

## 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.

#### Comments

The Scottish Independent Advocacy Alliance is concerned that these proposals will have a negative impact on individuals who do not fulfil the criteria around this consultation as a qualifying patient. We understand that there are a number of people who are held in excessive levels of security in local hospitals and are not in high or medium secure facilities.

We understand from reports by member independent advocacy organisations in different parts of Scotland that some are currently supporting numbers of individuals in both psychiatric and learning disability hospitals who are held in conditions of excessive security. While these individuals are not subject to an order requiring them to be detained in medium secure facilities they nevertheless are being detained in locked wards with what they feel to be excessive security. Furthermore the facilities in which they are being held would not meet the criteria as qualifying hospitals and therefore this proposed change would not include individuals in this situation.

Advocacy organisations have reported on situations where individuals are unable to move to conditions of low security or to community support because of lack of available suitable facilities and services.

One advocacy organisation working in their local psychiatric hospital reported that they are aware of, and support individuals who have been residing in the hospital for lengthy periods because of debate between the local authority and

NHS Board about suitable accommodation and support to facilitate a move to community places.

These proposals could have a negative impact on the individuals in such situations by preventing an appeal.

#### Case study

*Two people supported by an independent advocacy organisation continue to be detained in a locked hospital ward having spent over 20 years each in 'locked' hospital care.*

*Both have a mild learning disability and were residents of a long-stay learning disability hospital that closed 10 years ago. When the hospital closed, all patients were told that community based accommodation would be found. However, a few were transferred from a locked ward in the long-stay hospital to a newly built, locked, hospital in-patient unit to wait for their community accommodation to become available. There is disagreement between medical and local authority staff about the suitability of any proposed accommodation. Meantime both people continue to be detained in a small, hospital based, locked ward. Both agree they had more freedom and self-determination when living in the long-stay hospital.*

*One person's index offences were committed in the 1980's and the other does not have an 'index offence' having been detained since childhood. Both feel they do not need to be in a locked 'forensic' ward. Both have challenged their CTOs but despite having 2nd opinion reports challenging the assessed risk they each pose, the Mental Health Tribunal has not focussed specifically on why they continue to be held in a secure setting.*

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?

#### Comments

See the comment above.

Wider provision for an appeal, particularly allowing change in security levels within the same hospital setting, would be likely to have a positive impact on those individuals that advocacy organisations report as being 'stuck' in the system. These are individuals who would be likely to benefit from a move from a locked to an open ward, from an IPCU to an acute ward or indeed from a move from low security to a community setting.

- 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?

Comments

Given that patients wishing to appeal conditions of detention or CTOs have a right to do so without any review considering the merits of the appeal, to place such a condition on this type of appeal could be seen to be discriminating against those individuals wishing to appeal against being held in conditions of excessive security.

- 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?

Comments

The Tribunal should consider levels of security as a matter of course however this should not be the only route for a right of appeal.

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

Comments

No comment

- 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?

Comments

**Any further comments**

Comments