

Response ID ANON-KENE-NF49-4

Submitted to Scottish Mental Health Law Review - Additional Proposals
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Independent Individual Advocacy

1 What is the current landscape and how can we improve it

Please share your thoughts on this proposal:

Equality of Advocacy provision being enshrined in mental health legislation would be beneficial. Offering Advocacy Services is a legal requirement in the Mental Health Act but is good practice in the Adult Support and Protection Act and the Adults with Incapacity Act. Opportunities may be missed to provide Advocacy under Adult Support and Protection and Adults with Incapacity legislation where this would benefit a service user and/or carer/s.

2 Improving access to independent advocacy

Yes

Please give reasons for your answers:

People must have a choice regarding whether they engage with Advocacy. Providing Advocacy where someone is clear that they do not wish to have Advocacy could be counter-productive for both the individual and the Advocacy provider. Resources could be more productively used for someone who has agreed to engage with Advocacy.

Non instructive Advocacy provision is inconsistent, with difficulties encountered in accessing this service, at times, for people with intellectual disabilities.

We support an opt-out system on the basis that it will improve access to advocacy. It removes the step of someone having to apply and any unnecessary uncertainty this might bring them in the meantime. Having an advocate on hand automatically provides an individual with a level of assurance and certainty.

Changing the law on this basis will mean that more regular advocacy presence on wards is required. This in turn means more resource being allocated to advocacy which will need to be taken into consideration.

Please give your views on our suggestions for change:

3 Evaluation and Quality assurance of Independent advocacy organisations

Please give us your views on the proposals for evaluation and quality assurance of independent advocacy organisations:

The implementation of the proposals would provide more clarity and consistency in the role and duties of Independent Advocates nationally. This would provide consistency of service across Local Authority areas. A wider right to Independent Advocacy in law and in Human Rights legislation would benefit service users and/or carers. This would increase the number of referrals and Advocacy Organisations would need to be resourced to meet the demand for the service. Training for Health and Social Care Practitioners regarding what Advocacy Services can do and public awareness raising would be beneficial.

In particular if you consider the role of evaluation should be given to an existing body, we would welcome suggestions as to which body might take on that role.:

4 Who can be an independent advocate?

Please give us your views on our proposals for who can be an independent advocate.:

A Scotland wide qualification would be desirable and would also provide additional recognition for the Advocacy role. The qualification could be done whilst working, with the option of completing the qualification in different learning models, such as classroom learning, blended learning and distance learning, to give wider access to the qualification.

Some people who find academic learning more challenging could find the requirement for a qualification to be a barrier if this were to be mandatory.

More detail is also needed around what the qualification process would involve. For example, how long would it take, how candidates are assessed, what costs would be involved etc.

Please also let us know if you consider the qualifications and registration should be required for those who support collective advocacy groups:

5 Diversity, equality and inclusion

Please give us your view on our proposals for improving diversity ,equality and inclusion in independent advocacy :

We support all the proposals to improve diversity, inclusion and equality. Ensuring that all independent advocacy workers complete diversity and equality training should certainly be a mandatory requirement. Guidance should be published around how often independent advocacy workers should complete

this training to ensure that their knowledge is kept up-to-date.

Despite identifying that there is a lack of diversity amongst those who work or volunteer for advocacy organisations, there is no mention in the proposals around what could be done to recruit people from different backgrounds. We would like to see better engagement with people from backgrounds who are under-represented in an effort to find out how to encourage them to put themselves forward to become independent advocacy workers.

6 Funding and commissioning of independent advocacy

Not Answered

Please give reasons for your answers:

A national model for funding could improve transparency and consistency around funding decisions.

However, there is no detail around how such a fund would operate and so it is difficult to provide a clear response. The level of service required in each geographical area would depend on the population and demographics.

7 The role of independent advocacy in supported decision making

Please give us your views on the proposals for training and your reasons for these:

Upholding and protecting a person's human rights should be embedded in independent advocacy in supported decision making. We therefore support measures to increase public awareness around this and best support independent advocacy organisations who are facilitating SDM through establishing an independently led training programme on human rights and SDM.

Human rights and supported decision-making training being developed and made available to all Independent Advocacy organisations would be greatly beneficial, and also a training programme and awareness training for the public and other relevant groups.

