

Scottish Mental Health Law Review

Minute of the Economic Social and Cultural Advisory Group meeting

21st April 21

Via video conference

Interim report

The intention was to produce the next Interim Report by end June. The Executive Team were meeting soon to discuss the format. It was likely to include input from this workstream, and we may ask group members to help with drafting some of this.

Discussion events

Graham updated the group on meetings to date with HUG, CAPS and EIP. Further meetings are being arranged, and Graham will co-ordinate a report on the emerging themes.

Issues raised included education (people with limited qualifications due to ill health when young), housing, safe places to be, people beaten down by the benefit system, importance of peer support and not being heard. Some of these are rights issues we don't always look at, and highlight the need to define what a right to dignity should mean. Graham suggested we discuss further how we can put more pressure on to make sure people don't live lives of poverty and isolation.

The following points were made in discussion

- These discussions reinforced points from earlier evidence about the breadth of change needed to make ESC rights a reality
- The issue is not just about law, but about the pace of change, and follow through and implementation of policy intentions
- This must be more fully designed and delivered with and around people
- That highlighted the need for a transformation in collective advocacy at a local and national level as a key part of our approach
- Currently collective advocacy, where it happened at all, was very limited and under-resourced, and forced to react to proposals, rather than have the time and space to set its own agenda – more fire-fighting than shaping services
- We know more austerity is likely, but that should not prevent us from advocating for a different way of designing and delivering services
- An important insight from the evidence was that many of the issues that most affect people (loneliness, isolation, lack of connection with peers and wider society, lack of awareness of how to effect change) are no-body's job to fix, as services are currently constituted
- We should consider whether and how the Review of Social Care may impact on this. On one view, greater national leadership and co-ordination and an explicit human rights focus may help with policy and standards, but the loss of

local authority influence and perhaps connection with other local authority services could hamper implementation on the ground, which may be the bigger problem. We need to think how collective advocacy in a broad sense can influence this, as well as help develop a sense of community and belonging for people

- The Review can help by highlighting the interdependence of rights, and reframing the mental health discussion to include housing, benefits etc.

Action: draft a paper setting out the key ingredients for success in collective advocacy, which may be used to inform the interim report

National Taskforce

Colin spoke to the paper summarising the Taskforce report. The following actions were suggested to take this forward

- Work on scrutiny and access to justice to be picked up by the Accountability workstream, which would begin once Isla Jack joined the Review team
- The work on collective advocacy discussed above would take forward some of the Review recommendations on the need for greater support for DPOs, nationally and locally and ensuring service users have a greater role in planning and oversight
- Simon Webster's work (below) would help us understand how incorporation of ESC rights might affect the current mental health law.

In discussion the following points were made

- The Review could help with the requirement to set out Core Minimum Obligations which the state should provide for everyone – not by setting them out in detail, but by setting a frame for what they need to include (as discussed above) and how the process of engagement with rights-holders to establish these core standards should take place. At the moment, it was doubtful that government or local agencies has the skill and capacity to do this well
- Important aspects of this would be to ensure that the floor of minimum obligations did not become a ceiling, and rights were not only available to those who already have knowledge and power. Core minimum standards should encompass recovery and prevention as well as care and support
- The recommendations on Regulation in the Taskforce were fairly lightly sketched out, so there was an opportunity for the Accountability workstream to draw these out more
- We need to be mindful of the pressures on professionals – new rights should not simply put more demand on services without the resources to meet them
- In the context of a 'rights for all' approach and a commitment to non-discrimination, we may need to justify why we should be making special provision for mental health, learning disability etc. That justification may reflect structural disadvantage and discrimination experienced by this group of

people, and the need for reasonable accommodation to overcome societal barriers – but it was recognised that there are tricky issues of where you draw the boundaries if you pass a low for some groups which may exclude others

- We should consider the structures that need to be in place – change would require strategic leadership, allocation of resources across partnerships and a cross-service response, cultural change and rights based budgeting and commissioning.

Action – To write up in more detail how the Taskforce recommendations could be taken forward in relation to mental health.

Analysis of law against ESC rights

Simon shared his initial thinking about how he hoped to take forward consideration of how ESC rights might affect mental health and incapacity law. This had been framed as an audit of the current Acts. His initial view was that it would be better to start with consideration of how CRPD and the social model of disability has shifted our view on what mental health law should be about.

Action – Simon to circulate a note to the Group setting out his thinking.

Date of next meeting - to be arranged for late May, to discuss contribution to Interim Report.