute policy, and there is a case for giving certain executive tasks in the mental hospital to an appointed or clearly designated member of the medical staff. This person will, in most circumstances, be the Chairman of the Division of Psychiatry or the Physician-Super-

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