

Scottish Mental Health Law Review

SMHLR
Executive Team Meeting
MSTeams
Tuesday 01 Feb 2022

Attendees: John Scott, Jill Stavert, Graham Morgan, Colin McKay, Alison Rankin, Karen Martin

Secretariat: Kirsty McGrath, Simon Webster, Isla Jack, Fiona Scott, Shaben Begum, Sandra McDonald

Minutes: Fiona Scott

Apologies: Morag Peberdy

Topic of Discussion for Meeting: Voluntary Decision making

1. Minutes of previous meetings

Minutes approved for 25th January Meeting – ET to revisit the discussion on a national scrutiny body at a later date.

2. RCPsychS event discussion

Responsibilities need finalised for an introduction, an afternoon summary and facilitators for workshops. It was agreed that roles would be covered by members of ET, Secretariat and representatives from the Royal College.

3. Consultation

- Forensic work agreed in principle
- Rome Review – there will be an expectation of this being included in the consultation and we can acknowledge that Scottish Government are no further with a response. Secretariat are to provide background on the purpose and intention and this can be the focus of a future ET meeting.
- Fusion – Paper previously provided for the Capacity Group and to be forwarded to the Secretariat.
- Update on draft consultation – The Secretariat are meeting on Thursday with the view to the first draft being distributed on Friday or Monday for comment. It will not be complete at that stage and there is no date set for comments yet but will be at least a week from issue.

Action Points:

- **Set ET meeting on Rome Review**

- **Send Fusion paper to Secretariat**

4. Reference Group Meetings

The next meetings have been set up for Friday 4th March for lived experience group and Monday 7th March for practitioners group.

5. Centre for Mental Health and Capacity webinar in March

The Centre for Mental Health and Capacity are hosting a series of webinars in March and that it could be useful for the Review to present one of the webinars as an opportunity to discuss the consultation and update on the what's going on in the Review. It was agreed that this was a good idea.

6. Meeting with Thrive Adult and SCP Programme arranged for 17th March 2022

The meeting has been set up by the HSCP based on organisations in New York and London that have held conferences where people from Thrive come to speak on services, access to services and changing services. They are setting up hubs where people can be directed by their GP or themselves to access support and advice before reaching crisis and before needing admission to hospital. The meeting will be led by Dr Linda Irvin Fitzpatrick from QMU and Colin Beck from HSCP. The meeting is valuable to the Review as we are seeking ways to see detention, compulsion and coercion reduced by access to services. They can provide information on the funding required and also how they currently fund projects.

It was agreed that this does sound like a helpful scheme to consider and we can discuss who would like to attend nearer the time.

Action point:

- **Secretariat to add a reminder to include on the agenda at ET meeting later in month**

7. Main Discussion – Voluntary Decision Making

The paper "Assessment Framework: Unpacking the Voluntary Decision- Making Test" was spoken to and the aim is to get feedback during the consultation on how it might work in different scenarios. There was discussion about the proposed human rights enabler and the following points were discussed:

- There will be a number of people involved in HRE to temper bias. Someone is responsible for triggering and reporting the assessment but input is needed from several people and varies from person to person tailored to need. It is based on what a person's needs are at a particular time and are they capable of voluntary decision making.
- The purpose of HRE is to question if the treatment is lawful, proportionate and justified in a particular situation
- HRE considers the situation at the time and if people are being influenced by illness. We don't want to have the situation where all influence is considered bad but only the times where it may cause harm.
- HRE not only about detention but also rights being taken away e.g. where to live.
- Enabler is a preferred term to assessment.
- The clinician will still consider diagnosis but the involvement of more people should limit harm.

- People will move in and out of the legislation according to the circumstance and HRE could then check if they have the support needed.
- The way in to the framework is the same for everyone and it's not that diagnosis is irrelevant. HRE might be for short, medium or longterm.
- HRE can help with conflict of interest and influence – allows to take steps to avoid conflict and can also check if conflict of interest is negative. It's about an awareness of conflict of interest and having safeguards in place.
- In the case of children parents need to be considered.
- This new approach is something fundamentally different – emphasis is on 'voluntary' rather than decision making ability. We need to make it clear that it is very different and not a modified capacity test.
- HRE ensures an ethical basis to step in to prevent harm. There are times where as a result of illness decision making is impaired and it would cause harm to not step in.
- In its approach of people with disability CRPD terms impairment to be important. It is not the intention to deny impairment. The focus of recovery doesn't talk about removing a disability or condition but rather talks of learning to live with it. Sometimes it is the environment that is disabling. If we use the model of recovery we are not taking away the condition but making use of the things that are available to provide support.
- It makes most sense when VDM, SDM and HRE are considered together
- A further ET meeting is needed on HRE using scenarios to help improve understanding of how it would work in practice.

8. Conclusion of meeting and date of next meeting

The meeting concluded with an acknowledgement that there is still some way to go to get the right approach for consultation.

There are no dates in the diary for the next meetings but will update soon with dates and also the details of the RCPsychS event.