8 Scrutiny/accountability of Independent Advocacy Organisations at a strategic level and at a micro level

Please give us your views on our proposals for scrutiny of independent advocacy organisations:

We support having an independently regulated body in place to provide oversight of advocacy organisations through a human rights lens.

Clarification is required in relation to the level of responsibility and authority of the proposed regulatory body and whether Advocacy Organisations and individual Advocacy Workers would be required to register with the regulatory body. Local and national arrangements for scrutiny would need to be devised.

9 Independent advocacy for carers

Please give us your views on the proposal for support for unpaid carers. :

It is vitally important that unpaid carers are able to access independent advocacy should they require it. We therefore support plans for dedicated staff and volunteers to be recruited to independent advocacy organisations to support unpaid carers.

However, it's crucial that this recruitment process is accompanied by an awareness campaign so that unpaid carers know that this support is now available to them. Given that most unpaid carers will have experienced not having access to independent advocacy, and new unpaid carers might not know it's appropriate for them, there is a risk that it will go unutilised.

Unpaid carers will often not have time to look for independent advocacy and so consideration needs to be given to how it can be made easily accessible to them. It will also need to be a flexible service to accommodate day-to-day lives of unpaid carers, which mostly vary greatly depending on the needs of those they are caring for.

10 Do you have additional proposals for change?

Please let us know of any other changes you think are needed.:

No

Advance Statements

1 What are your views on the proposed system, any significant omissions and on other steps that might be taken to strengthen advance planning as part of the supported decision making framework in our wider proposals?

Please give us your views on the proposed system:

Given the low uptake of Advance Statements, how peoples' wishes are recorded regarding their care and treatment would benefit from changes. Recording a SWAP in different formats, including voice recording and video recording, provides more options and may encourage more people to make their will and preferences known formally. How voice and video recordings would be stored for future access requires consideration. Guidance would be required regarding the format a SWAP would take and the purpose of the SWAP, for individuals making a SWAP, for Mental Health Practitioners, Solicitors and Advocacy Workers.

1a What are your views on the application of the 'statement of will and preference' (SWAP) to treatment under Mental Health Law, other medical treatment and other welfare issues?

Please give us your views:

Making more than one SWAP for different areas of the person's life would be beneficial but could lead to complications, so guidance in these circumstances would be required.

1b What do you think of the general approach to a 'statement of will and preference' (SWAP)?

Please give us your views:

Agree with the general approach. It's important that if someone doesn't have a SWAP, their views are still heard and respected.

1c What do you think of the possibility that a SWAP could give advance consent for something the person might refuse when they are unwell?

Please give us your views:

This is a difficult area. People could reasonably change their mind about an aspect of a SWAP based on new information or a change in circumstances. As such, there are difficulties with treating the SWAP as giving advance consent.

1d What are your thoughts on the process for making a SWAP and the requirements for its validity?

Please share your views:

Agree with the proposals

2 What do you think of the proposals as to who can decide if a SWAP should not be followed?

Please share your thoughts on the proposals as to who can decide if a SWAP should not be followed?:

It is being proposed that if a Doctor wants to overrule medical treatment in a Statement of Will and Preference, this is referred to the Mental Welfare Commission. MWC would appoint an Independent Medical Practitioner to make a decision regarding whether the SWAP would be overruled. The decision of the Independent Medical Practitioner would be final.

In this context, we agree with the proposal to have an independent Medical Practitioner appointed by MWC to give an independent opinion on whether a SWAP should not be followed. This is an additional safeguard for the person making the SWAP and some medical practitioners may welcome an independent opinion also. It is important that this does not cause delays in treatment if implemented.

S243 of the Mental Health (Scotland) Act 2003 allows for treatment to be given to prevent serious deterioration in a patient's condition. We have not included this as it may prove too broad a justification for many psychiatric treatments which a patient might reasonably refuse. What are your views on this?:

Agree with the proposal not to include this.

3 We would like to know your views on the overruling process proposed and if there are any others you think might be authorised to review certain decisions.

Please share your views on the overruling process proposed and if there are any others you think might be authorised to review certain decisions.:

It is important that this does not cause delays in treatment if implemented.

