Finance Committee

Inquiries into Deaths (Scotland) Bill

Submission from The Royal College of Psychiatrists in Scotland

Response

We note that you are inviting comments on the Inquiries into Deaths (Scotland) Bill proposed by Patricia Ferguson MSP. The Royal College of Psychiatrists in Scotland previously outlined concerns at the proposal to have a mandatory Fatal Accident Inquiry into all deaths of people in custody, including those people detained under mental health legislation. We were therefore surprised to see this has been proposed again in this Private Members’ Bill. Our concerns largely relate to the burden these additional FAIs would place on the medical workforce in terms of both financial and workload implications making the proposal unworkable. We can only refer you to our previous response to the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill and we enclose it with this email. (please see below)

If we can be of any further assistance do not hesitate to contact us. We realise that this response has missed the official deadline but we hope you will still consider it.

DATE: September 2014

RESPONSE OF: The Royal College of Psychiatrists in Scotland

RESPONSE TO: Scottish Government Consultation on Fatal Accident Enquiries Legislation

This response was prepared by the Royal College of Psychiatrists in Scotland.

The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in psychiatry.

Chapter 2: Mandatory categories of FAIs

Question 5b

There is strong support within the membership of the College for option 5b.

The Mental Welfare Commission is already automatically informed of any deaths of detained patients and has the discretionary option of holding an inquiry.
There is already a requirement to report suicides, sudden unexplained deaths and deaths where there is a concern about healthcare contributing to the death to the Procurator Fiscal who has the discretion to hold a Fatal Accident Inquiry. If there is a requirement to report to the Procurator Fiscal deaths of all those detained under the Mental Health Act or the Criminal Procedure (Scotland) Act 1995 then there is a strong view that the discretionary power to have a FAI would be a sufficient safeguard. There would be little public interest in having an automatic FAI for a patient who dies an expected death from an unrelated physical health problem.

A Recent Mental Welfare Commission report on deaths in people subject to compulsory treatment under the Mental Health (Care and Treatment) (Scotland) Act 2003 shows no evidence of excess mortality for patients detained under the Act.\(^1\) The report also shows that many patients are not in hospital at the time of their death, and around half die from natural causes.\(^2\) Mortality rates for detained patients are no worse that rates for other patients who have been treated for a mental health condition.\(^3\)

Figures from the Department of Psychological Medicine at the Royal Infirmary of Edinburgh confirm this pattern and raises concerns that a mandatory FAI requirement would be held on patients who were already in General Hospitals (rather than psychiatric hospitals) for treatment of physical health problems.

- In the period March 2006 – July 2014 the department saw 8083 cases on RIE wards\(^4\)
- 343 of these cases (4.24%) died while inpatients during the same admission in which they were seen by DPM.
- 425 of these patients (5.26%) were detained under MHA at some point during their admission.
- 18 patients (0.22%) who were, or had been, detained died during the same admission died.
- The breakdown of detentions for these 18 was: EDO 6, STDO 10, CTO 2.\(^5\)

The view of members was that the details of someone’s physical health should not automatically be publically aired simply because they were detained under

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\(^1\) Mental Welfare Commission for Scotland *Death in Detention Monitoring*  
http://www.mwcscot.org.uk/media/175822/death_in_detention_final.pdf  
\(^2\) *ibid* p.3, of the 78 individuals who died 32 were in the community at the time of their death.  
\(^3\) *ibid* p.7, 7.4 per 1000 vs. 8.5 per 1000  
\(^4\) Excluding the self harm service  
\(^5\) In some of these patients their detention may have been revoked prior to their death but the data set cannot confirm this.
legislation for their mental health problems. Making an FAI mandatory in all such cases was viewed as unduly legalistic, in that it will impose large numbers of elaborate, expensive and drawn-out judicial procedures upon families, clinicians and services with no discernable benefit in prospect to justify it. Procurator Fiscal's already have the discretion to hold FAIs when they deem this to be in the Public interest and the focus should be on reducing the delay in FAI, which can stretch to several years in some cases, rather than increasing the numbers of automatic FAIs.