

CONSULTATION QUESTIONS

1. Proposals for regulations

Our first proposal for legislative change is that we bring forward regulations in the following terms:

Section 268 of the 2003 Act gives a right of appeal against levels of excessive security for qualifying patients in qualifying hospitals. We propose that a qualifying patient would be -

- an individual who is subject to an order requiring them to be detained in a hospital which operates a medium level of security; and
- who has a report from an approved medical practitioner (as defined by section 22 of the 2003 Act, who is not the patient's current RMO,) which supports the view that detention of the patient in the qualifying hospital involves the patient being subject to a level of security which is excessive in the patient's case.

A qualifying hospital would be one of the following-

- the Orchard Clinic in Edinburgh, and the regional medium secure component of Rohallion in Tayside and Rowanbank in Glasgow

Please tell us about any potential impacts, either positive or negative you feel these proposals for regulations may have.

The secure psychiatric system should operate as one integrated whole, but it does not. The entrapment issue at The State Hospital has reduced (but not disappeared) and the "blockage" is now at medium secure, particularly Rowanbank.

At the time of writing Rowanbank has a waiting list of approximately 22, with 15 patients waiting from The State Hospital and seven from elsewhere. That waiting list will take three years to clear.

Patients need to move through the system and a right of appeal at the medium secure level is not much use unless there is a sufficient volume of beds at the low secure level and in the community. Accordingly a qualifying hospital should be defined so as to also include all low secure services.

2 .Our second proposal is that we do not bring forward regulations but instead repeal section 268 at the earliest opportunity. At the same time we will consider the review undertaken by the National Forensic Network of patients detained in the high, medium and low secure estates, which we hope will clarify whether there is an issue with entrapped patients held in these settings. The outcome of this could result in changes to primary legislation in early course. To take that proposal forward we seek views on the following:

- The current appeal provision in section 268 is restrictive and in particular does not allow for a change in security levels within the same hospital setting. Is there a need for a wider provision for an appeal against excessive levels of security?

1. Your second proposal does need not need to be an alternative to new regulations; the government should adopt both proposals

2. Yes, there a need for a wider provision for an appeal against excessive levels of security.

- If an additional appeal provision is created, do we need to provide for a preliminary review to consider the merits of the appeal before proceeding to a full hearing?

Yes but not at the Tribunal level but as a preliminary to making an application. The best filter (which you have already identified) would be to require a report from an independent medical practitioner supporting the view that the patient is held in excessive security and should be moved within the same hospital or elsewhere - but see also the final paragraph below

- Compulsory Treatment orders, compulsion and restriction orders and transfer treatment directives are currently reviewed by the Mental Health Tribunal at least once every two years. Levels of security are not necessarily discussed at these reviews. Should there be a requirement for the Tribunal to consider levels of security as a matter of course, with an accompanying right of appeal if the question of level of security has not been considered?

Yes, but the proposals does not go far enough. The question of security levels should not only be considered but be decided upon and that decision put into the Findings of Fact and Reasons and/or contained in a separate form which is not only sent to the Parties but also to the Mental Welfare Commission

- Can more effective use be made of recorded matters by the Tribunal with regard to levels of security in Compulsory Treatment Order cases ?

Yes, but a better change would be to enable Recorded Matters to be made by the Tribunal in Compulsion Orders, either with or without a Restriction Order, in addition to in CTOs.

- Are there other changes to the review system that you consider may help to support and develop further the effective movement of patients through the secure system?

The current bed blockage at Rowanbank needs to be removed

Any further comments

Two points of detail with regard to the report from an independent AMP.

Firstly, to be a qualifying patient it should be provided that the report, in its entirety, must first be copied to the RMO and the Tribunal; so the pre-condition is not merely the existence of such report but the giving of limited publication to its contents.

Secondly, that report can only describe the current situation and should not be allowed to have an indefinite duration; so the appeal needs to be brought within, say, six months of the date of that report



18-09-13