An Inadequate Bill

Both the Scottish Human Rights Commission (SHRC) and the Mental Welfare Commission for Scotland (MWC) make clear in their submissions to the Health and Sport Committee that the Mental Health (Scotland) Bill does not go far enough as far as amending the 2003 Mental Health Act is concerned.

The SHRC in its submission stated that it “believes that the Bill could go further to implement a number of the recommendations of the McManus review”. One of those recommendations is that there should be a review of the inclusion of learning disability in the 2003 Act. Given that the forced administration of psychiatric medication is unlikely to ameliorate either learning disability or autism, which is deemed to be a learning disability, this is a matter to which the Health and Sport Committee should give serious consideration. Oral evidence should be taken about this issue.

The MWC notes that at present there are three routes to non-consensual treatment and that there might shortly be a fourth. In its submission, it stated that “In our view, it is now time to review the overall framework for non-consensual care and treatment, to make it clearer, more consistent, and compatible with human rights norms”. The MWC, therefore, appears to be recommending that new incapacity legislation be formulated and that this should subsume the 2000 Adults with Incapacity Act, the 2003 Mental Health Act, the 2007 Adult Support and Protection Act and any new Act that might be enacted following proposals expected to emerge soon from the Scottish Law Commission. That recommendation is worthy of serious consideration but such a major piece of legislation is unlikely to be ready to present to Parliament in the near future. It is important, therefore that the Health and Sport Committee presses ahead and amends the 2003 Act taking due account of Article 12 of the UN Convention on the Rights of Persons with Disabilities together with the General Comment on that Article. Both the MWC and the SHRC agree that this is important as do, indeed, several others who have made submissions to the Health and Sport Committee.

In her submission to the Health and Sport Committee Anne Greig makes clear that she was detained for 72 hours in a psychiatric facility as a consequence of a warrant issued by a justice of the peace under section 117 of the 1984 Mental Health Act. That section authorised detention for a period not exceeding 72 hours. It should be noticed that the corresponding section in the 2003 Act (s 35) authorises detention for a period of only 3 hours “for the purposes of enabling a medical examination of the person to be carried out by the medical practitioner specified in the warrant”. This fact should be noted when the Health and Sport Committee consider whether a GP should be able to grant an emergency detention certificate which authorises detention for up to 72 hours to determine what (!) treatment should be provided to the patient whom he or she has sectioned. As I suggested in a previous paper, 72 hours
would appear to be an unnecessarily long period to determine whether an individual has a serious mental disorder which might benefit from treatment. The Health and Sport Committee should also take an interest in sections 33 and 34 of the 2003 Act together with the corresponding sections of the 2007 Adult Protection Act. The Committee should notice that by virtue of s 51 of the 2007 Act no appeal is competent against the granting of a removal order by a sheriff following an application by a council officer and that justices of the peace may also grant a removal order. I have had representations made to me from a young man in Macduff with Asperger's syndrome. He is concerned that he will be removed from his home as a result of an application from the Aberdeenshire council. In a letter to me he referred to a “shrink” who lives locally. He expressed the fear that the opinion of that person together with the opinion of Aberdeenshire social services would be accepted as the truth. While I do not know what the truth is, I am clear that this case is another example of Scottish mental health legislation making it too easy for people to be deprived of their liberty. Neither the 2003 Act nor the related 2007 Act requires the evidence to be tested in court prior to the forcible removal of an individual from his or her home; neither even requires the justice of the peace or the sheriff to give the adult allegedly at risk an opportunity to refute the allegations made. There appears to be the unwarranted assumption that, if given on oath, the allegations made by a mental health professional to a sheriff or a justice of the peace will always be factually accurate.

The Health and Sport Committee should recognise that much of what is in the 2003 Act is there because of advice received from psychiatrists, particularly from those in the MWC. In general, it seems that psychiatrists are in favour of legislation that makes it easy to detain non-compliant patients so that those patients can be treated in ways that the psychiatrists imagine, often wrongly, to be in their best interests. The Health and Sport Committee should amend the 2003 Act in ways that reduces the risk of an individual being wrongly deprived of his or her liberty and then subjected to unwanted, unpleasant and potentially harmful treatment.

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