The ALLIANCE

Mental Health (Scotland) Bill

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together over 700 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals.

The ALLIANCE welcomes the Health and Sport Committee’s call for evidence on the Mental Health (Scotland) Bill. Following publication of the draft Bill earlier this year, the ALLIANCE convened a small group of members who are keen to help shape policy that produces the best outcomes for Scotland’s people and communities.

Consultation Questions

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

No. Generally, the provisions included in the Bill do not appear to be person-centred in their approach and make a number of administrative duties in isolation of the person and their rights. This is out of step with both the international context – for example, the Convention on the Rights of Persons with Disabilities (UNCRPD)\(^1\) and the recent direction of travel in Scotland, e.g. the Mental Health Strategy for Scotland 2012-15\(^2\), development of the recovery approach, the emphasis placed on person-centredness in the broader 2020 Vision and the Route Map to the 2020 Vision\(^3\) and the Scottish National Action Plan on Human Rights\(^4\).

The provisions of the Bill must reflect the shift in policy towards co-production and people being equal and active partners in their health and care. Co-production can describe partnership at the individual level but it is also about involving people in decisions about the design and delivery of services. This is an essential mechanism for producing models, services and systems that are person-centred.

We must ensure a balance continues between a person being supported to make their own decisions against decisions being taken away from them. Moves towards the empowerment of people’s voices must apply equally in


relation to people with mental health problems as it does to all other groups of people who use health and social care services.

Our members have expressed a general concern that if the provisions are enacted they are likely to lead to a loss of rights for people with mental health problems with very little justification.

2. 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?

Advance statements

Our members have expressed concern about the legal status of advance statements and whether medical staff paid attention to what was included in them. Placing a copy of this in the person’s medical records, as proposed by the Bill, will not make certain that it is proactively used and a further duty is required to ensure that this happens. Behaviour in relation to advance statements needs to be better researched and monitored so that they can play a much bigger role for people who would benefit from having one.

Advance statements should be promoted as a positive means of the individual saying what helps and what doesn’t help them to be well as part of a recovery plan. However, people are not always clear and confident about the legislation and can hide behind it and this encourages risk adverse behaviour. We should be countering this by linking tools like advance statements to the self management agenda and recovery approach and encouraging people positively to take ownership and responsibility for their condition. People must be able to have confidence that they will be supported to do this and that their views and wishes will not simply be overturned or ignored when they are unwell.

The low numbers of advance statements are a cause for concern and we believe that greater efforts are required into increasing their use. Anecdotal evidence suggests that take up is lessened because when people are well, often they do not want to think about the possibility of becoming unwell again. In addition to the points made above, the ALLIANCE believes that research and action must be carried out into:

- The barriers to completing an advance statement
- The number of advance statements that exist
- How many are overturned
• Actions that will encourage further take up of the advance statement process.

This must be followed by detailed recommendations and urgent action by the Scottish Government to increase the numbers of advance statements.

Advance statements can be a very positive tool but they need to be introduced to people as part of a collaborative goal setting process/personal outcomes focused discussion. This doesn’t happen enough at present and the system doesn’t encourage this type of interaction. Practitioners often do not have the skills or capacity for this type of personal outcomes approach or to encourage the writing of advance statements and often medical practitioners do not look at advanced statements until after treatment has been given. Practitioners need to be supported to adopt a personal outcomes approach and have conversations with people about what matters to them, the support they need and how they can put in place advance statements when they are well to ensure their views remain central at times when they are ill.

There is a fundamental inequity between people who have mental health conditions and others. For example, if someone has a terminal illness they have the right to refuse treatment, but this is not the case with a mental health diagnosis. Even where advance statements exist the views of the person are not always taken into account in decisions about treatment.

Role of the Mental Welfare Commission

The Bill proposes that a copy of advance statements be sent to the Mental Welfare Commission (MWC) who will hold a central register of advance statements. Many people do not understand the role of the Mental Welfare Commission – and believe that it deals with complaints. Whilst we recognise that the low take up of advance statements is an issue we are concerned that many people could be put off making an advance statement if these are shared through a central register managed by the MWC. It will be important to have clarity on how the advance statements will be held and who will have access to their contents. The person themselves should be allowed to decide who is able to access their advance statement.

