People First (Scotland)

Mental Health (Scotland) Bill

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

The overarching objective of the Bill is stated in the policy memorandum as: to help people with a mental disorder to access effective treatment quickly and easily.

The experience of people with learning disabilities is that being identified as “mentally disordered” and included in an Act which clearly has, as its focus, the treatment of people with mental ill-health conditions, achieves quite the opposite for us. Intellectual impairment or learning disability is not a treatable condition and it is not a condition from which we will ever recover.

While we agree that some of the provisions of the Bill are sensible for people with mental health conditions, they are all misdirected in respect of people with a learning disability.

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?

Most of the proposed amendments are not major amendments to the meaning and purpose of the Act. As long as people with learning disabilities are considered to be mentally disordered and covered by the Act, we believe that there should be opportunity to appeal against excessive restriction in all settings (section 11) and not only high secure settings. Our experience is that even in settings categorised as low secure, the restrictions are very severe indeed and are subject to arbitrary and sudden change depending on which staff are on duty. In addition, we want to point out that Compulsion Orders and Compulsory treatment orders (relevant orders) are very differently applied to “patients” with learning disabilities than to people with mental health issues. For us, the Compulsion is always about where we’re allowed to go, what we’re allowed to do, what kinds of juice we’re allowed to have, whether we’re allowed to smoke, what toilets we may or may not use, when we can eat or drink, what TV programmes we’re allowed to watch. They are never about treatment as we would normally understand the word except to say that we must follow the guidance, advice or instruction of health services. What isn’t said is that instruction is usually about freedom of movement or activity or association and thereby removes nearly all of our human rights under the pretence of “treatment”.

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

We believe that the application of the term “mental disorder” to people with learning disabilities allows the criminal justice system to buy into the myth that the “disorder” (learning disability) is somehow the cause of any offence we might have committed. The provisions of the Criminal Procedures Act allow for us to be denied a full and fair hearing (Article 6, Right to a Fair Trial ECHR) and diverts us into the mental health system. This is quite simply wrong. In our meetings with the Procurator Fiscal’s service, it was clear that once we are diverted away from the justice system, there is
no interest in, or understanding about, what happens to us and it is simply assumed that we are being looked after, cared for and appropriately treated. This is not our view and it is not the view of people with learning disabilities who are detained or compelled in this way. It feels to them that they are imprisoned and punished for, usually, much longer than other citizens who have committed similar offences. We believe that all human beings should be entitled to a fair trial in open court with support to understand the proceedings and engage with them.

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 have no objection to this arrangement but we believe that victim notification where the offender has a learning disability should follow the same process as for any other offenders in the general population.

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.

We would wish to draw the Committee’s attention to page 74 of the McManus Report which says:

“Learning disability and the law Persons with learning disability complained to the Review Group about the inclusion of learning disability in the Act. We understand the Millan Committee recommended that this should be reviewed and that the then Government accepted this in its policy paper “Reviewing Mental Health Law”. Now, eight years on from Millan, the Review Group feels that it is time this was done.” P74

Now, a further five years on from the McManus Report, this recommendation has still not been addressed and we are told by civil servants and MSPs that there are “no plans to review the definition of mental disorder” and that allowing us to come out of the Mental Health Act and have a new piece of legislation covering learning disability is “not seen as desirable”.

This strikes us entirely dismissive of our argument. There is general acceptance that the Mental Health law in Scotland does not adequately address leaning disability and we are simply clumped together with people who have mental ill-health, for which they are treated and from which they can recover. We further believe that continuing to include us in the Act and refusing to listen to our claims of mistreatment and undue and excessive restriction places the Scottish Government in breach of its obligations under the European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities.

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