

Mental Health Law Review ESC workstream

Note of meeting of 25th November 2020

Present: Colin McKay, Anne O'Donnell, Chloe Trew, Joanna Higgs, Jennifer Campbell, Kirsty McGrath, Nicola Paterson

Apologies: Graham Morgan

1. Note of last meeting

The note of the meeting of 11th August was approved.

2. Evidence to date

The review has completed four evidence gathering sessions, hearing from representatives of the National Taskforce for Human Rights Leadership, the Royal College of Psychiatrists, VOX, Lanarkshire Links, the Royal College of Occupational Therapists, the Health and Social Care Alliance and the Mental Welfare Commission. A further evidence session has been arranged with the Royal Edinburgh Patients Council.

3. Interim report

Colin spoke to the paper outlining the chapter on ESC rights to appear in the interim report. The aim was to publish the interim report before Christmas, and drafts would be circulated to the group, with a short time available for comments.

The group were generally content with the outline, and the following points were highlighted in discussion.

The importance of the *right to relationships and family life* should be emphasised – for example a case of a person with ASD refused access to IVF; the implications for child care of being on a CTO – where a person was denied access to their children with planned supervised access not being delivered. These were familiar issues for people with learning disabilities, and in the pandemic they had not been supported to see their families. There was a need for a proportionate and balanced approach to family life and the safety of children – examples of children being adopted where the trauma led to the mother being in a secure ward. Too often mental health and children/family social work teams operate separately. A significant part of the work of individual advocacy services is supporting people through child protection proceedings. The impact on mental health of being adopted was also significant. The lack of recognition of the right to family life could in some cases even amount to degrading treatment. We should link to the work of the Care Review. [Note – the Children and Young People workstream is considering this.]

The rights and interests of *carers* needed to be factored in. There were significant issues around managing hospital discharge. Noted that the Comms workstream is looking at how to improve

the information given to carers, and considering a survey to professionals about their understanding of their responsibilities to carers. The Carers Act was not making the difference that had been hoped, and there was a need for advocacy for parents.

We should include comments on the importance in human rights instruments of the *maximum available resources* being devoted to securing ESC rights. This links to the processes for *accountability* and the duty to assess and report on the level of need in the community, and comparing this with the available budget. There may need to be someone in the system (possibly the MWC?) who could interrogate the budget allocated to a need.

We need to watch out for the emerging recommendations of the *Adult Social Care Review*. This could significantly change rights, or how courts view those rights – for example if the Review makes provision for the right to independent living.

The accountability theme highlights the need for more *collective advocacy* – people should not depend on caselaw to advance rights, particularly where there were barriers to access to justice. This links to the CRPD requirement that disabled people and their organisations should be fully involved in all policies that affect them. We should map out what collective advocacy is available – as far as the group were aware, Spirit Advocacy in the Highlands was the only core funded collective advocacy organisation in Scotland, although other organisations like CAPS do this to a limited extent (and some claim they do but don't). It is important to guarantee the independence of advocacy – some groups have been taken over by larger organisations, and the procurement process is a concern. The advocacy arrangements established under Scottish social security legislation were not independent.

Quality standards are an important aspect of accountability. Insofar as standards set by bodies such as the RC Psych exist, they tend not to have a human rights basis. Important to look at how you measure success and at qualitative as well as quantitative indicators.

The law should state *principles* such as valuing and respecting people, but we need to consider how enforceable these are.

4. Next steps and stakeholder engagement

The interim report will set out the actions we will now pursue. The intention is that the ESC workstream should continue in the New Year to take forward these actions. We had hoped to have further conversations with peer support and user organisations but it had not been possible to arrange these before now. This will be a priority in the New Year.