Witnessing of advance statements

Under the Mental Health (Care and Treatment) Act 2003, all advance statements must be witnessed to certify in writing that the person making the statement has the capacity to do so. The Act set out that only the following witnesses were eligible:
Clinical psychologists entered on the British Psychological Society’s register of chartered psychologists
Medical practitioners
Occupational therapists registered with the Health Professions Council
Persons working in, or managing, a care service
Registered nurses
Social workers
Solicitors.

We believe that this is highly medicalised in its approach and wish to see these rules extended to consider reviewing the list of people eligible to sign such a witness statement. This should include peer support workers.

Named persons

Having a named person should be a safeguard and can bring forward valuable information, particularly when a person is unwell. However, the ALLIANCE is concerned that at present many people are asked about the named person when they are ill rather than when they are well.

In circumstances where the named person is informed of their right to legal representation and advice (subject to local advocacy advice criteria) this process can work quite well. However, this is often not the case and people need more information about the role of the named person. This is particularly the case for carers, many of who want named person status so that they are properly informed and included in discussions. However, carers should be respected and have their views taken into account, anyway, in line with the spirit of the principles included on the face of the 2003 Act.

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

No comments.

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?

The ALLIANCE is concerned about the possible inequity of these changes and the possibility of a perpetuation of the stigma that already exists about Mentally Disordered Offenders. Balancing the rights of these two groups – offenders and victims – is a difficult process – but this should be addressed in
the same way for all offenders, regardless of whether the offender is a Mentally Disordered Offender.

Further detail is required about how information will be disclosed to a victim as where people have to live in a certain place as a condition of their treatment there is a possibility that their right to privacy could be undermined by these proposals. The Scottish Government must outline how this will be respected.

The ALLIANCE believes that further consideration is also required on how disclosure of information about release would work in relation to the staged release/rehabilitation approaches that are increasingly common i.e. if someone was being allowed out a day at a time would the victim be informed on every occasion?

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? If so, please set out why.**

During our discussions with ALLIANCE members, many expressed concern that despite publication of the Limited Review of the Mental Health (Care and Treatment) (Scotland) Act\(^5\) in 2009 (the McManus Report), very few of its recommendations are included in the Bill and conversely, that there is a lot included in the Bill that was not included in the McManus Report.

The ALLIANCE is concerned that the consequence of this is that these proposals do not appear to be person-centred in their approach and make a number of administrative duties, apparently in isolation of the person and their rights. This is out of step with both the international context – for example, the Convention on the Rights of Persons with Disabilities (UNCRPD)\(^6\) and the recent direction of travel in Scotland, e.g. the Mental Health Strategy for Scotland 2012-15\(^7\), development of the recovery approach, the emphasis placed on person-centredness in the broader 2020 Vision and the Route Map to the 2020 Vision\(^8\) and the Scottish National Action Plan on Human Rights\(^9\).

There was a general concern expressed by members that if the proposals are enacted they are likely to lead to a loss of rights for people with mental health problems with very little justification. We would absolutely want to avoid a situation in which Scotland takes a regressive step in relation to rights and

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mental health, particularly when we are often held up as among the leading countries internationally in this regard.

**Independent Advocacy**

Given recommendations made in the McManus Report we are concerned to note that the command paper makes no reference to independent advocacy.

“The Government should by whatever means it sees fit, ensure that there is appropriate provision, with associated funding, across Scotland, of independent advocacy services by NHS Boards and local authorities to ensure that the requirements of s259 of the Act (Mental Health (Care & Treatment) (Scotland) Act 2003) are complied with in relation to all persons affected by mental disorder regardless of where they are and taking into account their specific needs.”

**Limited Review of the Mental Health (Care and Treatment) (Scotland) Act, Review Group chaired by Professor Jim McManus, 2009**

Advocacy helps people to express their own needs and make informed decisions as well as safeguarding people who are vulnerable or discriminated against or whom services find it difficult to support. Reference to independent advocacy would strengthen these proposals and safeguard the rights of people with mental health problems.

The 2003 Act set out a “right of access to independent advocacy” and there are organisations working across Scotland to support people with a “mental disorder”. However, despite the duty, access to advocacy varies from area to area and the duty is not being adhered to across the country. We believe that the Scottish Government needs to put in place stronger monitoring mechanisms and consequences for Health Boards and Local Authorities who do not meet this duty.

**The ALLIANCE**

**August 2014**

The ALLIANCE vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

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The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.

- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.

- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.