Tom Todd (Individual)

Mental Health (Scotland) Bill

Summary

A number of opportunities are described to improve details of The Bill. These relate to the fact that many people who suffer from a mental disorder have the disorder only temporarily, and at other times are capable of making their own decisions in relation to how they wish the disorder to be managed.

Comments

Do you agree with the general policy direction set by the Bill?

The overarching objective of the Bill is stated as: ‘to help people with a mental disorder to access effective treatment quickly and easily.’

I agree with this.

In doing so, I believe that The Bill, either implicitly or explicitly:

a) has, as a key objective, the building of trust between the person with the mental disorder and those assisting in accessing and providing treatment;

b) recognises that treatment shall be provided within the scope of Human Rights legislation and guidance;

c) recognises that treatment that ‘effectively’ addresses one issue may lead to expression of another undesirable issue. In such instances, evaluation of ‘overall effectiveness’ may not be able to be agreed upon objectively. For example, administration of medication associated with reducing acute episodes of mania may also be associated with the emergence of chronic akathisia. In some instances, treatment that is considered ‘effective’ with respect to diminution of symptoms associated with the mental disorder may be considered inappropriate as a result of the association with other effects produced. The subjective views of individuals being treated shall be considered paramount, and particularly when expressed in an advance statement.

Do you have any comments on specific proposals regarding amendments to the Mental Health (Care and Treatment) Scotland Act 2003 as set out in Part 1 of the Bill?

95.

I would like to draw attention to terminology used in Paragraph 95, where it is stated that ‘the individual has…thus shown a willingness to participate in their treatment’.

By means of the advance statement, the individual being treated is explicitly expressing their right to say how (and in certain circumstances if) they want to be treated, in the same way that someone suffering from, say cancer or a
broken leg, might. The use of the word ‘willingness’ is therefore inappropriate and may show that the writer hasn’t appreciated the **rights** of the individual to unequivocally let their wishes be known. To be clear: they are not showing a ‘willingness’, but expressing their wishes, consistent with their Human Rights. Those giving the treatment should then be obliged to either respect those advance statement details (Rights), or be able to offer a rationale as to why they did not.

96. The above comment for 95. also applies to Paragraph 96, where it is stated ‘…where an individual has completed an advance statement and thus shown a willingness to participate in their treatment.’

It is further recommended that Paragraph 96 should be amended to add that ‘there shall be an obligation on those making assessments for potential provision of treatment to access and fully respect details in advance statements, or be able to provide a clear, and legal, rationale as to why they did not.’

Do you have any comments on the provisions in Part 2 of the Bill on criminal cases?

No.

Do you have any comments to make on Part 3 of the Bill and the introduction of a victim notification scheme for mentally disordered offenders?

No.

Is there anything from The McManus Report that’s not been addressed in the Bill and that you consider merits inclusion in primary legislation? If so, please set out why.

No.

Do you have any other comment to make about the Bill not already covered in your answers to the questions above?

No.

**Tom Todd**  
August 2014