Carers Trust Scotland

Mental Health (Scotland) Bill

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

Carers Trust Scotland welcomes the Scottish Government’s efforts to amend the Mental Health (Care & Treatment) (Scotland) Act 2003 (the Act); however we do not agree with the overall policy direction set by this Bill. We feel that it is a very narrow, clinical approach, which does not help promote recovery of the service user or enhance the involvement of carers. As one of the guiding principles to the Act is “Respect for Carers”, we are disappointed to note the changes made in relation to Named Persons and role of carers within that (see answer below.)

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?

Opt out from having named person

Carers Trust Scotland agrees with this amendment as it places considerable stress on a carer if they are automatically appointed to a role they have no knowledge of. However we would have welcomed the inclusion that, where a service user is unable to appoint a named person, the carer (or nearest relative) should have an automatic right to appeal against orders, the extension of orders and against hospital transfers. This is in line with McManus recommendations, but also provides respect for carers and takes their views into account. We do not think, however, that the carer (or nearest relative) should act as named person, but should have certain powers to act (as outlined.)

Consent to being a named person

Carers Trust Scotland welcomes the amendment to the consent to being a named person (Sections 250, 251 and 257 of the Act). However we feel that the Scottish Government should take on board the recommendation within the McManus Report around a nationwide publicity campaign to highlight the role of named person and the need for consent to this. Otherwise there is a risk of a situation where a person thinks they are the named person but, due to there not being a signed and witnessed document to that effect, the person ceases to be the named person and therefore can play no part in tribunal proceedings.

Many carers report that the only time the role of named person is mentioned is at a point of compulsory powers being applied, or thought about. In many situations this does not give service user or carer time to think about what this role entails, and may not give time for written consent to be given and witnessed. Greater recognition to the need to promote role of named person would have been welcomed within this Mental Health Bill. Indeed it would have been preferable to have seen the inclusion of recommendation 4.11
from the McManus Report: “[A signed form for appointing a named person] should also contain a box setting out the consequences of appointing a named person, including sharing information. The box should be signed by the person nominating and confirm that the information set out in the box has been read out and the person signing it understands it.”

This would give greater safeguards to both the service user and the named person, particularly where the named person is the primary carer. We know that in situations where the primary carer becomes the named person there can be potential for conflict with the relationship; by clearly stating what is expected of the named person around sharing information, this potential situation could be reduced.

Carers Trust Scotland and many of the carers we support believe fervently in the inherent value of a named person’s right to be party to Tribunal hearings. There is clearly a need for more information to be provided about the role and functions of named persons, how this differs to role of primary carer and more support offered in order for the named person to be able to fulfil their role in a meaningful way.

*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.*

Carers Trust Scotland is disappointed to note that, in the proposed amendments, scant attention has been made to the McManus Report recommendations around named person. In particular we regret that recommendation 4.16, “A young person under the age of 16 who has adequate understanding of the consequences of appointing a named person should be able to do so”. We feel this does not respect the rights of a young person, especially where they have the capacity to consent (or otherwise) with medical treatments. By allowing the nomination of named persons to under 16 it would bring the Act into line with Age of Legal Capacity (Scotland) Act 1991, which allows a young person with capacity to decide about medical treatment. Carers Trust Scotland would have also welcomed the inclusion into the Bill recommendation 4.19 from the McManus Report: “The Scottish Government should draw up a Code of Practice for named persons, covering such matters as confidentiality.” This would have given service users and carers the chance to properly decide who to nominate, and whether to accept the nomination to act as named person.

We would welcome greater recognition to recommendations from the McManus Review that there should be a nationwide campaign to advise everyone about the role and function of the named person and consequences of appointing or not appointing one.

Overwhelmingly carers, Network Partners and Carers Trust Scotland would like to see the Scottish Government bring into force the Limited Review
recommendation 4.19\(^1\) that a Code of Practice for named persons be drawn up, covering matters such as confidentiality. Carers were concerned about the amount and nature of some of the information shared and would like to see this information shared only on a need to know basis, and on one which is relevant to the application being made.

We would also like to see the implementation of McManus’ recommendation 4.15, that a Mental Health Officer (MHO) should have a duty to consult with the Named Person on the proposed care plan. McManus further recommended that Named Persons should be notified when a person is taken to a place of safety – again, we would like to see this enacted.

**Carers Trust Scotland**

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