



### **Consultation on proposals for a new Mental Health (Scotland) Bill March 2014**

We are concerned that despite publication of the Limited Review of the Mental Health (Care and Treatment) (Scotland) Act in 2009 (the McManus Report), very few of its recommendations are included in these proposals and conversely, that there is a lot included in the consultation that was not included in the McManus Report. While the proposed Bill includes sections on Named Persons and Advance Statements it does not take account of all recommendations in respect of these issues, furthermore there is no reference to independent advocacy. The McManus Report recommended a strengthening of the role of advocacy – but that is missed in these proposals. We fear that the lack of reference to independent advocacy in this Bill will have a negative impact on availability and on how it will be possible to meet the Scottish Government commitment to independent advocacy.

Advocacy helps people to express their own needs and make informed decisions as well as safeguarding people who are vulnerable or discriminated against or whom services find it difficult to support. Reference to independent advocacy would strengthen these proposals and safeguard the rights of people with mental health problems. Furthermore, to support the shift in policy towards co-production and involving people in decisions about the design and delivery of services, the Bill also should support the wider development of collective advocacy.

The 2003 Act set out a “right of access to independent advocacy” and there are organisations working across Scotland to support people with a “mental disorder”. However, despite the duty, access to advocacy varies from area to area and the duty is not being wholly adhered to across the country. We believe that the Scottish Government needs to put in place stronger monitoring mechanisms and consequences for Health Boards and Local Authorities who do not meet this duty. The McManus report recommended that ‘The Scottish Government should, by whatever means it sees fit, ensure that there is appropriate provision, with associated funding, across Scotland, of independent advocacy services by NHS Boards and Local Authorities.’

The SIAA Advocacy Map should be used as a tool by the Scottish Government to monitor provision and NHS Boards and Local Authorities should be reminded of their responsibilities to produce strategic advocacy plans and action plans following on from these.

In previous editions of the Advocacy Map the SIAA has reported concerns around levels of provision of independent advocacy for children with mental disorders. This has improved in some areas however significant gaps in provision remain. We have also reported on limited availability of

collective advocacy in some areas. Provision has increased but, as with independent advocacy for children, gaps still remain.

Recommendation 3.2 of the McManus report was that - *The Mental Welfare Commission requested that service users or those with an interest in a case be empowered to report to the Commission failures to provide adequate access to advocacy services.* We believe that the Mental Welfare Commission should have powers to monitor access to independent advocacy and report on failures around provision.

In March 2013 the Mental Welfare Commission commissioned a consultation exploring participants' knowledge about, and understanding of, their rights in relation to the care and support they receive from mental health services. Many of these participants were unaware of their rights in relation to Named Person or Advance Statements. The participants who had accessed independent advocacy, both one to one and collective, were all aware of these rights.

McManus further recommends that independent advocacy organisations should aim to work in accordance with the Scottish Independent Advocacy Alliance Principles and Standards and Code of Practice. The recently published Scottish Government Guide for Commissioners<sup>1</sup> includes the four Principles as detailed in the SIAA Principles & Standards. The standards within Principle 3 of the Guide for Commissioners reflect Commissioners' statutory responsibilities under the Mental Health (Care & Treatment) (Scotland) Act 2003 and its supporting Code of Practice.

The McManus report also includes a recommendation that appropriate scrutiny processes should promote and monitor the application of the advocacy Principles & Standards. Some work is already underway to pilot evaluation and monitoring systems for advocacy. We believe that Commissioners should ensure that the application of advocacy principles and standards should be demonstrated through contracts and Service Level Agreements for independent advocacy provision.

Independent advocacy is vital in ensuring the principles underpinning the Mental Health (Care & Treatment) (Scotland) Act 2003 become a reality. This is particularly in relation to seeking the views of the patient and in full participation in decision making. It is important that the proposals for a new Mental Health Bill do not contribute to any erosion of availability of high quality independent advocacy.

The Mental Health (Care & Treatment) (Scotland) Act 2003 was hailed internationally as a ground-breaking piece of legislation and Scotland has a reputation as a world leader in relation to the care and the rights of people with mental disorders. It is therefore vital that proposals for the Mental Health (Scotland) Bill do not result in the loss of this reputation. We believe that the Bill in its current format has the potential to weaken many of the important provisions of the Mental Health (Care & Treatment) (Scotland) Act 2003.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2013/12/7000/downloads>

## **Consultation Questions**

### **Question 1: Do you have any comments on the proposed amendments to the Advance Statement provisions? (Chapter 2)**

In spite of the extensive work done by various agencies to promote Advance Statements the numbers of people preparing them are still low. Reports from advocacy organisations suggest that there are concerns about the legal status of advance statements and whether medical staff give due consideration to them. In situations where Advance Statements are not followed the accountability around this needs to be strengthened.

We support the idea of the Mental Welfare Commission holding a central register of Advance Statements. It will be important to have clarity on how the advance statements will be held and who will have access to their contents. The person themselves should be allowed to decide who is able to access their advance statement.

### **Question 2: Do you have any comments on the proposed amendments to the Named Person provisions? (Chapter 2)**

We support the idea that individuals should have the right not to have a Named Person. While we welcome this clarity we believe that it is important that, if an individual has not signed a declaration to the effect that they do not wish to have a Named Person, one should not be imposed by the Tribunal or MHO if there is no obvious candidate for this role.

We also support the idea that a Named Person should be required to sign an agreement before they are appointed. We believe that there should be training, information and support for Named Persons.

### **Question 14: Do you agree with the proposed approach for the notification element of this VNS? If not, please explain why not and please outline what your preferred approach would be. (Chapter 4)**

We are concerned about the lack of clarity around these proposals. The introduction of a statutory scheme allowing for the disclosure of information about mentally disordered offenders to their victims or their relatives in certain circumstances is a hugely significant development and requires significant consideration, discussion and detailed information. It is important that a provision for such notification does not discriminate against mentally disordered offenders.

### **Question 17: Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the "protected characteristics". (Chapter 5)**

The proposals do not appear to be person-centred in their approach and make a number of administrative duties in isolation of the person and their rights. This is out of step with both the

international context – for example, the Convention on the Rights of Persons with Disabilities (UNCRPD) and the recent direction of travel in Scotland, e.g. the Mental Health Strategy for Scotland 2012-15 , development of the recovery approach, the emphasis placed on person-centredness in the broader 2020 Vision and the Route Map to the 2020 Vision and the Scottish National Action Plan on Human Rights .

The proposals must reflect the shift in policy towards co-production and people being equal and active partners in their health and care. Co-production can describe partnership at the individual level but it is also about involving people in decisions about the design and delivery of services. This is an essential mechanism for producing models, services and systems that are person-centred.

Moves towards empowerment of people’s voices must apply equally in relation to people with mental health problems as it does to all other groups of people who use health and social care services. We are concerned that if the proposals are enacted they are likely to lead to a loss of rights for people with mental health problems with very little justification.

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The Scottish Independent Advocacy Alliance (SIAA) is Scotland’s national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.