Response

Response to the Mental Health (Care and Treatment) (Scotland) Act 2003 consultation in relation to section 268 appeals against conditions of excessive security:

The views complied below are my own; as stated within my role as service manager of a Forensic Mental Health Advocacy service, remitted to support patients detained with both Rowanbank Clinic and forensic wards within Leverndale Hospital. Our office is based at Rowanbank Clinic and I have worked within this service for six years, having joined the team shortly after the opening of Rowanbank Clinic in 2007. I acted as advocate for patient RM at the time when he commenced his appeal to the Supreme Court, and our service continues to advocate on his behalf.

I believe that I have seen several patients detained in conditions of excessive security over the years, in both medium and low secure environments. I will give examples of these cases below. It is clear to me that the Milan report anticipated that there may be entrapment in medium secure services, and that the intention of ss268-274 of the 2003 Act was to prevent patients becoming entrapped in medium security.

There is evidence that patients in the West of Scotland in particular have an increased length of stay in medium security, and it is my opinion that this is often due to lack of low secure or community facilities. I have witnessed over the years the referral of many male patients to low secure facilities, most of whom face a delay in transfer due to waiting lists and a lack of beds. These patients would have the opportunity to appeal under s268 were it enacted. It is clear to me that if an individual is referred and accepted to lesser security but are then held in conditions of medium security for a protracted period of time while awaiting a bed, then they are being detained in conditions of excessive security. Similarly, I have seen many patients, both male and female, over the years who have had frequent, unescorted time out in the community, sometimes on a daily basis. Many of these patients have had to wait for a protracted period of time on suitable housing being identified, as delays due to funding or shortage of appropriate housing are not uncommon. If a patient is receiving regular unescorted outings to the community, yet is having to return to a medium or low secure locked ward, then it is difficult to see how they would continue to require this level of security.

Experiences

Females in Scotland are particularly discriminated against in terms of mental health services, with there being no high secure service and limited low secure services. I have supported at least three female patients in medium security who I believe would have used the power to appeal against excessive security under s268 had the section been enacted. I believe that female patients have been, and continue to be, detained in conditions of excessive security due jointly to the lack of low secure or community provisions and the fact that S268 has not been implemented.

Patient A – Patient A was detained in Rowanbank Clinic on a CTO. She was offered accommodation in the community but turned her first property down due to the fact that there were an number of stairs leading up to the property. Despite being ready for discharge at this point, she remained in medium security until she found accommodation which she felt was

suitable, some months later. She found it difficult being held in conditions of medium security with people who were unwell and unsettled.

Patient B – Patient B was detained in Rowanbank Clinic on a CORO. She waited for accommodation for a number of months, possibly over a year, despite having been told that she was ready for discharge. This delay was not due to the clinical team, but to a lack of suitable accommodation in her local area. She had frequent unescorted outings and had overnight passes to a family members home. Patient B had indicated that she would have appealed to be held in a lower level of security had that option been available to her, and that she felt her continued detention in a medium secure environment, which was very unsettled, was detrimental to her mental health.

Patient X – patient X was detained in Rowanbank Clinic on a CTO. He had been referred back to an open ward in his local area and was accepted. However, there were no available beds, meaning that his transfer back to an open ward was delayed. Patient X had a number of CPA meetings rescheduled or delayed, and waited several months for a bed to become available. Patient X expressed to his advocacy worker and lawyer that he would have appealed against excessive security, had this option been available to him.

The above examples are not exhaustive, and several patients over the years, from both medium and low secure wards, have sought information form our service on their ability to appeal against conditions of excessive security. I am of the view that, whilst there are not as many patients entrapped in lower levels of security as there were in The State Hospital prior to the implementation of s264, entrapment in lower levels of security does occur, and will continue to do so if s268 is not enacted. Furthermore, it is not enough to say that there is no evidence that patients are currently entrapped; it is clear that further delay in the implementation of s268 leaves individuals vulnerable to detention in excessive security, with no mechanism to challenge this.

