

CONSULTATION QUESTIONS

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1. Proposals for regulations

Our first proposal for legislative change is that we bring forward regulations in the following terms:

Section 268 of the 2003 Act gives a right of appeal against levels of excessive security for qualifying patients in qualifying hospitals. We propose that a qualifying patient would be -

- an individual who is subject to an order requiring them to be detained in a hospital which operates a medium level of security; and
- who has a report from an approved medical practitioner (as defined by section 22 of the 2003 Act, who is not the patient's current RMO,) which supports the view that detention of the patient in the qualifying hospital involves the patient being subject to a level of security which is excessive in the patient's case.

A qualifying hospital would be one of the following-

- the Orchard Clinic in Edinburgh, and the regional medium secure component of Rohallion in Tayside and Rowanbank in Glasgow

Please tell us about any potential impacts, either positive or negative you feel these proposals for regulations may have.

Comments

I feel that the qualifying hospitals needs to be extended to all hospitals that offer any level of security, as what is considered "excessive" will be different for each patient in each scenario.

It would be beneficial for the right of appeal to be extended to individuals at any level of security for the same reasons as above.

I also feel that the patient should not have to have a report to ask for an appeal, if they don't have one, a paper based hearing should be considered with a statement from the patient on their views of their level of security and its effects on them.

2 .Our second proposal is that we do not bring forward regulations but instead repeal section 268 at the earliest opportunity. At the same time we will consider the review undertaken by the National Forensic Network of patients detained in the high, medium and low secure estates, which we hope will clarify whether there is an issue with entrapped patients held in these settings. The outcome of this could result in changes to primary legislation in early course. To take that proposal forward we seek views on the following:

- The current appeal provision in section 268 is restrictive and in particular does not allow for a change in security levels within the same hospital setting. Is there a need for a wider provision for an appeal against excessive levels of security?

Comments

Yes, a wider provision for appeal would be beneficial. As mentioned above, it should be available to patients at all security levels. Restricting the appeal provision takes away the right for patients to be heard on this matter, it needs to be opened up so patients have a fair right to appeal and review, like any human outside a detention facility would have in their lives.

- If an additional appeal provision is created, do we need to provide for a preliminary review to consider the merits of the appeal before proceeding to a full hearing?

Comments

No, I feel the patient has the right to a full hearing. It is not for others to decide if it merits an appeal, the patient should have their case heard and considered in the fullest way possible so that the best decision is made for them.

- Compulsory Treatment orders, compulsion and restriction orders and transfer treatment directives are currently reviewed by the Mental Health Tribunal at least once every two years. Levels of security are not necessarily discussed at these reviews. Should there be a requirement for the Tribunal to consider levels of security as a matter of course, with an accompanying right of appeal if the question of level of security has not been considered?

Comments

Yes, if the review decides that the patient is progressing, then the level of security should be considered for reduction so the patient can progress further and regain some sense of independence. It seems pointless to just review the CTO and not review the level of security. Security is a huge part of a detained patient's life and it should be regularly reviewed to make sure it is accurate and beneficial to the patient.

- Can more effective use be made of recorded matters by the Tribunal with regard to levels of security in Compulsory Treatment Order cases ?

Comments

Yes the Tribunal can make fair judgements on levels of security and revision dates and implement these as recorded matters. I think a completely unbiased, outsider opinion is needed to evaluate the level of security needed using provided evidence and medical reports. The patient should have their say too. The Tribunal could stipulate as a recorded matter that if the patient progresses well with specified treatments their level of security will be reassessed and more privileges will be opened up to them.

- Are there other changes to the review system that you consider may help to support and develop further the effective movement of patients through the secure system?

Comments

I feel that two years is a long time to wait for a CTO review and if a patient or their family would like it reviewed more regularly, it should be made available for them to apply for this.

Any further comments

Comments