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.

Under the chapter entitled "Changes Since 2003" paragraph 13; it states, as it does in the title of the consultation document, that it is "conditions" of excessive security that is the subject under discussion not "premises" of excessive security. It also states that that the relevant person "could have been moved to conditions of lesser security if accommodation had been available to them. These provisions are not unique to those in the State Hospital. There are a number of patients within a low secure open ward who could be considered to be entrapped due to a lack of suitable housing.

Patient A was transferred to a pre discharge ward with a view to moving on to community living in some form of supported accommodation. 2 years ago at their 2 year review tribunal it was brought to the attention of the board that he was "stuck" in hospital because there was no suitable accommodation available. He has only just within the last couple of months been allocated housing, with another local authority. Patient B within the same ward has been waiting in the same ward for 5 years for suitable supported housing.

Para 14 discusses the "Flow" of patients from the State Hospital and the progress of transfers both of which are managed by the Forensic Way Forward group. There is no mention in the report that this group has found that they were hindered by the lack of suitable accommodation and that until beds are freed up at the bottom end of the security

scale patients cannot move on from the State Hospital.

In paragraph 15 the report states that the "increased length of stay in medium secure is considered to be due to case complexity in the main, rather than the lack of available low secure services". I would argue that the lack of suitable supported accommodation is also a large factor and that "case complexity" is an excuse to keep patients in hospital and this therefore is blocking any beds becoming available for those patients in higher secure settings. The right of appeal must be for all levels of security.

Therefore to restrict the meaning of a qualifying hospital will only serve the purpose of stopping patients appealing when the only reason they cannot move on is the lack of housing. Patient flow can only be improved when the patients in low secure are able to access suitable supported accommodation and this is the only way beds can become available.

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?

Within the medium secure setting patient C spend regular overnights in their own accommodation. They must return to the medium secure ward at the end of their outing and must immediately become compliant with excessive rules and restrictions. They are treated in the same fashion as those patients who have just been admitted. This has the undesirable effect of the patient having constantly to deal with the pressure of transforming themselves from trustworthy with minimal risk to medium risk and untrustworthy. Is this patient only a risk at weekends. Many other patients are in similar circumstances. There are also patients who find themselves being told that there are no spaces available in low secure but that they will be moved on to the community from medium secure. This is in itself an admission by RMO's that their patients are in "conditions of excessive security" and is an example of how a patient cannot move to low secure if there are no beds and there will be no beds until suitable accommodation becomes available to patients in low secure.

- 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?

While a preliminary review would help establish if the reason for a patient being held in conditions of excessive security is a bottleneck caused by the lack of suitable accommodation and or housing. Legal Aid is not provided for preliminary reviews and unaffordable to many if not all patients.

- 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?

Excessive security should always be discussed at tribunals. As mentioned there are patients within medium secure who have been informed that they will be moved on to the community without having to go through low secure because there are no beds available. The same can be said about patients in low secure who have been told that they cannot be discharged because there is no suitable housing available. These matters will only come to light if they are discussed at tribunals. One of the purposes of tribunal system is to establish if the system is failing. Excessive conditions of security is one of these failings

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

Recorder matters can be used to provide documentary evidence on how long a patient has been “kept on hold” because of a lack of beds or suitable accommodation. But at present the recorded matters are a toothless tiger because they are seldom enforced or indeed they are not enforceable.

- 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?

Housing departments should be involved at an earlier stage in a person’s rehabilitation and more funding for suitable housing should be available this would assist in the unblocking of the bottlenecks of patients being held under conditions of excessive security

Any further comments

There is further concern that the consultation speaks of the ”undue pressure on clinicians and the Mental Health Tribunal”.
The Mental Health (Care and Treatment)(Scotland) Act 2003 section 268 is there to protect the patients from “undue pressure” of conditions of excessive security, not protect clinicians from extra work that would protect those patients.