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East Lothian Council

Additional information:

This letter is a response on behalf of the Council to the Scottish Parliament Health and Sport Committee's call for written evidence on the Mental Health (Scotland) Bill

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Dear Committee Members

STAGE 1 CONSIDERATION OF THE MENTAL HEALTH (SCOTLAND) BILL

East Lothian Council welcomes the opportunity to respond to the Committee's call for written evidence on the Mental Health (Scotland) Bill. This officer-level response reflects the views of our Mental Health Officers who are familiar with the legislation and its implementation, and is set out in the order of the questions sent by the Committee.

1. Do you agree with the general policy direction set by the Bill?

Considering that the overarching objective of the Bill is 'to help people with a mental disorder to access effective treatment quickly and easily', East Lothian Council can support the general policy direction set by the Bill. However, throughout our consideration of this issue, concerns were raised about the impact of the proposed changes on the Mental Health Officers' work load capacity. It is acknowledged that the proposed changes enable further protection for the client, ensure a more informed assessment and are in keeping with good practice and are therefore supported, but Mental Health Officers feel that their capacity is already stretched. Accepting that this is a national issue, we would ask that this is addressed at a national level and careful consideration is given as to how local authorities can continue to meet their statutory duties in relation to this legislation, Adults with Incapacity (Scotland) Act 2000 and other key pieces of legislation.

2. Do you have any comments on specific proposals regarding amendments to the Mental Health (Care and Treatment) Scotland Act 2003 as set out in Part 1 of the Bill?

Procedure for compulsory treatment

Increasing the 5 working day period to 10 working days – the proposed change raised some positive responses and some concerns. There was recognition that extending the time during which the CTO application can be determined or an interim

CTO granted would allow more time for administrative tasks to be completed. It would also allow those participating in the tribunal time to consider the case and their position in relation to the application. This is particularly true when the input of a *curator ad litem* is required. Allowing time for better preparation for the tribunal does reduce the likelihood of a further tribunal being needed where interim CTOs are granted, avoiding an additional potentially stressful event for the client.

It was also noted that the duration of a short term detention is often just short of the amount of time required to make a safe assessment that further detention is not required. 28 days are sometimes not enough for treatment to be fully effective. A further 1 or 2 weeks can be enough time for an assessment to be made establishing, with confidence, that further detention is not required.

Within the existing timescales, CTO applications are sometimes made to enable a relatively short extended time in hospital with treatment before discharge home is planned. However, this extension could result in the period of time the client can be detained for under the Short Term Detention being increased from 28 days to 42 days, if the extended period of time includes 2 weekends. Enabling a period of detention for this length of time without the independent scrutiny the tribunal process affords needs to be considered very carefully. It might be anticipated that the number of appeals in relation to short term detentions would increase. This increase could potentially erode the impact of the benefits anticipated with the proposed extension. When considering the maximum amount of time the client could potentially be detained in hospital without the CTO application being heard, the client's rights might be compromised.

Information where order extended – Where the Tribunal is required to review a determination, officers support the proposal that the MHO submits a written report to the Tribunal containing information set out in the new section 87A(4). Officers consider that this is in keeping with a multi-disciplinary approach and good practice, and provides further safeguard for the client. In light of the original CTO application being made by the MHO, raising the MHO's input at this stage is considered appropriate.

Emergency, short term and temporary steps

The changes proposed in relation to emergency and short term detentions are supported.

While officers support that hospital managers can exercise discretion as to whether or not to give notice of certain matters to those listed in the Bill, to inform this decision guidance should be provided by those directly involved in the detention and best placed to do so - the RMO, MHO and/or the GP. We suggest that the code of practice should clarify this.

The suspension of certain orders etc.

The proposed changes in relation to the suspension of orders on emergency and short term detentions are supported, as are the proposed changes in relation to obtaining the Scottish Ministers' consent to the suspension of detention.

While the MHOs cannot comment on the administrative implications of the proposed changes in relation to the maximum suspension of detention measures, they are supportive of the proposals insofar that they ensure close monitoring of the use of the suspension and time restrictions. This will help to ensure that individuals do not

remain on inappropriate detentions and detention orders are varied appropriate to individual needs.

Orders regarding level of security

The proposed amendments in relation to rights of appeal against perceived level of excessive security for those held outside of the state hospital are supported and considered to be in keeping with the principle of least restriction.

Removal and detention of patients

The changes proposed are supported though East Lothian Council MHOs ask that every effort should be made to minimise the length of time someone is detained pending medical examination to ensure that their rights are protected as best as is safely possible.

Time for appeal referral or disposal

The proposed changes are supported and believed to be in the client's best interest to ensure that the best treatment option can be accessed promptly.

Representations by named persons

Proposing that the client only has a named person if they choose to have one is in principle supported. The named person can inform assessment and outcome, ensuring further protection for the client. However, when considering this issue, officers did express some concerns that those with a cognitive impairment might not be able to fully consider the need for or benefits of having a named person, or the implications of not having one. While it is anticipated that the Code of Practice will guide on this issue, from the amendments proposed, it is not clear how this will be addressed. Assurance that this group will not be vulnerable to discrimination is sought.

