Below is my response to the Mental Health (Care and Treatment) (Scotland) Act 2003 consultation in relation to Section 268 Appeals Against Conditions of Excessive Security. I am a Forensic Mental Health Advocacy Worker and currently work at both the medium secure unit at Rowanbank Clinic and also Leverndale Hospital, a low secure setting.

Having read the consultation in combination of my experience I have gained from working with detained patients, I believe that there are indeed patients who find themselves facing excessive security who would benefit from Section 268 being implemented in order to appeal against this. The consultation states that patients in the west of Scotland have an "increased length of stay in medium security but this is considered to be due to case complexity in the main, rather than the lack of available low secure services." There is a lack of evidence supporting this and in my experience and the experience of my colleagues, there are certainly many patients who find themselves moving straight from a medium secure setting into the community due to a lack of beds in a suitable low secure setting. RMO's often openly express that if there were beds available in a lower secure setting, they would ideally like to see the patient transferred here prior to discharge however due to a lack of beds this is often not possible. This has been similar to patients from the State Hospital who have again found themselves stuck in a higher level of security than they require due to a lack of beds in a lower secure unit. The consultation states that "At the time of the Bill's consideration there were around 30 patients who were detained in the State Hospital but who could have been moved to conditions of lesser security if accommodation had been available to them," clearly showing that there is an issue with excessive security right from the top. This would therefore indicate that the right of appeal against excessive security should be across the board for all levels of security.

One of the main concerns with patients moving on into the community is identifying suitable accommodation for them, often due to a lack of options or available funding. This has been the case for several patients detained within Rowanbank Clinic, who have found themselves having regular unescorted outings into the community but having to return to the medium secure unit rather than a lower secure setting where they are perhaps more suited. The fact that they are trusted to be out in the community unescorted yet are still being detained in a medium secure unit would suggest that they no longer require this level of security. This can cause a great deal of stress for individuals experiencing this, aswell as annoyance at what they often perceive as a lack of progress.

Patient A has faced a similar situation to this where he has, for a period of time, been having overnight passes in his own accommodation throughout the week however must return to the medium secure unit at the weekend. This means the individual is expected to return to abiding by the rules in place on the unit and is surrounded by people who could be deemed to be a great deal more unwell that himself. If he is trusted to be out in the community throughout the week mixing with his family and the public, it seems wrong that he must return to a high level of security over the weekend. It would therefore appear that he is being detained in excessive security and would be more suited to a low secure setting until he has received conditional discharge.

In my experience, I have several individuals from the same ward who have been told that they no longer require to be detained on a locked ward. However, again due to a lack of beds in the open ward, it is very unlikely that many of them will actually move there, despite the fact that it would be beneficial towards their rehabilitation to do so. Although these individuals have again been told that if suitable housing is located for them before a bed becomes available, it could still be said that they are being held in excessive security.

Patient B has been waiting for a great length of time for suitable accommodation to be found. The clinical team are all in agreement that this individual does not require to be detained in the environment that he is in however due to the difficulty locating suitable accommodation for him he continues to be held here. This patient has again been referred to the open ward however an available bed has yet to become available for him. This lack of progress into suitable accommodation is frustrating for the individual involved and he often feels like he is "being passed from pillar to post," more for the benefit of the wards rather than for his own progress and rehabilitation. There are of course many other examples of patients being held in excessive security, however I have given only a few examples of this from my personal recent caseload.

The consultation states that "There is also a significant concern about the negative impact additional appeals would place on practitioners' time and the added pressure to the Tribunal system." Although I do sympathise with how much work it takes in order for the Tribunal system to run smoothly, I do not agree that this is a suitable excuse to prevent vulnerable individuals who have found themselves trapped in the system from making an appeal. The act is not there for practitioners – it is there for the patients and therefore it is not fair to base decisions on what makes it "easier" for the professionals.

I feel that the idea of a preliminary hearing should not be supported. It seems unfair on patients who would be appealing against section 268 having this when patients in a similar position appealing against other sections do not face this. Furthermore, legal aid would be unable to provide assistance meaning that only certain patients would be able to afford this, therefore leading to discrimination amongst individual patients.

Although Two Year Reviews are a useful part of the Act as they ensure that all patients are reviewed without doubt on a fairly frequent basis, I disagree that this should be introduced instead of an appeal. This would involve patients having to wait for two years for their level of security to be discussed, something that for the individuals involved is simply not fair.

The consultation suggests that recorded matters could perhaps be used more frequently in order to deal with the issue on excessive security. Although this could perhaps be beneficial for patients under a CTO facing excessive security, it would be of no help to individuals on a CORO or CO, therefore again leading to discrimination amongst patients. Although recorded matters can be useful in some situations, I do not feel that this is the correct solution for the matter of excessive security.

I therefore strongly believe that Section 268 should be implemented and should include not only the right of appeal for individuals held in medium secure settings, but also those in a low secure setting. As discussed, there are many individuals in both

medium and low secure settings who are facing excessive levels of security due to a lack of an available alternative, whether that be in a hospital or in the community. In order to address this problem I feel that housing authorities should be aware further in advance that accommodation is needed in order to prevent a hold up when the individual is ready to be discharged. I also feel that section 268 should allow for movement between wards in the same hospital, something which can often be overlooked but can still cause concern to patients when they are faced with this situation. To conclude, I believe that Section 268 should be implemented in order to allow for patients trapped in excessive security to appeal in order to move to a setting more suited for their level of risk and the level of management and support that they require.

Lorna Robertson
Forensic Mental Health Advocacy Worker
Circles Network Advocacy