Justice Committee

Tribunals (Scotland) Bill

Written submission from Voices of Experience Scotland

Introduction

Voices of Experience Scotland (VOX) is the National Mental Health Service User Led charity funded by the Scottish Government and Comic Relief. We work in partnership with mental health and related services to ensure that service users get every opportunity to contribute positively to changes in the services that serve them and the wider society.

VOX supports individuals and service user led groups to ensure that their views are listened to. We have 345 Individual members, 12 Group Members and 8 Associate Group members (we have a fairly strict criteria for this grouping, must be service user led and must be following equal opportunities policies etc.) This means that we act for approximately 3500 people. Our work with Comic Relief is mainly founded on the equalities and human rights agenda and we have a role in promoting the community champion model.

General comments

Our member and group members represent user views and form the main part of the user and carer subgroup of the Mental Health Tribunal Sub Group, which is constituted to influence the working of the tribunal to take on user views.

Our members have worked with and continue to work with the Scottish Government Mental Health Division on the legislation, the subsequent creation of the MHTS and the McManus review and have continued to provide input into the running of the tribunal, selection of senior members and training of the majority of the membership through both formal and informal channels.

Many of the service users who act as general tribunal members are members of our organisation.

Two of our group member leads were members of the Millan Committee and the subsequent Mc Manus review of the mental health care and treatment act.

We work in partnership with European and International Leadership initiatives and it is through these ties that we know that we in Scotland are widely praised for our legislation in this jurisdiction, as well as for the inclusive approach of the whole mental health community from health and social work/social care in demonstrating genuine and effective partnership with the people who use the services and their carers creating an equitable landscape.

Tribunal reform has therefore figured highly and been an agenda item for discussion at our general members meetings and as a separate agenda item at many of our larger group members own meetings.
As the Tribunal president has been a guest at many of these groups, there is a solid knowledge base of the current working of the tribunal. There is also an understanding of and ability to influence the current workings of MHTS. Potential change in that one to one relationship that the president has committed to creates a cause for concern.

That influence extends through the Mental Health Division, which has done its utmost to continue to follow the model first adopted by the Millan committee itself of inclusion as equal partners of the service users and the carers who support them.

Building on a number of earlier pieces of government guidance in this field, the earliest being the framework for Mental Health September 1997, the involvement aspects of that guidance then enshrined in our mental health legislation the right to access to not only individual advocacy, but collective advocacy, for everyone who has a mental health issue and not only those who are subject to compulsory powers.

The tribunal reform could potentially destabilise this situation which would very quickly impact on the standard of service provided to the population by the tribunal service itself and therefore the service they receive when under compulsion from whichever service provider supports them in their daily lives.

VOX believes that the reform agenda will inevitably impact on the MHTS and on the whole therefore welcome the sense that the MHTS is being considered currently, and recognised because of its unique nature, even though only shown in the memorandum of understanding, to need a separate structure.

Concerns that remain within the membership about the appointments process is the disparity between the other judicial appointments and the way MHTS was recruited to. Although the Mental Health Act ensures that the membership categories will remain unaltered, the ability to reach and then encourage applicants from within the mental health service user and carer population will be challenging, as there is no history of shared appointments, such has had existed within the health departments working and appointments for some time prior to seeking applicants for the MHTS.

(a) the creation of a new office – the President of the Scottish Tribunals – who will be a Senator of the College of Justice and who will have delegated responsibility for the tribunals’ efficient disposal of business;

This proposal would impact on MHTS only in as much as the powers delegated to the chamber presidents are done so, and through this office. Some of the chamber president’s decision-making powers about his membership could be eroded by these means, especially when the membership seeks to include service users. In this case, the president’s office and its staff have to be able to make reasonable adjustments to the role in the light of the fluctuating presentation often associated with mental health issues. For this reason all performance issues should be left in the hands of the chamber president.

(b) the organisation of the First-tier Tribunal into chambers and the Upper Tribunal into divisions;
In regard to the chamber structure, we feel it is vital that for all the reasons that we have mentioned to date that the MHTS is a separate chamber and that chamber structure should be enshrined in primary legislation.

To repeat some of the general introductory comments we are the envy of the international mental health community for the act and the tribunal that it helped to create and to risk endangering the ethos and culture of this long considered and well trained and supported structure both in membership and administrative terms must not be sacrificed for expediency.

(c) rules on appeals, including the right to appeal a decision of the Upper Tribunal to the Court of Session on a point of law and a new measure to allow tribunals to review their own decisions;

MHTS jurisdiction makes decisions on people’s liberties, agrees medications that are at best given to them without their agreement and at worst have damaging side effects and all that has to be decided in a framework of principled practice. It must be weighed against the person’s own mental health gains whilst addressing public safety. Appeals should only be heard through a route that ensures that they are heard by a higher level of decision makers in law.

While we find it encouraging that the second tier is proposed to include the tribunal president, it is our preference that all appeals, whether civil cases or restricted patients, should be heard in the court.

We are satisfied in our secondary position as long as we have a guaranteed separate tribunal chamber, because this would ensure the presence of a subject matter expert, through the presidency.

(d) a power for the Scottish Civil Justice Council to propose procedural rules for Scottish tribunals; and

Any proposal that takes the making of the rules further away from the direct influence of the members and the president is a retrograde step.

(e) Rules allowing certain members of the judiciary to act as members of the First-tier Tribunal and the Upper-tier Tribunal.

Many judges from other jurisdictions sit on the MHTS. We strongly feel these judges must be trained and supported in the same way as all other new members. It is essential in our view, to have the service user experience informing their practice, as well as protecting our other members by affording them the same level of insight and support to engage in the process.

In summary
VOX has to acknowledge that we have a unique and narrow perspective on the tribunal system and its workings within Scotland and our answers therefore in the main can only be used when considering MHTS.
Throughout consultation we have heard much of how other tribunals want to attain the same high standards as the tribunal in terms of bespoke training to a dedicated and informed membership and the provision of support of by an equally well trained and committed group of individuals as administrative staff.

I think we could potentially have a positive effect on the workings of other parts of the tribunal systems however this can be accomplished without the need to legislate to allow for it to happen at some indeterminate point in the future.

We also sympathise with the desire to make it easier to make changes to allow some of these changes to happen naturally for other jurisdictions by creating shared structures but this cannot be allowed to happen as this would potentially be to the detriment of the workings of the MHTS, and the service users it serves. Such changes deserve to be given a full consultation in their own right.

We wish to go into this changed tribunal system as a strong unified and distinct tribunal and that should be as difficult to undo as possible and therefore it deserves Scottish parliaments time to make changes to something which was the first main legislation of this Scottish Parliament and it is no less than its due, because of the significance of the decisions that this tribunal have to make, that it should be heard by full parliamentary process and consultation to undo it.

MHTS are sometimes the custodians of an individual's whole life even within the rest of the justice system a person deprived of their liberty with few exceptions is reintroduced to society.

MHTS still have people in our care who through no fault of their own live and die in the system and these people as well as the young person who has one very frightening psychotic episode in their early teens or the person with early onset dementia deserve a system which has gone out of its way to make sure that the justice it provides is also ensuring a therapeutic outcome that for that individual is the best that they can aspire to.

The number of individuals that this legislation touches directly is one in four of the population of Scotland, and indirectly many more, hopefully never in terms of compulsory measures but in some of the rights that the Act gives people who use services, their families and communities.

This more than any other reason gives us a duty to ensure that the service provided to this population is the best version of decision making that Scotland can deliver.

Joyce Mouriki
Chairperson
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