Advanced statements

The proposed changes are supported. It is recognised that when there is an advanced statement at present, local experience is that the tribunal considers its content carefully and with respect. However, at time of writing there are very few advanced statements. Holding the advanced statements centrally will give the statements more status and recognition, which will in turn filter out to more questions being asked if individuals do not have one. Enabling out of hours access to the advanced statement needs to be considered.

The importance of ensuring that the advanced statement is a meaningful document was once again raised. It is important that those supporting the client to create a statement can advise and guide appropriately. Training is necessary for those in this role, and those who witness the documents, to ensure that advanced statements can be promoted with confidence.

Support and services

The proposed changes to extend the existing provision of assistance to patients with communications difficulties are supported, as are widening the commitment to provide services and accommodation for mothers and their child who are admitted to hospital for any type of mental disorder. While we acknowledge that this will have significant impact on resources, officers also propose that consideration should be given to extending support beyond the first year of the child's life to 2 years. The onset of post natal depression is not always immediately after the birth of the child and, irrelevant of diagnosis, the impact of separation on both mother and child beyond the first year is still significant.

Cross border and absconding patients

The proposed amendments to extend cross border transfer to include clients from out with the UK from other EU member states were positively received.

Arrangement for the treatment of prisoners

The proposed changes in relation to MHOs now contributing to the decision making of a patient being transferred from prison to hospital are considered positively. The MHO contributes to decision making at critical points throughout the implementation of this legislation and makes the initial CTO application. For them to contribute at this stage is in keeping with the principles of the Act and is considered appropriate.

Consideration will need to be given as to how the MHO from the responsible local authority will complete their assessment when the client resides outside of their area and travelling restricts the set timescales being adhered to.

Removing the obligation for the Convenor of a Tribunal Panel to be either the Tribunal President or to be selected from the Shrieval Panel should result in increased flexibility in being able to respond to requests for tribunals.

3. Do you have any comments on the provisions in Part 2 of the Bill on criminal cases?

The proposed changes are supported.

Enabling the court to extend the period of time from 7 to 14 days to complete an assessment order is thought to be appropriate and enables a full and complete assessment by those best informed to carry this out.

4. Do you have any comments to make on Part 3 of the Bill and the introduction of a victim notification scheme for mentally disordered offenders?

The introduction of a victim notification scheme for victims of mentally disturbed offenders is supported, although officers consider that this raises questions and would seek more clarity about the implications of this.

Officers have concerns about the monitoring and control of the information shared about the MDO. Clear guidance is sought through the code of practice to ensure that there is clarity about who shares information with the victim, what information can be shared and in what circumstances. Officers recognise the importance of the victim having their rights recognised and addressed to help their rehabilitation, but the Mentally Disturbed Offender's needs and vulnerability also need to be considered. It needs to be recognised that these needs differ from an offender who is not mentally disturbed, and that the scheme cannot be directly transferred without safeguards in place to ensure the MDO vulnerabilities are not further compromised.

5. Is there anything from [the McManus Report](#) that's not been addressed in the Bill and that you consider merits inclusion in primary legislation? If so, please set out why.

Throughout our consideration of this, the purpose and use of the 2nd medical report was debated. At present the 2nd medical can be a valuable contribution to the decision making process, but it is also recognised that when it is completed by a

doctor who is not familiar with the client, it serves a less useful function. The McManus report does consider the benefits of a clinical psychologist providing one of the medical reports. Where they are the lead clinician, likely to be most relevant to clients with learning disabilities, their involvement would be useful and informative and has the potential to ensure a better outcome for the client.

6. *Do you have any other comment to make about the Bill not already covered in your answers to the questions above?*

While the proposed changes were generally received positively by relevant officers, being considered to promote better practice and improved services for the clients, some issues were raised and which we would ask receive additional thought in relation to the need for further safeguarding. These issues are mentioned above: they are the proposed changes to procedures to appoint a named person, and mentally disturbed offenders whose vulnerabilities may be further exposed should the changes be made without clarity being provided through a detailed code of practice.

It is also hoped that the code of practice will address concerns about how the tribunal is led and how solicitors present in this environment. Some tribunals continue to be adversarial and subsequently intimidating to clients and named persons. The process should be inclusive, with the client truly being able to access and contribute.

Considering the effects on local government the Policy Memorandum acknowledges that there will be an increase in the MHO's work load but 'does not consider that the measures in the Bill have any disproportionate effect on local government'.

Figures are given of the number of cases which will require additional work by the MHO, should the changes progress. While these figures are not large they need to be considered over and above the current pressures from statutory commitments. The impact of the Adults with Incapacity legislation on the MHOs continues to grow, as does the Adult Protection legislation. The numbers of cases likely to be affected by the proposed changes cannot be considered in isolation and while our officers support the proposed increased role of the MHO, considering it good practice, the MHOs' capacity to fulfil their statutory responsibilities is already stretched.

I hope the Committee find this helpful.

Yours sincerely,



David Small
Director of East Lothian Health and Social Care Partnership

