

## COSLA

### Supplementary evidence on the Mental Health (Scotland) Bill 2014

#### Introduction

1. COSLA recently participated in a Health and Sport Committee oral evidence session, convened to support scrutiny of the Mental Health (Scotland) Bill 2014. At that session, COSLA raised a number of issues in relation to discrepancies within the Bill documentation and the resulting questions this raises over the accuracy of Financial Memorandum estimates of potential costs to councils. It was agreed COSLA would provide further written detail on potential costs to councils, and this is provided below along with some background information on COSLA's policy position on the Bill.

#### Background – pre-existing pressures on the MHO workforce

2. Our initial perspective is that many of the proposed duties and responsibilities are welcome in the interests of good practice, strengthening and extending existing safeguarding functions, and improving assessment options for individual councils and professional associations. However, the introduction of new statutory duties on local authority mental health officers (MHOs) to prepare reports for a tribunal hearing places another burden on an already overstretched and limited resource. There is a risk that proposals to require these reports, while welcome in policy terms, will result in an increased burden on local authorities.
3. New duties need to be considered against the backdrop of historic pressure on MHO capacity arising from the Adults With Incapacity Act, which introduced a demand-led system over which local authorities have no control. Since the Act's introduction, there has been a year on year increase in MHO workload arising from AWI duties. For example, guardianship applications have been increasing by 10-12% per annum since 2000<sup>1</sup>, and there are questions over whether the funding originally provided was sufficient. This burgeoning demand is occurring within the context of *reducing* MHO capacity. The Scottish Social Services Council recently published a report which showed that the MHO workforce is shrinking. It reduced by 3.4% between 2012 and 2013, and is now the same size as in 2008 despite increasing demand. Moreover, the workforce is ageing; about three-quarters of MHOs are over 44 years old, and one in three MHOs is 55 or older, meaning many will be retiring and recruitment has not kept pace.<sup>2</sup>
4. Furthermore, the Scottish Law Centre published a report earlier in October which recommends changes to AWI legislation, to ensure compliance with the ECHR, which would significantly increase burdens on MHOs<sup>3</sup>. The report proposes new AWI legislation to ensure compliance with Article 5 of the ECHR on deprivation of liberty. This would require local authorities and health boards to implement formal schemes for the 'authorisation of significant restriction of liberty'. Such schemes would require increased use of guardianship and so would place a significant additional burden on MHOs in the form of increased guardian applications and new MHO reports.
5. All of these points underpin COSLA's support for the Mental Welfare Commission's call for a national strategy on recruitment, training and retention. We are aware that the Scottish

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<sup>1</sup> Annual AWI Monitoring Reports, Mental Welfare Commission, <http://www.mwscot.org.uk/publications/statistical-monitoring-reports/>

<sup>2</sup> *Mental Health Officers Report (2013)*, Scottish Social Services Council, October 2014.

<sup>3</sup> *Report on Adults with Incapacity*, SCOTLAWCOM No.240, Scottish Law Commission, October 2014.

Government Chief Social Work Adviser is carrying out work that will consider the role of MHOs as part of wider work on developing future social work strategy. The Committee may wish to reflect on whether the scope of this work will provide sufficient information about current and future resourcing to support the development of a robust strategy going forwards. COSLA would assert that any national strategy on recruitment, training and retention must be based on a fundamental review of MHO workload and capacity; this should include consideration of the wider policy and legislative landscape, what this means for longer-term capacity requirements, and how those requirements will be resourced.

6. In the interim, there is a case for the position that there should be no new duties which place an additional burden on MHOs until this work has been carried out and sufficient resources are in place to support change going forwards. Should Parliament nonetheless decide to proceed with new duties, the resulting financial burdens on local authorities must be properly understood and funded in full by the Scottish Government.

### **Scope of the Bill**

7. The Bill proposals in relation to additional duties on Mental Health Officers (MHOs) are not clear due to inconsistencies between the various documents published with the Bill, and as a result, nor are the financial implications. COSLA is seeking clarification from Scottish Government regarding this inconsistency, but irrespective of the response, the Financial Memorandum significantly underestimates the financial implications of the Bill as currently drafted.
8. Specifically, the Bill explanatory notes (page 5, paragraph 13) which deal with section 2 of the Bill regarding hearings relating to compulsory treatment orders, suggest that an MHO report will be required in any of three different circumstances – where there is a change of diagnosis, where the MHO disagrees with the determination, or when the tribunal has not the compulsory treatment order within a certain timeframe. However the financial memorandum (page 34, paragraph 32) suggests a report will only be required in one of those circumstances – where the MHO disagrees with the determination. It estimates this to occur in about 20 cases per year, and goes on to give estimates of costs based on that incorrect narrower scope.
9. The same discrepancy exists in respect of section 41 of the Bill, which would introduce a requirement for an MHO report in relation to compulsion or compulsion and restriction order hearings. The FM estimates these to be 'less than 20' per annum. Again, the financial memorandum estimates are based on a narrower set of duties than described within the Bill.
10. Both the Mental Welfare Commission (MWC) and the Mental Health Tribunal for Scotland (MHTS) have also highlighted these discrepancies in their responses to the Health and Sport Committee. The Mental Health Tribunal for Scotland clearly states, in paragraph 16 of its response, that reports will be "triggered more often than is anticipated by the FM, and so the costs involved will be greater than those estimated."<sup>4</sup>

### **Resource Implications**

11. The financial memorandum uses a unit cost per report of £475, provided by Social Work Scotland, and an estimate of 20 reports per annum to arrive at cost to councils of £9000 – although this would actually give a figure of £9,500. The 'less than 20' reports it assumes for s41 are written off as absorbable. As noted by COSLA and others, including the MWC, these figures are based on an incorrect interpretation of the Bill duties.