4 What do you think about the proposals for dealing with conflict?

Please share your thoughts about the proposals for dealing with conflict:

Agree with proposal for MWC to provide input if there is conflict regarding a SWAP. Designated Officer/s undertaking this role would be beneficial for consistency.

5. Do you have additional proposals for change?

Please let us know of any other changes you think are needed.:

No

Forensic Proposals

1 Do you agree that we should introduce intermediaries to support people who need it in criminal proceedings?

Yes

Please share reasons for your answer:

Court processes can be complicated and stressful. People with a mental illness are dealing with the stress of an illness along with the court processes and would benefit from the support of an intermediary. The role of the intermediary would need to be defined and guidance issued for the person going through the court process and practitioners working with the person, regarding the role and duties of an intermediary.

2 What do you think about courts being given the power to require that appropriate medical provision is found for any remanded prisoner?

What do you think about courts being given the power to require that appropriate medical provision is found for any remanded prisoner? :

The Nelson Mandela Rules emphasize that the provision of health care for prisoners is a State responsibility, and that the relationship between health-care professionals and prisoners is governed by the same ethical and professional standards as those applicable to patients in the community. Moreover, the Rules oblige prison health-care services to evaluate and care for the physical and mental health of prisoners, including those with special needs. Therefore, this power simply should not be required. However, we know that being remanded could result in deterioration in the person's mental health and care and treatment must be available in prison. Mental Health Services in prisons would need the resources to meet this requirement. Arrangements for deciding which prison a person will go to must take into account whether or not that prison can deliver the environment, support and treatment necessary.

3 What are your views on whether supervision and treatment orders continue to be needed or not?

What do you think about the current need for supervision and treatment orders?:

Supervision and Treatment Orders can be useful in certain circumstances.

4 Do you think there are specific legal changes that could support more appropriate diversion of offenders into the mental health system?

Please share any thoughts on specific legal changes that could support more appropriate diversion of offenders into the mental health system:

If Social Workers in Adult and Older Peoples Services and Mental Health Practitioners are aware that the person they are working with, is appearing in court, they could provide the court with information regarding the person's mental health, which may result in diversion into Mental Health Services being considered. Creating better connections between justice social work and adults services would help this. At present, workers may not be aware of a court appearance or find out about this after the court hearing. The progress of diversion would need to be monitored and reviewed.

5 What do we need to be aware of from a forensic mental health point of view when considering the continued use of 'mental disorder' within our mental health and incapacity law more generally?

What do we need to be aware of from a forensic mental health point of view when considering the continued use of 'mental disorder' within our mental health and incapacity law more generally?:

The term 'mental disorder' has negative connotations. Mental illness or mental health condition are more accurate and less negative terms.

6 What do think about on our proposals on whether or not a SIDMA test (or a similar requirement like ADT) should be added the criteria for forensic orders?

What do you think about our proposals on whether or not a SIDMA test (or a similar requirement like ADT) should be added the criteria for forensic orders:

If a prisoner does not meet the SIDM test, they would not be transferred to hospital for treatment of mental illness which would be detrimental.

If SIDM was a test for a CORO, someone who presents risks to the public could be taken off the CORO when not ready. This has implications for public safety and may have implications for the supports the person subject to the CORO would receive when no longer on the CORO.

7 Do you feel that risk to the health, safety or welfare of the offenders ('harm to self') should continue to a criterion for forensic orders?

Not Answered

Please share reasons for your answer.:

If a person is at risk of harming themselves, it may be more appropriate for a civil order to be granted. Self-harm may not be appropriate criteria for forensic orders being granted at court.

8 Do you think forensic orders should only be allowed if the offence is punishable by imprisonment?

Not Answered

Please share reasons for your answer.:

This a really important question which merits further consideration and discussion. Unfortunately, due to the short timeframe given to provide a response to this consultation, we have not been able to fully consult with our members in this area. To try and give a response to such an important issue without proper consideration would be disingenuous, risky and unhelpful.

We would therefore hope that more time will be allowed to properly consult on this area before any decisions are taken.

9 Do you have any suggestions for updating the criteria for imposing a restriction order?

Do you have any suggestions for updating the criteria for imposing a restriction order?:

The High Court should have the power to impose a CORO.

10 What do you think should be done - if anything - about the differences between the tests and procedures for imposing an Order of Lifelong Restriction (OLR) and those for a compulsion order and restriction order (CORO)?

