

Consultation on the Review of the Mental Health (Care and Treatment) (Scotland) Act 2003

Response by the Administrative Justice & Tribunals Council Scottish Committee

Question 1: Advance Statements

Your views are sought on any or all of recommendations relating to advance statements found in Chapter 2 of the Report. If you have any separate issues in relation to advance statements which you would also like to address, you are invited to include those in your response to this question.

The SCAJTC (“the Committee”) note the low take up of the opportunity to make an advance statement identified by the review group and is broadly supportive of the recommendations aimed at addressing this. In the light of the evidence of confusion in the minds of service users as to the process, purpose, content and effect of advance statements, the Committee consider that the recommendations on clarifying and facilitating the process through publicity and education are particularly important.

Question 2: Independent Advocacy

Your views are sought on any or all of recommendations relating to Independent Advocacy found in Chapter 3 of the Report. If you have any separate issues in relation to independent advocacy which you would also like to address, you are invited to include those in your response to this question.

The Committee consider that access to independent advocacy is a basic legal requirement of the regime under the 2003 Act and is concerned to note the consultation evidence of patchy availability of advocacy services in some areas. The Committee supports the recommendation that Government must ensure that the statutory duty of the NHS Boards and local authorities to provide access to such services is complied with. To this end, the Committee welcomes the initiative suggested by the Mental Welfare Commission that service users be encouraged to report failures to provide access to them in the first instance. The Committee also endorses the recommendation that NHS Boards and local authorities should support the development of collective advocacy groups in their area.

The Committee notes the evidence of confusion around the role and function of independent advocacy services as distinct from the role of other relevant parties who may also represent the service user. The Committee acknowledge that a service user may be dealing with multiple personalities with different roles and responsibilities in relation to his or her care and supports the recommendation that advocacy services should aim to work in accordance with Scottish Independent Advocacy Alliance Principles and Standards and Code of Practice.

Question 3: Named Persons

Your views are sought on any or all of recommendations relating to Named Persons found in Chapter 4 of the Report. If giving your views on any of the further thoughts relating to named persons raised in [Part 2](#) of this paper, you are invited to provide these here in answer to this question. If you have any separate issues in relation to named persons which you would also like to address, you are also invited to include those in your response to this question.

The Committee appreciates the comprehensive review of the difficulties encountered in the way in which the named person rules are currently operating. The Committee is particularly concerned to note the evidence that named persons face difficulties in obtaining information on

their role and what is expected of them, particularly in situations where their views may conflict with that of the service user. The Committee consider that, if named persons are to fulfil their obligations to participate in the proceedings in their own right, whilst continuing to act in what they regard as the best interests of the service user, they require access to advice and information well in advance of any decisions affecting the service user. It is unacceptable that a named person should first receive notice of their involvement via service of tribunal papers very shortly before a hearing is due to commence.

The Committee note that a similar degree of confusion exists in relation to the role and function of named person as to that identified in relation to independent advocacy and welcome the recommendation to make information more widely available, accessible and targeted at those who might need it. The Committee welcome the recommendations improving service users rights in this regard, particularly 4.1 -allowing a service user the option not to appoint a named person and 4.11- requiring information for the service user of the consequences of making such an appointment at the time they nominate.

In relation to recommendation 4.12, we would suggest that support should be offered to a named person as soon as possible and that this should be available prior to, rather than after, he or she needs to act.

The Committee acknowledges the need for further discussion in relation to good practice concerning the amount, quality and confidentiality of the information included in Tribunal papers and would welcome the opportunity to comment on this at the appropriate time.

Question 4: Medical Matters

Your views are sought on any or all of recommendations relating to Medical Matters (medical examinations / reports; medical examinations and conflict of interest; revocation of emergency detention certificates; suspension of detention requirements in relation to compulsory treatment orders; consent; and care plans) found in Chapter 5 of the Report. If giving your views on any of the other options relating to medical reports posed in [Part 3](#) of this paper, you are invited to provide these here in answer to this question.

If you have any *separate* issues in relation to medical matters which you would also like to address and which are not **covered** in the Chapter 5 of the Report, you are also invited to include those in your response to this question.

The Committee supports the recommendation to maintain the requirement that an application for compulsory treatment should continue to be accompanied by two medical reports, one from an approved medical practitioner/specialist and the second from the service user's general practitioner.

The Committee also supports the proposal to alter the statutory responsibility of the general practitioner to providing a view on the approved medical practitioner' report which we consider will provide a more holistic perspective centred on the service user's needs.

The Committee supports the recommendation to remove the current anomaly whereby there is no requirement for an approved medical practitioner seeking to continue a compulsory treatment order in a private service, to be independent of that service.

The Committee also supports the recommendations at paragraphs 5.6-5.9 as being likely to clarify the calculation of time periods and promote greater flexibility in the treatment of service users subject to detention in hospital.

The Committee supports the review group’s recommendations in relation to Consent and Care Plans and endorses the view that a national template for care plans would promote consistency of practice in the interests of service users.

Question 5: Tribunals

Your views are sought on any or all of recommendations relating to the Tribunal (multiple hearings; excessive formality and legality; and availability, quality and style of legal representation) found in Chapter 6 of the Report. If giving your views on any of the other options relating to multiple hearings posed in [Part 4](#) of this paper, you are invited to provide these here in answer to this question.

If you have any *separate* issues in relation to Tribunals which you would also like to address and which are not covered in Chapter 6 of the Report, you are also invited to include those in your response to this question.

The Committee appreciates the review groups timely and detailed consideration of the working of the new Mental Health Tribunal for Scotland and is pleased to note that the move to a Tribunal based system has been viewed positively by most people. The Committee welcomes the opportunity to comment on the major issues identified by the review .

The Committee agrees that repeated hearings are stressful, demanding and cause major problems for the people the new system was designed to benefit most. The Committee is grateful to the review group for its careful analysis of the problems contributing to the need for multiple hearings and for the discussion of the possible solutions. The Committee notes the two options identified , option 1 being to extend the validity of a short –term detention certificate , effectively lengthening the period where a person could be detained without any test of the evidence or scrutiny of the service users condition. Option 2 being to allow short preliminary hearings and the granting of interim orders without the need for all parties to be present,in particular the use of conveners sitting alone. The Committee also notes with interest the detailed suggestions for improvement of both the process and the practice of Tribunal hearings .

In relation to Option 1 the Committee agrees with those respondents who identified this as a clear breach of the Millan principle of minimum intervention and the risk that it would merely provide for a longer initial period of detention with no real identifiable benefit to the service user.

In relation to option 2, the Committee acknowledges the existence already of powers within the Mental Health Tribunal for Scotland (Practice and Procedure)(no.2) Rules 2005 and the safeguards already available requiring written consent of relevant persons and sufficiency of evidence . However, we would comment that dispensing with the presence of the service user runs entirely contrary to the key Millan principle of participation.

On balance, the Committee agrees that recommendation 6.34 to increase the five working day time limit to ten working days, subject to the same present maximum of 56 days for an interim detention order is a reasonable and proportionate response. The Committee also supports the proposed legislative change , that, at this interim stage, the Tribunal need only be satisfied that the conditions for the order “appear to be met” rather than the more stringent test applied at present that the conditions for the order are met. The Committee agree that a time limit of 28 days maximum should apply to any order granted on the basis of this less stringent test.

In relation to Option 2 and recommendation 6.44, the Committee agrees that greater use should and could be made of existing powers in relation to preliminary and procedural hearings and for conveners sitting alone. However, the Committee also considers that this should be

dependent upon the agreement of the service user who should continue to have the right to attend .

The Committee notes the wide variety of venues and personalities involved in Tribunal and, Subject to the foregoing comments, fully supports the recommendations of the review group in relation to Tribunals.

In the last reporting year, members of the Committee visited two hearings of the Mental Health Tribunal for Scotland (MHTS). We are therefore conscious of the complex issues arising . We have raised concerns in our annual report on the use of venues which do not meet appropriate standards. In addition, we have commented that greater flexibility within MHTS is required to secure efficient and effective case management and procedures.

Question 6: Other Issues

Your views are sought on any or all of the additional points on Other Issues made in Chapter 7 of the Report; or indeed any other issues within the Group's remit but that are not addressed in any of the above questions you should feel free to address those in your response to this question.