The Scottish Independent Advocacy Alliance

Mental Health (Scotland) Bill

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

The Mental Health (Care & Treatment) (Scotland) Act 2003 is based on the Millan Principles which give it a clear rights based framework. We would like to see the Bill reiterate a commitment to these Principles. We are aware that low levels of awareness around the Millan Principles remain and steps should be taken to raise awareness about them amongst services users, carers and practitioners. As well as a lack of awareness of these Principles we understand that service users are not always aware of their rights such as Advance Statements, Named Person and Independent Advocacy. This is of major concern and is clearly highlighted in research published by the Mental Welfare Commission\(^1\) which showed that few participants knew about these important safeguards.

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

**Tribunal timescales** - We would find it useful to have more information about the proposal to extend the time that the Tribunal has to organise a hearing from 5 to 10 days. We are concerned that the impact of such a change could lead to individuals being detained without external scrutiny for extensive periods of time.

**MHO duty to inform about independent advocacy** - We believe that the requirement as described in section 2 an MHO extending an order to tell the individual about advocacy where practicable should be changed. It is important that the Bill gives a consistent message about the duty placed on practitioners to tell service users about independent advocacy. Early findings from our own research due to be published in the autumn show that service users are not always routinely told about their right to access independent advocacy timeously. Different groups repeatedly stated that if they had been told about advocacy earlier it would have helped them better understand their rights and what was happening to them.

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Section 3.- We believe that if a person is detained for up to 72 hours and hospital managers have a duty to inform the Mental Welfare Commission then they should also have a duty to inform that person’s carers or nearest relative.

Section 11 -12 - We would like to see mention of when the regulations regarding appeals against excessive security will be introduced. In addition we believe that people in low secure facilities should have the right to such an appeal.

Section 14 - We note that the Bill proposes the extension of nurses holding power from 2 to 3 hours. We feel that reasons for this extension should be made clear.

Section 15 - We further note that the Bill proposes a substantial reduction of the time limit for making an appeal against transfer to a state hospital to the Tribunal from 12 weeks to 28 days. We believe that reasons and evidence for this change should be included in the Explanatory notes.

Named Person - We believe that an ‘opt in’ system for appointing a Named Person is better and ensures that the individual has full control in the situation and we are concerned that the default Named Person has not been completely removed as per the McManus recommendation. We believe that when an individual appoints a Named Person their MHO or RMO should have a duty to also discuss the benefits of an Advance Statement and Independent Advocacy. We believe that there should be effective support and training available for a person appointed as a Named Person.

Although the Named Person has a right to access legal representation we believe that they should also have a right to access independent advocacy. In addition we feel that consideration needs to be given to children over the age of 12 being able to appoint a Named Person. The other recommendations made by McManus regarding consulting the Named Person on the care plan and being notified about an individual being taken to a place of safety should be included in the Bill.

Advance Statements - We believe it should be as easy as possible for a person to make an Advance Statement. We know that many individuals find out about Advance Statements and receive help from their independent advocate when considering whether they wish to make one and when drawing one up.
We believe that a person should have the option not to submit their Advance Statement with the MWC if they so choose. We are concerned about who will have access to Advance Statements held by the MWC. There needs to be clarity about whether the MWC will hold a register of everyone who has an Advance Statement or will hold the full Advance Statement. If they have the full Advance Statement then there needs to be careful consideration given to who has access to the details.

When an Advance Statement is overridden there should be a duty on the RMO to meet with the individual to explain the reasons for such an override. This would help the individual to better understand how the Advance Statement can be strengthened in the future.

In the instance of an individual not having an Advance Statement and being in the process of being discharged from hospital there should be a duty on the RMO to discuss the importance of having an Advance Statement. The value of an Advance Statement should be raised with the individual as part of the aftercare discussions. This would fit with the McManus recommendation regarding the promotion of Advance Statements.

**Section 25** - We do not support this proposal and are concerned about the treatment of a patient who has absconded especially if they do not have access to independent advocacy if they are in other parts of the UK.

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

**Section 29** - We do not support the extension of the assessment order from 7 to 14 days without clear evidence.

4. **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?**

We would like to see a clear statement regarding minor offences committed by individuals with a mental disorder not being included in the victim notification scheme. Also we are concerned about the Power of Ministers to vary section 48 and would like to see clarification around this.
5. Is there anything from the McManus Report that’s not been addressed in the Bill and that you consider merits inclusion in primary legislation?

The SIAA is concerned that the McManus Report highlighted a number of issues regarding access to independent advocacy including appropriate levels of provision, adherence to the SIAA good practice guidance, collective advocacy and advocacy for carers. It is disappointing to see that almost a decade after the legislation was introduced we still have people with a statutory right unable to access independent advocacy for one reason or another. We call for the Bill to make provision for more scrutiny of the implementation of section 259 regarding independent advocacy.

We are in the process of finalising our biennial research into the national funding and provision of advocacy in Scotland. Early findings indicate that overall funding for the 2013-2014 year may be, in real terms, 5% lower than for the 2011-2012 year, most organisations report a standstill or reduced budget. Meanwhile demand for advocacy has increased by over 5% in the same period.

Role of advocacy commissioners
We believe that consideration needs to be given to the strengthening of the duty placed on NHS Boards and partner Local Authorities to ensure availability of independent advocacy in their areas.

