



**THE LAW SOCIETY
of SCOTLAND**
www.lawscot.org.uk

Scottish Government Consultation: Patient Rights Charter.

The Law Society of Scotland's Response.

May 2012.

INTRODUCTION

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession.

Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Law Society of Scotland's Mental Health and Disability Sub-Committee (the committee) welcomes the opportunity to consider and respond to the Scottish Governments Consultation: Patients Rights and Responsibilities.

The committee has the following comments and responses to put forward in relation to the questions posed:

Question 1

- a) Do you think the level of detail in the Charter is useful and appropriate?
- b) Is there any information not included in the Charter that should be covered?
- c) What would make it better?

Response: Refer to general comments in response to Question 6 (below).

Question 2

- a) Do you think the information in the Charter is written in a way that is easy to understand?
- b) Does the format of the Charter make it easy to find the information you need?
- c) What would make it better?

Response: Refer to general comments in response to Question 6 (below).

Question 3

Do you have any comments on the design of the Charter?

Response: Refer to general comments in response to Question 6 (below).

Question 4:

- a) What do you think is the most appropriate way for people to get a copy of the Charter?
- b) Do you agree that we should only make alternative formats available on request?

Response: The Charter must be made available in any place which may be used or visited by a patient. A copy should be provided to each individual patient in the appropriate format as a requirement, and the onus not placed on the patient to request one, as many patients will not be aware of the existence of the Charter.

Question 5

- a) Do you have any comments on the balance of rights and responsibilities set out in the Charter?
- b) What would make it better?

Response: The committee's opinion is that there should be a better balance between the rights and responsibilities of the patient. It is important to ensure a fair and clear balance also between the NHS responsibilities and the patient's rights.

Question 6

Do you have any additional comments to make about the Charter of Patient Rights and Responsibilities?

General comments:

Having reviewed and considered the draft Charter, the committee is of the opinion that the structure and content should be reviewed and amended to make it more reader friendly. The

committee believes that the Charter is not written in a clear manner and would not be readily understandable to patients, particularly those with learning difficulties, and it fails to take account of patients who have any form of sensory impairment. The draft also fails to distinguish between those responsibilities which should be met and carried out to meet legal obligations and duties under law and those which should be carried out as good practice. These should be reflected in clear use of the terms of 'must' and 'should'. The committee suggests that consideration be given to also setting these out in separate headed columns, which will be clearer to all those concerned. To make the Charter more accessible, clear indexing should be used, and it is suggested that all heading be in bold type, followed by information on rights and responsibilities, and details where further information can be accessed. The committee also believes that as drafted, the Charter is not 'child' friendly and this also needs to be addressed.

Specific comments:

Page 9: *'the views of anyone who has legal authority to make a decision on your behalf'*

Comment: The committee believes that the Charter should set out clearly information for patients of who can and cannot make decisions on their behalf. The wording as set out on page 9 does not make it clear and is very 'muddled'

Page 9: *'you should be given information in a way you can understand'*

Comment: The committee suggests that this should read 'you *must* be given...'

Page 10: *'you can expect to be given information about your care and treatment in a format or language that meets your needs (for example in audio format or in a language other than in English)'*

Comment: The committee suggests that this be expanded to ensure that the information is delivered to those individuals who have sensory difficulties impairments, such as sight or hearing, in a form which is easily accessible and understandable to them. There should be an obligation, for example to ensure that they have correctly heard and understood. The

committee also suggests that any information provided should be communicated in a manner which is easily understood by the patient, taking their level of understanding into account.

Page 11: *'the Adults with Incapacity (Scotland) Act 2000 provides safeguards for the welfare of adults who lack capacity to make some or all decisions for themselves...'*

Comment: The committee note that reference is made to Adults with Incapacity (Scotland) Act 2000 but the Charter is silent on rights under the Mental Health (Care and Treatment) (Scotland) Act 2003. The committee suggests that the Charter should be broader in nature to cover patient's rights under all relevant health legislation which applies to patients.

Page 12: *'tell a member of staff if you need information in a particular way to meet your needs (for example, in audio or in a language other than English)'*

Comment: The committee suggests, as previous, that this needs to be expanded to take account of those patients with sensory impairments.

Page 16: *'you have the right to be treated as an individual with dignity and respect'*

Comment: The committee believes that the simple reference to dignity and respect should be expanded, and that it should be specified that as a very minimum the patient should be treated in a courteous manner, taking into account their needs, level of understanding and culture, and which includes addressing the patient in an appropriate manner. For example for some patients it may be appropriate to address them by their first name, for others this will be entirely inappropriate.

Page 18: *'you can expect that everyone working in the NHS in Scotland has the appropriate skills and training for their job'*

Comment: The committee suggests that not only should the patient be assured that the member of staff attending to them has the skills for their job but, more importantly, they have the skills required to meet the specific needs of the patient at that time. The committee further suggests that there is a responsibility to assess the needs of the patient, by a member of staff who is competent to make such assessment, and a member of staff appointed who is trained and skilled to meet those needs.

Page 20: *'you have the right to give feedback, make comments, or raise concerns or complaints about the health care you receive'*

Comment: The committee suggests that this be amended to include a patient's legal proxy, who also has the right on behalf of the patient.

Page 23: *'Examples of this are if an NHS body in Scotland or health care professional'...*

Comment: The committee suggests that the list of examples is extended to cover contravention of a patient's human rights relating to discrimination.

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