What do you think should be done - if anything - about the difference between the tests and procedures for imposing an Order for Lifelong Restriction (OLR) and those for a compulsion order and restriction order (CORO)?:

The current tests and procedures are appropriate.

11 What do you think about our proposals for time limiting compulsion orders, with or without restriction orders?

What do you think about our proposals for time limiting compulsion orders, with or without restriction orders?:

Time limiting Compulsion Orders would mean that no one is subject to a Compulsion Order for longer than is necessary. Although progress has been made with how quickly people move through the mental health system, this would be an additional safeguard for individuals subject to a Compulsion Order.

12 What do you think about our suggestions to either remove or significantly restrict the 'serious harm' test introduced in 1999?

Please share your thoughts about our suggestions to either remove or significantly restrict the 'serious harm' test introduced in 1999?:

The serious harm test continues to be beneficial in terms of ensuring public safety. However, there need to be checks and balances to ensure the test is not used beyond its intended application. Restricting the test and enabling referral back to court for resentencing could both be useful in ensuring human rights are upheld.

13 Do you think the current roles that Scottish Ministers have in the management of restricted patients should be reduced, and to what extent?

Please tell us your views on whether the role that Scottish Ministers have in the management of restricted patients should be reduced, and if so, to what extent? :

A progressive society that seeks to advance, protect and uphold human rights cannot risk allowing these decisions to be influenced by politics. On that basis, we would prefer to see an independent or judicial body take these roles on.

14 What do you think about the additional powers we are suggesting for the Mental Health Tribunal around the discharge and recall of restricted patients?

Please share your thoughts about the additional powers we are suggesting for the Mental Health Tribunal around the discharge and recall of restricted patients (i.e, power to vary conditions, power to discharge to conditions that amount to deprivation of liberty, and a role in recalls). :

Agree with the additional powers for the Mental Health Tribunal.

15 Are there any issues with respect to cross-border transfers which are relevant for how the law might be changed?

Please share your thoughts on any issues around cross-border transfers which are relevant for how the law might be changed.:

Current processes are complex and would benefit from change to make processes less complex.

16 Do you agree that there should be an enforceable duty on Scottish Ministers to ensure that prisoners with significant mental health needs are accommodated safely and appropriately?

Yes

Please share reasons for your answer.:

This could lead to Mental Health Services in prisons having more resources.

17 Do you agree recorded matters should be allowed for forensic orders?

Yes

Please share reasons for your answers.:

18 Do you agree that the current right to appeal against conditions of excessive security (excessive security appeals) should be extended to all people subject to compulsion?

Yes

Please share reasons for your answer:

19 What do you think about removing the need for excessive security appeals to be supported by a medical report by an approved medical practitioner?

Please share your thoughts about removing the need for excessive security appeals to be supported by a medical report by an approved medical practitioner:

An appeal should be allowed without the need for a medical report to support the appeal. Where liberty is restricted in these circumstances there should be a right of appeal.

20 What do you think about giving voting rights to people in the forensic mental health system?

Please share your thoughts about about giving voting rights to people in the forensic mental health system? :

People in the forensic mental health system should have the right to vote. They remain citizens and part of the Scottish community. Disenfranchising them is unequal and unfair. We agree that this needs to be changed.

21 Do you have additional proposals for change?

Please let us know of any other changes you think are needed. :

No

About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Association of Social Work (SASW)

The Scottish Mental Health Law Review would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

Your response will only be viewed by members of the Scottish Mental Health Law Review. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Mental Health Law Review to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly dissatisfied

Please enter comments here.:

We feel that the timing of this consultation was not very accommodating and could impact on the number and quality of responses you receive. Given the importance of these proposals, this is concerning.

The length of time allowed for responses was very short. Given how busy people working in mental health are just now, many will not have had the time to consider the proposals fully and be able to submit a response.

Furthermore, running this consultation during the summer has not been helpful. Staff are likely to be taking leave and smaller organisations do not have the required capacity to respond properly.

There was no indication from the MHLR consultation, which closed in May, that there would be an additional consultation so soon afterwards. If there had been, this might have helped organisations to at least prepare better.

As such, we hope that there will be another opportunity to consider and discuss these proposals more fully.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Please enter comments here.: