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.

At present it is our belief that adults with learning difficulties are detained and restricted to a level that is, in most cases, not necessary or warranted for the severity of offences committed. Any changes that could lead to a change in this or the ability to appeal such restrictions would be a positive move. We feel strongly that limiting appeals to "qualifying hospitals" only is wrong. People with learning disabilities often find themselves restricted in major ways regardless of the notional level of security operated in specific units and hospitals and appeals should be available to any person who feels unreasonably restricted. Neither do we think an approved medical practitioner needs to agree that the restrictions are excessive. Medical practitioners tend to have a vested interest in current levels of restriction and could be argued to have loyalty to colleagues within forensic systems.

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?

Yes – Not only is section 268 restrictive there is no requirement for rehabilitation within the settings. It was initially believed that after 2 years in medium security units, rehabilitation would then be an option. This does not always happen and should be addressed.
If the section is not repealed the wider provision for an appeal against levels of excessive security would be required.

- 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?

Yes – however the terms and remit of a preliminary review would need to be outlined clearly so that each appeal would be treated in the same way. When in relation to an adult with a learning disability, it would be important that the fact existence of the learning disability is not counted against them and to be denied a full hearing on that basis. Our experience of being treated differently in the mental health and criminal justice system means we do not trust clinical discretion on that basis.

- 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?

Very definitely – we are surprised that this is not currently discussed at reviews. This gives the indication that people that are detained do not progress or learn and move on from any index offence and so the level of security wouldn't change. This would not be accepted in the criminal justice system so we are surprised that this has not been addressed before now.
Detaining individuals without the opportunity to learn from their offences with the focus on their detainment being reduced seems wrong to the members of this group.

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

Yes – by accessing recorded matters from previous tribunals would allow for progress to be followed and lead to possible reduction in security levels.
In relation to adults with learning difficulties it should not be acceptable that having a learning difficulty alone results in someone being subject to a Compulsory Treatment Order. In our experience, CTOs and CPAs are much more about applying restrictions than working on behaviour change with a view to rehabilitation by use of "treatment" or any other means.

- 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?

Effective and consistent reviews of each patient and their treatment. In our opinion this should be more frequent than every 2 years and their level of security. We believe that plans for rehabilitation should be introduced to individuals whether or not they have been in medium security. We struggle to understand how a person can be expected to learn and become less of a risk to themselves or others without consistent, suitable and rigorous learning opportunities and support and encouragement to take responsibility for their own behaviour

Any further comments

As in nearly every Scottish Government consultation we respond to, we want to make a plea for the term “mental disorder” to no longer apply to people on the basis of an intellectual impairment (learning disability).