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<sup>4</sup> Mental Health Tribunal for Scotland evidence submission, paragraph 16.

[http://www.scottish.parliament.uk/S4\\_HealthandSportCommittee/Mental\\_Health\\_Tribunal\\_for\\_Scotland.pdf](http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Mental_Health_Tribunal_for_Scotland.pdf)

12. COSLA's submission to the Finance Committee indicated that the number of additional MHO reports could be as high as 1800, but that additional time was required to conduct further and these figures would need to be re-visited. COSLA has since obtained hearings data, for the financial year 2012/13, from MHTS and these show that the actual number of hearings where a report would be required under s. 2 of the Bill are 493. The provisions under s.41 would add a further 100.<sup>5</sup> This gives a total of 593, not somewhere between 20 and 40 as the financial memorandum states. Assuming a unit cost of £475, this would give a total cost of £281,675.

13. However, even the figure of £281,675 may not be an accurate reflection of the full costs to councils for four main reasons:

i. Travel costs

The unit cost of £475 does not allow for travel costs, which can be considerable in some cases – for example where an MHO is required to carry out visits to a person's home, a hospital, or a prison, as part of gathering the information needed to be able to prepare a report. These costs will obviously vary a great deal across the country and are likely to be higher in rural areas. Estimates from our members ranged from £575 per report, to £675 (including travel).

ii. Differential complexity of orders

The unit costs of compulsion and restriction orders can be significantly higher than the £475 estimate which the financial memorandum applies to reports across the board. Compulsion and restriction orders are more complex than other types of orders and consequentially can require more MHO time. Estimates from our members ranged from agreement with the £475 figure (*excluding* travel), to £847 per report.

iii. Bill measures not considered by the financial memorandum

The financial memorandum does not include any estimated costs for new provisions introduced under sections 22 and 26 of the Bill. Section 22 extends the requirement for an appropriate person (often the MHO) to arrange assistance for people with communication difficulties, from not only those who are the subject of certain orders, but also to those who are subject to an application for these orders. Our members have indicated that the costs associated with this are difficult to estimate and further work will be required to estimate costs across Scotland.

Section 26 introduces a new requirement for an MHO to agree before a transfer for treatment direction can be used (to remove someone from prison to hospital). This will normally require an MHO to visit the relevant prison, sometimes on more than one occasion. Given the distribution of prisons across Scotland, this is likely to require significant travel in many cases. Cost estimates from our members vary due to local circumstances, but the most commonly-reported figure was between £500 and £600. Estimates of the number of cases in each council where this is likely to apply ranged from two to ten, meaning the costs across Scotland could be significantly more than for the other measures which merited inclusion in the financial memorandum.

Individual members also highlighted a range of other costs that could arise as a result various measures within the Bill. There is no clear pattern in relation to

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<sup>5</sup> Mental Health Tribunal for Scotland, case management database information request response, 30/09/2014

these costs, with different councils highlighting different issues – for example in relation to removal orders and named person requirements, and including a need for requirement for additional MHO posts with admin support. This suggests that costs are likely to impact differentially across councils, due to varying local circumstances, and that further work to scope these costs is required.

iv. Year-on year fluctuations

All of the additional costs outlined above, will be subject to year-on-year variations and these need to be taken in to account when estimating future costs. The financial memorandum considered a snap-shot of demand, during 2012/13. Looking at the most resource intensive measures – i.e. new duties on MHOs in relation to compulsion and retention orders, reveals a 120% increase from 2012/13 to 2013/14. Similarly, compulsion orders also increased by 30% over the same period.<sup>6</sup> Compulsion and treatment orders have shown a more erratic pattern over recent years, suggesting future sharp increases cannot be ruled out. These fluctuations will have the effect of multiplying the additional costs described above, and there is a need to consider demand in a more robust manner by using a wider range of historical data to arrive at future demand projections.

## Conclusion

14. In summary, although many of the policy intentions within the Bill are broadly welcomed, COSLA has significant concerns about the burden these will place on an already overstretched and limited resource. As previously noted, many of these concerns are shared by others, including the Mental Health Tribunal for Scotland and the Mental Welfare Commission.<sup>7</sup> COSLA is also concerned that the scope of new duties on MHOs is unclear at this stage, with the financial memorandum and Bill explanatory notes disagreeing on the scope of duties. However, it is clear that the additional cost set out in the financial memorandum is an underestimation of the costs associated with the measures contained in the actual Bill.
15. Given that the introduction of new statutory duties on local authority MHO's places a significant burden on a workforce which is already facing capacity problems, COSLA is requesting a fundamental review of MHO workload and capacity is carried out. Moreover, this review should include consideration of the wider policy and legislative landscape, what this means for longer-term capacity requirements, and how those requirements will be resourced. Should Parliament then decide to proceed with new duties, the resulting financial burdens on local authorities must be properly understood and funded in full by the Scottish Government.

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<sup>6</sup> Mental Health Tribunal for Scotland, case management database information request response, 30/09/2014

<sup>7</sup> See respective evidence submissions to Health and Sport Committee - <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/81287.aspx>