



The independent review of
**Learning Disability
and Autism**
in the Mental Health Act

Final consultation - Stage 3 of the review

Response by COSLA

COSLA
Verity House
Haymarket Yards
EDINBURGH
EH12 5BH

Contact: John Urquhart

Thank you for the opportunity to provide a response to Stage 3 of the Review. COSLA's Health and Social Care Board considered the Consultation document and the headline actions under 1.3 The changes that we think need to happen, at our meeting on Friday 1st November 2019 and a COSLA response was agreed. We are happy for our response to be published

Our members welcomed the opportunity to comment on the likely recommendations to Ministers and also noted there will be further opportunities to inform any future Bill in the Scottish Parliament and empathised that a full costing of any proposed changes would be required in the Financial Memorandum supporting the Bill.

Our submission at Stage 2 of the Review noted that our position is based on the following principles:

- A multi-agency approach to protecting people at risk
- A human-rights based approach
- Flexibility to design local services based on the assets and resources that exist within that area
- A focus on prevention and early intervention
- Recognition that adequate core funding for local services will allow agencies to achieve the above

That remains our position as does Local Government's commitment to human rights-based approaches and an openness to learning and changing policy and practice based on that learning. We also highlighted resource and capacity issues and the pressure on local government services, these pressures remain.

Members were supportive of recommendations for the removal of learning disability and autism from the existing Act and the creation of a new Act based on the UN Convention of the Rights of People with Disabilities. Adopting a human rights based approach would be expensive, introducing assessments based on human rights needs would mean existing staff would need retraining to carry these out. This approach is also likely to be more expensive than the current model of needs and risk-based assessments. There is also the potential for increased number of appeals from individuals around service provision and this also has resource implications. We are aware that it was not in the Reviews remit to seek to quantify how many individuals would be affected by these changes, however it is important that such an exercise takes place to determine the scale of any new demands which will be placed on the social care and social work sector as a result of these changes.

On recommendations for community-based settings, for safe places and secure care centres these are likely to be more expensive than hospital-based services and a proper transfer of resources from NHS Acute services to Local Authorities would need to take place. We have some concerns around the use of the term secure care and note that People First have raised concerns that a new Act needs to see the development of new models of care and support and not merely replace the existing Act with new forms of secure care. We support this view. It is important that these new facilities provide rehabilitation and don't replicate assessment centres which some of our Members think end up as long stay institutions due to lack of suitable accommodation. These proposals could be seen to be at odds with the Coming Home Report with its focus on reducing the use of large-scale provision of residential care for individuals with learning disabilities. Our members were also keen that we raised the issue of secure care settings in rural areas being very resource intensive and highlight existing difficulties of recruiting staff in a number of areas of the country.

COSLA do have concerns about the recommendations of considerable new powers for the Mental Welfare Commission, we see this as contradictory to the theme that learning disability and autism are removed from the Act. We feel that these proposals need to respect and incorporate existing processes and roles rather than seek to impose the role of the Mental Welfare Commission on a new model of social care provision. We suggest that proposals for how new forms of provision in a social care setting could be monitored and overseen need to take no account of existing social care and social work processes and procedures.

These proposed new powers seem to suggest that the Mental Welfare Commission would be able to determine how local authority employees and commissioned services are deployed and trained, and what services should be provided. The proposals would also give the Mental Welfare Commission an inspection and monitoring and reporting role over Local Authority staff and services, and the ability to direct how resources are used, including the ability to close services or to direct local authorities to keep services

open. It is local authorities and their elected members role to determine local priorities and to set their budgets within existing resources, these proposals would appear to pass that role onto the Mental Welfare Commission which we do not accept. The recommendations also appear to ignore the existing role of the Care Inspectorate, SSSC, Social Work Complaints processes and the Scottish Public Service Ombudsman.

The recommendations would also increase the workload of Mental Health Officers and there are already heavy demands on these Local Authority employed officers, so more would need to be recruited and trained, the need to quantify the number of individuals impacted by the new act would help to determine the amount of additional Mental Health Officers required. There is a recommendation that Mental Health Officers would need to be employed in a way that made them independent of the Health and Social Care Partnership and the Social Work Department. We think this proposal needs further clarification.

Conclusion

We are supportive of learning disability and autism being removed from the existing Mental Health (Care and Treatment) (Scotland) Act 2003. We do not consider learning disability and autism to be mental disorders and would be supportive of a new Act based on a human rights approach.

Such a new Act would be expensive to deliver and resources across the public sector are under strain and demand for all services is high. The number of individuals who would be supported by a new act needs to be quantified to determine the level of community-based resources which would be needed, and these resources would need to be fully funded by a proper resource transfer. We are supportive of getting individuals out of hospitals and for support being provided as near to their home communities as possible. The level of locally available support will legitimately vary based on the assets and resources which exist within that area, and on demand.

We are not supportive of new powers for the Mental Welfare Commission to direct Local Government resources and not convinced that the Mental Welfare Commission should take on the roles outlined in the consultation document, further development on the need for new powers will be necessary if a new Bill is introduced in the Scottish Parliament.

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