



DATE: 6 January 2016

RESPONSE OF: The Royal College of Psychiatrists in Scotland - Faculty of Intellectual Disabilities

RESPONSE TO: The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

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The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and is the professional and educational organisation for doctors specialising in Psychiatry.

Mental Health Legislation

31. Learning disabilities and autism spectrum disorders – the Scottish Government will review the inclusion of people with learning disabilities or autistic spectrum disorders under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Comment:

Intellectual Disability

Whilst it is true that people with intellectual disability (PWID) are over represented in mental health institutions, this reflects the much greater complexity and co-morbidity of this patient group, who experience an increased risk of psychiatric illness, pervasive developmental disorders, autism, deprivation, negative life experiences and so on. It also reflects the fact that people with intellectual disability who commit offences are far more likely to be cared for in hospital settings rather than prison.

The Same as You, a wide ranging learning disability review carried out by the Scottish Government in 2000, had suggested and delivered on a significant reduction in hospital beds, with a firm recommendation of four acute assessment and treatment beds for people with learning disability per 100.000 population.

In addition there is a smaller number of longer stay forensic and challenging behaviour beds. These longer stay beds, the greater complexity of patients, and "delayed discharges" all contribute to longer than average in-patient admissions for PWID (cf GAP services).

We understand that a lack of adequate/robust community provision is a major contributor to PWID becoming delayed discharges and would welcome any legislative or public policy support to address this issue.

The Mental Health (Care and Treatment) (Scotland) Act 2003 supports the care and treatment of people with mental disorder. It defines treatment far more extensively than just medication and includes, for example, psychological intervention, nursing care, risk management procedures, provision of meaningful structured day activities, and so forth.

All of these interventions constitute treatment and can be beneficial for people with intellectual disability, and as a consequence the suggestion that intellectual disability per se cannot be treated is clearly incorrect.

People with intellectual disability cannot be made subject to provision of the Mental Health (Care and Treatment) (Scotland) Act 2003 only on the basis of having an intellectual disability. The Mental Health Act is underpinned by principles such as benefit, least restriction, informal care and others which must always be considered before detention is explored. Additionally, alongside the presence of mental disorder, there must also be the availability of treatment (preventing worsening of the disorder or alleviating symptoms or effects) *and* the presence of significant risk to the person or others *and* a significant impairment of the person's ability to make decision about treatment.

The use of the mental health act for PWID has increased. In our view this is, in part, a welcome development reflecting an appropriate use of legislation. An example of this would be that some PWID, who due to their inability to give informed consent to their admission, are now rightly made subject to the MHA legislation, thereby affording much greater scrutiny through the Mental Health Tribunal System (MHTS), along with access to advocacy, access to treatment review through the mental welfare commission, and empowerment of the named person.

All applications for compulsory treatment orders are subject to review by the Mental Health Tribunal Scotland and of course can be opposed or challenged on a regular basis. We therefore believe that the MHA provides a higher level of safeguarding than the Adults with Incapacity Act, and feel that it would be detrimental to remove this level of scrutiny and legal rights for PWID.

We see no benefit to PWID being removed from the provision the Mental Health Act, a measure likely to disadvantage this group further. The outcome of taking this measure would be that PWID who have committed offences will be subject to increased disposal into prison settings, where individuals can be vulnerable and often do not receive appropriate offender treatment programmes.

We agree that there is a requirement for appropriate and highly skilled community placements. PWID would be better served by using legislation to drive service improvement; however, without a specific and significantly funded programme to develop community services, simply removing PWID from the provisions of the Mental Health Act will only be to the detriment of this patient group.

Autistic Spectrum Disorders

It is our view that people with Autistic Spectrum Disorders are also appropriately included in the MHA, the rationale being similar to that of the argument above supporting the inclusion and retention of Intellectual Disabilities.

32. Adults with Incapacity Act

The Scottish Government will consult on the Scottish Law Commission's review of the Adults with Incapacity Act regarding its compliance with Article 5 of the European Convention on Human Rights, specifically in relation to Deprivation of Liberty. A scoping exercise will follow in relation to a wider review of the Adults with Incapacity legislation.

Comment: We would support the recommendation by the Scottish Law Commission that in order to comply with Article 5, the process for authorising significant restriction of liberty should include provision for periodic review (at intervals of no more than a year), and renewal where appropriate.

33. The Scottish Government will review policies on guardianship and consider circumstances in which supported decision making can be promoted, in line with principles of Article 12 of the UNCRPD.

Comment: We would support a review of policies on guardianship and measures to assist supporting the adult's capacity to make decisions regarding their own circumstances.