

Scottish Mental Health Law Review

Involuntary Care and Treatment Advisory Group Meeting (Compulsion)

Location: Virtual Meeting via MS Teams

Date: 1st November 2021

Time: 13:00

Attendees: Roger Smyth, Neil Robertson, Gordon McInnes, Laura Dunlop, John Scott, Michael Craggs, Colin McKay, Graham Morgan (chair), Elinor Dawson

Secretariat: Simon Webster, Karen Colvin

Agenda

1. Welcome and Apologies

GM welcomed everyone to the group after a long break. No apologies were received.

2. Note of Previous Meeting

Email secretariat any changes required.

3. Paper from Colin McKay towards foundational proposals on involuntary care and treatment.

Following discussions in this group, talks were had by the executive team about views on compulsory treatment and where it fits within our thinking. A report was circulated prior to the meeting for discussion. Any changed or recommendations to be submitted to the executive team.

Considered the issues around the UN Convention on the Rights of Persons with Disabilities and ways it should be interpreted, also how it squared with the evidence received within Scotland from people with lived experience. This paper was an attempt to summarise where we are at and where do we go?

Firstly, the upfront position is that we are not in a position to say we will end compulsion or that mental health law and incapacity law needs to be essentially abolished, or completely rethought.

From speaking to some of the international experts recently, who are positive in response to our position in relation to the CRPD, our thinking is not that far away from what they thought, and not actually denying the importance of CRPD, as it is important as to how we take things forward, we need to think how to apply it in a meaningful way in Scots law and services.

We don't think we can end compulsion of any kind right now, but it does lead to think about coercion and coercive practice. The paper submitted tries to suggest there may be a difference between involuntary treatment and coercion.

Drawn heavily on research carried out to underpin his paper, there may be tensions surrounding different definitions. There are two issues to any kind of aspirations we have:

- We don't think we can end involuntary treatment altogether. Trying to do that by taking it out of the law wouldn't end involuntary treatment and it would still happen, but probably in an unregulated way.
- Although law regulates involuntary treatment, it doesn't sufficiently address the most serious coercive practice and what actually happens in psychiatric care.

We need to think about how to regulate in law restraint, forceful treatment. Safeguards are not sufficiently robust, but also how do we reduce compulsory care and use of detention.

Often by the time people get to tribunal there is often little alternative to compulsory admission, it's what should have happened before that we need to focus on.

The paper argues for a full spectrum approach to reducing coercive practice within mental health care, and partly reflects some of the evidence used. There is evidence around the world, detailing practical things you can do, which will reduce coercive practice, but there isn't a country that has systematically used the full suite of interventions that might actually make a substantial difference.

Opportunity for Scotland to do what needs to happen right across the system to greatly reduce coercive practice and get to a point where some practices are completely ended.

Pages 3-4 are essentially a checklist of 15 broad foundational recommendations we might want to make, about how we can transform compulsion and coercion in Scotland.

General approach and analysis of views that underpin the paper? Suggested measures, do they make sense/specific? Anything missing – what else could we do to reduce coercive practice? Very interested in the group's reactions.

There was a mixed reaction from the group and it was discussed at length.

Information sought from legal academics from the Victoria (Australia) Mental Health Commission, said to look at the CRPD as a whole, and not get overly caught up in Article 12(3) but more broadly look at the human rights trying to protect, including the rights to receive support/help.

Agreed it was a good start to opening conversation, on how this can go in a way that actually reduces it. There are still some concerns, worries and uncertainties that need to be addressed.

The group were advised that while UNCRPD enjoins us to say get rid of compulsion completely, passing the problem on to the individuals or professionals having to deal without structures of safeguards. The next step is to find the steps in between. In practice there is a limited range of options, we need to reduce the use of compulsion, not by ending it, but putting measures in to divert.

A suggested book, 'Inconvenient People', about 19th century laws in England, the few references to Scotland makes point to how Scotland always had civic involvement.

4. Discussion on paper on human rights and involuntary care and treatment from Simon Webster.

This research paper's purpose was bringing information from different sources to answer questions on reducing/potentially removing coercion through Scottish mental health law.

Will summarise the summary, this review is considered by Scottish government to be very important in the context Scotland may move towards incorporating the convention on the rights of persons with disabilities and to Scots law. This may be the most difficult and complex area of that convention and that process if it happens.

An important element, is the wide range of views towards coercion from people with lived experience in Scotland, but there is a tension between what I believe I see in the publications available, overall collectively people with lived experience as a group don't have the same very strong abolishment level position to mental health law compared to what has been seen in other countries. Different overall position.

Core issue of coercion, appears to be no definitive evidence to demonstrate the use of coercion is practically, clinically helpful or effective. Purpose of paper is to set out possible approaches in law, policy and practice to reducing this.

Importantly, there is not agreement at the UN on what should happen in relation to involuntary care and treatment.

Paper was discussed by the group and comments sought.

5. Update on work to date and work in the next few months.

- Will take comments to Executive Team
- Upcoming meetings with experts
- Gathering evidence

6. AOB

None.

Secretariat – SMHLR
01/11/21