We have concerns about some commissioners not following the Independent Advocacy: A Guide for Commissioners (2013) regarding all aspects of strategic planning including;

- Clarity about the definition of independent advocacy – we are still encountering different definitions of independent advocacy that don’t fit with the legislation. As a consequence there are still some areas that don’t meet the statutory requirements regarding access to independent advocacy.
- Commissioning – there are still many variances in commissioning practice that don’t always consider the strength of small user led organisations
- Planning – in some areas there is very little evidence of effective planning for the development of advocacy.
- Consultation with service users – in some areas there is very little evidence of meaningful and effective consultation with users about advocacy provision.
- User involvement – we are still to see effective and meaningful user involvement in some areas.
• Realistic levels of funding for the population – advocacy organisations report levels of funding that do not effectively cover the populations they serve.

• Sustainable funding levels – from both statutory and non-statutory sources. We know that independent funders and trusts are reluctant to fund organisations that do not have guaranteed core funding for a reasonable amount of time.

• Monitoring – we know that in some areas there is little or no effective, meaningful, qualitative outcome focused monitoring of the advocacy delivered.

• Evaluation – organisations report that funding for external evaluation is often not included in their funding.

• Ongoing support – some organisations report that there is little ongoing support from commissioners and funders.

We are concerned about quality assurance at the strategic level of planning; there isn’t any monitoring of strategic plans which should be produced every 3 years. Some commissioners do produce them some don’t.

Some organisations report that monitoring is either non-existent or purely quantitative and does not consider impact or advocacy outcomes.

We believe that the Mental Welfare Commission should have a role in monitoring the planning and commissioning of independent advocacy to ensure that this is done in a manner compliant with the Independent Advocacy: A Guide for Commissioners (2013).

**Access to advocacy**

Currently the legislation is not being followed in some areas. For example many organisations have reported that their Service Level Agreement requires that they prioritise people subject to compulsory measures under the Mental Health Act. As a result of this, along with the reduced budgets and increased demand, they have been forced to introduce waiting lists which can involve lengthy waits, sometimes for as long as several weeks for people with mental disorder not facing compulsion.

There are also reports about misunderstanding of the right of access to advocacy amongst some commissioners who appear to believe that only people who are detained have a right of access.
We are increasingly receiving calls from parents with mental disorder facing child protection issues who need advocacy support but are unable to access it. This can be due either to the requirement placed on their local advocacy organisation to prioritise those facing compulsory measures or, because of waiting lists and high demand their local advocacy provider cannot respond in what can often be a fairly short time span to support them through the process.

While independent advocacy is available to some degree for all adults with a mental disorder in almost all areas of Scotland the situation is very different for children with a mental disorder. Many areas of Scotland do not have independent advocacy provision for children with either learning disability or mental health problems. Even children, who are detained, in some areas, do not have access to independent advocacy.

There is only limited access to collective advocacy across Scotland. In some areas advocacy organisations providing one to one advocacy have gone on to develop collective advocacy in addition but gaps in provision remain.

There is still a great deal of confusion regarding the definition of independent advocacy. The definition in the Act is clear, the accompanying Code of Practice states

‘Independent advocacy should be provided by an organisation whose sole role is independent advocacy or whose other tasks either complement, or do not conflict with, the provision of independent advocacy. If the independent advocacy service or advocate has a conflict of interest, they should inform all relevant parties of this, and should withdraw from acting for the patient.’

We believe that the MWC should have a role in monitoring availability of and access to independent advocacy.

Quality assurance
We are concerned about a situation arising in response to the Social Care (Self-directed Support) (Scotland) Act 2013. Reports are coming from a number of areas about organisations and individuals who are advertising or wish to advertise that they provide independent advocacy which can be purchased by service users by means of Direct Payments. We are concerned that some of the most vulnerable people who need advocacy are also going to be the least likely to be able to afford it.

We believe that independent advocacy should be free at the point of access therefore this development could leave vulnerable individuals open to exploitation. The Social Care (Self-directed Support) (Scotland) Act 2013 refers
to independent advocacy as defined in the Mental Health (Care & Treatment) (Scotland) Act 2003. The SIAA Principles & Standards for Independent Advocacy clearly state the importance of being ‘accountable’ and ‘free from conflicts of interests’ as key components of high quality advocacy. We believe that the robust systems in place for the procurement of independent advocacy need to be strengthened in this context in order to safeguard vulnerable groups.

We feel that the proposed Mental Health Bill is an important opportunity to reinforce the duties on Local Authorities and NHS Boards and to ensure that everyone is clear on the definition of independent advocacy and the structures within which it can be provided. Ultimately we want to see the right of access to high quality independent advocacy for everyone covered by legislation become a reality. We believe that the role of ensuring access to good quality independent advocacy for all with a mental disorder should be covered within the remit of the MWC.

We hope to have an opportunity to discuss our response and further evidence with the Committee.

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The Scottish Independent Advocacy Alliance (SIAA) is Scotland’s national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland. SIAA is a Scottish Charitable Incorporated Organisation Charity number SC033576 – London House, 20-22 East London Street, Edinburgh EH7 4BQ 0131 556 6443 | enquiry@siaa.org.uk www.siaa.org.uk