In response to the Mental Health (Care and Treatment) (Scotland) Act 2003 consultation in relation to section 268 appeals against excessive security, I have compiled my own views as a Forensic Mental Health Advocacy Worker within Rowanbank Clinic. My views are based on my own experiences of working with patient's who are detained within Rowanbank and who the right of appeal against excessive security undoubtedly applies to.

Firstly, after reading the consultation paper I was met with a notion which suggested the negative impact of implementing section 268 and the effects it would have on the Mental Health Tribunal Service as well as practitioners. The consultation paper states that if patients detained under the Mental Health (Care and Treatment) (Scotland) Act 2003, had the right to appeal against excessive security in hospitals out with the State Hospital it would have a negative impact on practitioner's time and put excess pressure on the Mental Health Tribunal Service. I feel that this proposal does not reflect that of patient centred treatment. An individual's right to appeal against excessive levels of security should not be restricted by the work loads of professionals involved in such an appeal, under the Act 2003, practitioners and the Mental Health Tribunal Service have a duty to fulfil their role in relation to a patient's right of appeal and I feel that more focus should be laid upon the benefits that this right would have for patients out with the State Hospital.

The proposal to hold a preliminary review in order to ascertain the perceived success of an appeal against excessive security is surely discriminatory. Other patients who wish to appeal against their Order do not have to undergo a preliminary review before they are able to proceed with their appeal. Further, no other appeal has an essential requirement for a supportive Independent Psychiatric Report. Through my experience of Tribunals, few Independent Reports ever go against the views of the Responsible Medical Officer and are more often that not unsupportive. In addition, many patients often wish to proceed with an appeal in the absence of an Independent Psychiatric Report. Therefore questions arise as to the effectiveness and appropriateness of preliminary hearings? In addition issues may arise concerning applications for legal aid as the preliminary hearing would not constitute as an actual appeal and so the Legal Aid Board may be unlikely to grant legal aid in this instance. Therefore, proposing that the patient would have to pay for any legal advice and assistance leading up to and including the preliminary hearing as well as the costly Independent Report. Therefore, by implementing such a procedure to one particular patient group would be both discriminatory and ineffective.

In relation to the proposal to utilise recorded matters more often, I feel that this proposal would be also be inefficient. Recorded matters do not apply to cases out with civil orders and as within Medium Secure Forensic Hospitals such as Rowanbank, Rohallian and the Orchard Clinic where perhaps the minority would be detained under civil orders, this proposal would therefore prove to have little impact on monitoring excessive levels of security.

The proposal to utilise two year reviews to deal with excessive security matters will not replace that of an individual's right to challenge levels of security. Furthermore, as two year reviews only take place in the event that a patient has not challenged their detention in the last three years or had any type of Tribunal relative to variation or extension of their order in the last two years, those who have lodged several appeals against their Order would have little chance for their security to be reviewed at two year reviews. Using two year reviews would mean that patient's security would only be reviewed by an Independent panel every two years and therefore the time scale of this review is

questionable in relation to how valuable this proposal would be as a mechanism to review conditions of excessive security.

Throughout the consultation paper reference is made to the lack of concrete evidence of entrapment within Medium secure Hospitals. From my experiences within Medium Secure facilities, it is in my opinion, that whilst several patients within Medium Secure facilities commence regular unescorted community visits there cannot be considered a necessity for Medium security for these particular patients. Additionally, it is in my opinion that female patients are at distinct disadvantage with a lack of high secure and low secure. From my experience of working with female patients within medium secure hospitals, many female patients have been kept in conditions of excessive security. Therefore contrary to the statements made in the consultation paper, there is significant evidence of entrapment within Medium Secure facilities. Below are examples of medium secure patients who I have worked with, who in my own view should be entitled to challenge conditions of excessive security and who would have, in my opinion, exercised this right if s268 had been enacted.

- Patient Z was detained under a CORO within Rowanbank Clinic, in 2012 supported accommodation was identified. One week prior to conditional discharge being granted the accommodation was withdrawn due to an unsatisfactory review by the Care Commission, leaving patient Z in a medium secure facility until an alternative option could be found. This instance is a prime example of evidence of patients being kept in conditions of excessive security and highlights the vital requirement for section 268 to be enacted. Patient Z was deemed to no longer require the level of security of Medium Secure and was ready for Conditional Discharge into the community. However, due to matters out with the responsibility of the patient, Patient Z was kept in Medium Security until alternative accommodation was found. Although it should be acknowledged that accommodation may have proven difficult for the Clinical Team to find within a short period of time, it should be considered that Patient Z was not placed in the **least restrictive** option as this point. Patient Z was deemed as not requiring the levels of medium security yet remained under such security for one year following the original plan for Conditional Discharge. Therefore, there is clear evidence that Patient Z is an individual of which the right to appeal against levels of excessive security should have been enacted.

- Patient Y is currently detained under a CORO and has been in Medium Security for around 5 years. Twice within this period Patient Y has been deemed as not requiring medium security and has been progressed towards Conditional Discharge. Thus suggesting that if Patient Y has been fit for Conditional Discharge on more than one occasion surely the requirement for Medium Security would be inaccurate. However, Patient Y has remained in medium security throughout this period. Further, due to Patient Y being a female patient there is little scope for her to be transferred to lower levels of security. It is in my view that female patients are more likely to be vulnerable to discrimination as there are less low secure services are available to them. Therefore, the **least restrictive** option is perhaps limited in relation to female patients in Scotland. Thus the right of appeal against excessive security should be implemented to give such patient's the right to challenge excessive security in order to maintain the notion of the least restrictive option.

In conclusion, the consultation in relation to the 268 right of appeal against conditions of excessive security does not effectively address the negative impact that surrounds failing to implement this right of appeal. Section 268 as it stands is not fit for purpose and amendments should be made in order to enhance its effectiveness and suitability. Such amendments might involve allowing for transfer between differing wards within a hospital rather than from hospital to hospital. I also feel that in particular, this right of appeal would be of significant benefit to female patients who are perhaps more likely to be entrapped in medium secure facilities in instances where there is no longer a necessity for increased level s of security. Further, the right to challenge levels of excessive security would enable individuals within medium security to pursue the least restrictive option. Which may be specifically potent in cases where patients within medium security are progressed directly into the community, in my opinion I find it difficult to conceive why such patients would require levels of medium security when they are so close to discharge. Greater focus should be placed on patient centred treatment and implementing the least restrictive option in every case. As such, I believe there is clear evidence of entrapment within hospitals out with the State Hospital and feel that enacting section 268 is imperative to those patients which it would apply to.

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