

Mental Welfare commission - Review of learning disability and autism in Scottish mental health law – a scoping consultation Social Work Scotland Response

Questions on the scope of the review

To what extent are the suggestions made by Millan still relevant to consider in the review?

Before we get into the detail of this submission, we want to make clear that learning disability and autism are separate conditions and those with these conditions have different needs. Learning disability and autism should not be conflated.

We agree that the position of the Millan Committee remains broadly pertinent – that learning disability and autism should not in themselves be treated legally as ‘mental disorders’.

Mental health treatment should be looked at for an individual where it is believed the individual requires treatment, not because they have either a learning disability or autism per se.

We come across many individuals and family members who regularly question why social work and clinical practitioners from community mental health teams are involved where someone has a lifelong and untreatable condition and no associated mental health problems. This can lead to a feeling of stigmatisation by those carers and adults who do not see themselves or the cared-for person as being ‘ill’.

More progressive legislation is required based around mental capacity, building on the already on-going discussion around revising Adults with Incapacity legislation. The need for medical treatment and where required compulsory measures connected to a learning disability or autistic condition should be embedded within this.

Social Work Scotland believes that it would be helpful to consider removing learning disability and autism from the 2003 legislation and embedding it within new and comprehensive legislation around mental capacity and ability, leaving the 2003 Act to deal specifically with issues around mental ill-health.

Are there any other issues you think the review should look at?

There are a number of issues we would suggest that the review considers:

- To use the formation of new legislation to include not only a review of mental capacity but also to take in the implications of recent case law of deprivation of liberty and wider issues of people with learning disability and autism where they are held in places without clear consent.
- Issues around those in the criminal justice system and whether there should be an alternative pathway. This should take into account the perceived under-diagnosis of people with learning disabilities/autism within the criminal justice system, and also the management of LD and autism within prison and hospital settings.
- Review definitions around mental health, learning disability, learning difficulties and autism.
- There could be greater consideration of models cited from Northern Ireland and New Zealand placing all matters concerning mental incapacity, including measures around compulsion and compliance and forensic matters, within a single piece of legislation separated from mental health.
- Inappropriate detention should be considered in the context of the lack of suitable alternatives for people with LD/autism, including consideration of community-based places of safety as alternatives to hospital admission.
- The scope of the review and any new legislation should cover all ages including children and be linked to the GIRFEC/named person agenda.
- People with LD who are subject to the 2003 Act and lack capacity will also experience different legal interventions if a CTO application is needed. For example, if an application is opposed and the individual has capacity to instruct, then the Solicitor's role is clear in that he/she will be intervening to oppose the order being made. However, if the individual lacks capacity, a curator is appointed and their role is to work in the patient's best interests. This illustrates clear differences in how the law is implemented for people with LD

Are there any issues that you think the review should NOT look at?

Where the 2003 Act is clear and working well on the course of action around mental health this should not be reviewed. The review should concentrate on the areas that are less clear and open to interpretation.

Questions about the conduct of the review

Do you have any suggestions about how the review should be governed or led? Please explain your answer

The review should be led by Scottish Government with Ministers appointing an independent chair.

What are your thoughts about how the review should gather evidence and consult people?

Appoint a group of representative experts from across all statutory, third sector and academic sectors including expert carers and service users.
Social Work Scotland offers to support this work through our membership and committee network. Note the importance of developing easy-read communication if consultation is to be meaningful.

Which individuals / groups / organisations should be involved in the review?

Social Work Scotland Community Care Standing Committee and MHO sub-group
Advocacy
People who use services
Carers
3rd sector organisations
Social Care/Social Work
Health
Equalities and Human Rights Commission in Scotland
Local Area Coordinators

Are there any practical issues that should be considered when deciding how the review should be carried out (for example, information requirements for different groups, format and location of meetings and events, etc)?

It is important that the review captures views from as many people as possible. We would encourage a variety of methods:

- Seminars and workshops
- Focus groups
- Encourage people to air their views through social media, online surveys, forums
- Using the survey methods of other organisations, such as carers groups and advocacy groups to ensure the voices of carers and people who use services are heard

If you are aware of any other examples of good practice for engaging with different groups which might provide lessons for the review, please describe them briefly here.

Social Work Scotland would be happy to facilitate a good practice gathering exercise across our membership should that be useful to the review.

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