Scope

It is my view that s268, as it stands, is not fit for purpose. Whilst many patients would benefit from the ability to appeal from conditions of medium secure to low secure, and low secure to the community, in its present form it would not allow patients to appeal against conditions of excessive security within a particular hospital ie appealing against being in a locked ward in hospital X and asking to be moved to an open ward in hospital X. Any alteration of the Act should allow that patients should not have to be transferred from one hospital to another when successfully appealing, to allow transfer between wards rather than just hospitals. There is a need for a wider provision for an appeal against levels of excessive security.

Impact

I am concerned to read that one of the Scottish Governments primary concerns is the ‘negative impact’ additional appeals would place on practitioners time and the perceived added pressure it would place on the Tribunal system. For me, the main issue here is ensuring that vulnerable individuals who suffer from mental ill health are not entrapped in conditions of excessive security, that may ultimately impact upon their ability to move out of the mental health system. If an individual has a legal right, this she be met regardless of the impact upon service providers. We cannot deny a vulnerable person their legal rights based upon perceived inconvenience to practitioner or Tribunals. Nonetheless, I do not agree that s268

appeals would have the same impact upon practitioners and the Tribunal service as s264 did; there are far fewer patients in conditions of medium security as there were in high security and the average stay is much shorter, meaning that patients are less likely to appeal against excessive security. I also know from experience that some patients appeal against their detention simply to 'move things on'; they know that their appeal will be unsuccessful but they want to get everyone round the table to get a proper update on a proposed transfer to low security or community discharge. I feel that if s268 was implemented, some patients would simply appeal under s268 instead of appealing against their detention (not in addition to). There are of course a number of mechanisms that could be put in place to minimise the number of appeals, such as only allowing appeals for those detained more than 6 months, or only allowing one appeal per 12 month period.

Preliminary reviews

The suggestion that preliminary hearings should be held and that patients appealing under s268 must have a supporting independent psychiatric report are both discriminatory and contrary to an individuals right to a fair trial. Preliminary hearings are not held for patients appealing under s264 and so it would be discriminatory to introduce this under s268. Both groups of patients are similar in circumstance and should be treated equally. In reference to independent reports, it is rarely the case that independent psychiatrists support a persons appeal against their current order, yet the tribunal often grants appeals despite this evidence. It would not be fair for a tribunal to make a decision on a persons detention at a preliminary review having considered only some of the evidence. Again, this is not a practise followed under s264, and would be discriminatory.

Two year reviews

While I feel it may be useful for levels of security to be considered by the Tribunal at two year reviews, I do not feel that it is appropriate for this measure to be introduced as an alternative to a s268 appeal. While two year reviews are a valuable mechanism for reviewing a patients care and treatment, the Tribunal has no power to find that a person is being held in conditions of excessive security. Further, if a person is being detained in conditions of excessive security, they may have to wait a full two years to have this matter looked at during their next 2 year review, in the absence of a s268 appeal.

Recorded Matters

While it may be useful to make use of recorded matters with regards levels of security in CTO cases, this again creates inequality under the Act. This suggestion would benefit only those individuals detained on CTO and would not benefit individuals detained on CO or COROs. This would be discriminatory and unfair. In addition, some Tribunals are reluctant to make recorded matters when asked to do so by solicitors, and even when recorded matters are made, they are not closely monitored and their efficacy is questionable. A recorded matter would not be a suitable alternative to a declaration by the Tribunal that an individual is being held in conditions of excessive security.

Conclusion

In conclusion, I feel that appeals against excessive security should be implemented, and extended to those individuals detained in both medium and low secure environments. I note from experience that I have encountered individuals detained in excessive security in both medium and low secure environments, and that female patients in Scotland are at a particular disadvantage. I do not feel that the section should be repealed with an ongoing review from the National Forensic Network, but that it should be amended and enforced as soon as is practicably possible. It is my view that the introduction of preliminary reviews and the need for a supportive independent psychiatric report are both discriminatory and contrary to a patients right to a fair trial. I find it contradictory to say on one hand that there is little evidence to suggest that individuals are being held in conditions of excessive security and therefore there is no need to implement s268, while on the other hand saying that there is a concern that implementation will put undue pressure on the Tribunal and practitioners. Nonetheless, meeting both the legal rights and medical needs of patients should be of paramount interest over inconvenience to service providers.

I would also like to note that neither myself, nor any of my colleagues were invited to participate in the Stakeholder event held by the Mental Welfare Commission, which led to their report on excessive security.

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