

Scottish Mental Health Law Review

SMHLR

Executive Team Meeting - Teams

Tuesday 22nd February 2022

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

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

Minutes: Fiona Scott

Topic of Discussion for Meeting: Questions emerging from the second draft of the consultation

1. Minutes of previous meetings

2. Forensic

JSc confirmed that David Leighton had been in touch and had been briefed on the times scales for the Review.

3. Draft Consultation

The second draft has been circulated and comments are to be submitted by close of play on Monday. A request was made for ET members to send their comments individually on separate documents as this makes editing easier. Comments should outline what needs to be said even if this is only a note to

say that we are aware we still need to address an issue. The aim is to publish the consultation w/c 7th March.

KM expressed a concern that there is very little on unpaid carers in the paper and it was agreed that she would send a paper on this subject to the Secretariat for inclusion in the next draft.

Action Point:

- **KM to send chapter on unpaid carers to secretariat for inclusion in consultation.**
- **Second draft comments to be returned to secretariat by COP Monday.**

4. Main Discussion – Questions emerging from the second draft of the consultation

The secretariat have identified four main areas requiring ET attention and decisions in the process of writing the second draft of the consultation. These areas are: The position of the ET on mental disorder for the consultation; questions in the HRE/VDM chapters; Adults with incapacity; and DoL. Each area was discussed in turn.

Mental Disorder

SW spoke to the papers “Options on Mental Disorder 11-2-22” and “Mental Disorder and Detention” and requested that the ET offer their position on: What it is essential that we cover at this stage; What we don’t need to cover in consultation; Mental disorder as a criteria for detention; terms and concepts to be used. The following points were agreed:

- We can include an abbreviated version of the papers to show our working.

- Acknowledge that you can't eliminate all elements of discrimination at a stroke.
- We need to include why discrimination and different treatment may be justified.
- Adopting a broad approach allows recognition of difficult edge cases.
- Rather than debating terminology ask for cases where a definition of mental disorder will help and where it will not.
- We can list conditions that are covered by the law
- With respect to the crossover with AWI and ASP we can ask if LD and Autism should be included in the act and if so how to deal with the implications if mental disorder is taken out.
- If people don't like the term 'mental disorder' we can ask for their preferred term

The ET were thanked for the discussion and it was agreed that this would help the secretariat move on with this area in the consultation.

Advanced Decision making and Deprivation of Liberty

SMc chaired this section of the meeting and requested that the ET pay special attention to the DoL chapter as it is new to this draft. If the content chapter is too crude at this stage to be included in the consultation, wording will be needed from the ET to acknowledge this. Recognising that there may not have been an opportunity to read the chapter yet it was suggested that a separate meeting can be arranged with ET members with a focus in this area for the end of this week or beginning of next week.

HRE Chapter

SMc noted that there are many areas marked with a red font on this chapter and this is to highlight where changes have been made since the first draft. The two main questions from this section are: Who has the lead responsibility for HRE ? and Who or what will trigger an HRE? The following was agreed for the next draft of the consultation:

- Who has the lead responsibility for HRE ?
 - We can have a consultation questions with options – select A,B or C?
 - We can say that we know that we need someone to lead and who do you think that should be?
 - There is a concern over including MHO as lead without consulting on the role of MHOs.
 - The chapter will be redrafted in two blocks
 1. The new assessment proposals.
 2. Consideration of existing situation.
 - Concerns over language can be built into the section of potential barriers to ADM.

- **Who or what will Trigger HRE?**
 - It is our view that there are situations that are an absolute trigger and we can ask consultees for others.
 - When commenting on the consultation please add anything else into the comments on the sidebar.

5. Conclusion of meeting and next meeting

The ET were thanked for the helpful discussion. If a separate meeting on AWI is required please let the secretariat know towards the end of the week. Basics like chapter headings and titles will be picked up at the ET meeting next week.

6. Date of Next Meeting

1st March 2022