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.

This seems the most pragmatic way forward and would balance the patient's right to have their level of security reviewed with making reasonable use of tribunal time

The Orchard Clinic provides both Medium and Low Secure care and so would fall into the same category as Rohallion.

It is neither necessary nor appropriate for all section 22 approved medical practitioners to have expertise in secure care, however in the case of appeals against excessive security we would consider such expertise to be mandatory in those providing opinions about in which environment care could be safely provided.

The SGHD holds a list of RMOs with responsibility for the care of Restricted Patients. It may be that these AMPs who have particular knowledge of Restricted Patients, and by proxy levels of security, would be best placed to provide any report as to the suitability of any particular level of security.

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?

We hold the opinion that any scoping work regarding entrapped patients must take place prior to any repeal in order that patients not be placed in the position of being unable to appeal against excessive security. Any change to primary legislation should be drafted and be ready for implementation as contemporaneously as possible with any repeal.

This route also has the potential for tribunals to have to hear from individual wards from the same site to properly consider the appeal. Possibly getting to the situation where they consider whether an otherwise identical ward manned with 4 staff is a higher level of security than one with 3 staff.

- 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?

Yes, this should be done as with proposal one, that it considers whether there is a recommendation from an AMP other than the RMO that the security level is excessive

There requires to be a certainty across the secure estate in the availability of therapeutic modalities. Which is to say that at national and regional centres individuals may be detained for specific psychotherapeutic and/ or offence focussed treatment, which may not be available within local hospitals; potentially this may cause individuals to not have access to treatment for which they are detained. Therefore how a care plan would transfer onto local services should be considered as a preliminary matter and time given to allow responsible Health Boards to put measures in place to deliver this care or to arrange a hospital place elsewhere at an appropriate level of 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?

This would seem appropriate.

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

We do not believe this to be the case.

- 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?

There should be mapping of treatment availability against geographic sites.

Review of the regulations needs to be undertaken carefully, to avoid the situation where evidence needs to be heard from multiple sites within a hospital about their level of security. If a review goes ahead it should be clear that the tribunal's only power is to declare the patient is held in excessive security, it should be for the health board to find appropriate alternative accomodation, not for the tribunal to rule on where that should be.

Any further comments

Comments