

Submitted to **1. Summary survey**

Submitted on **2019-11-05 14:40:40**

1. What Scotland needs to do

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

The Scottish Association of Social Work (SASW) – part of BASW UK - is the professional association for social workers in Scotland. We're here to promote the best possible social work services for all people who may need them, while also securing the well-being of social workers.

SASW agrees that mental health law in Scotland needs to change for people with a learning disability and autism – in particular we welcome the move to redefine autism and learning disabilities as 'disabilities'. Those with autism and learning disability have a unique set of needs which differs greatly to those with mental illness. It's important these groups are empowered and that their human rights are realised and respected.

Our members, many of whom are Mental Health Officers across Scotland work directly with those with autism and learning disability. Members are both heartened by the aspirations in stage 3 of the consultation but acknowledge the risk it is trying to be all things to all people. Social Workers are focused on interconnected systems as part of their remit and find it difficult to respond to policy that doesn't discuss resources. Our members are constantly telling us that the service they are able to provide has diminished significantly across a decade of austerity and this is frustrating to practitioners who want to embrace positive changes for service users.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Members felt that at times, this consultation is unclear as it covers a lot.

SASW feel that developing changes to the legislation in stages would be helpful.

It is important that a resource scoping exercise is undertaken with practical examples and illustrations of additional capacity being made available to help these

aspirational plans be realised. This is in respect to suggested timescales as well as increased workloads.

2. How we understand autism, learning disability and mental health

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

SASW are concerned that the 'positive discrimination' indicated in the consultation, in terms of Significantly Impaired Decision-Making Ability about medical

treatment and appearance at trial may increase the distress experienced by individuals with autistic spectrum disorder and learning disability.

Members expressed concerns around advocacy and how this could effectively safeguard the rights of these individuals, stating it is essential that the safeguards are clear and readily available. Mental Health Officers (MHO's) wanted us to stress that as social workers they already have a focus on the social model of

disability and see their roles currently as human rights defenders ensuring least restrictive alternatives are employed. MHOs provide an independent 'check and

balance' to the medical model and have a robust awareness of services and range of creative community options available; especially since the advent of the

Social Care Self-Directed Support (Scotland) Act 2013 (SDS). Members in areas where the adoption of these acts has been well implemented told us they felt

good practice already in place has not been reflected or recognised. SASW acknowledges that people using services in different areas of Scotland may have very

different experiences.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Sometimes the notion of capacity is vague in the consultation discussion. This is something MHO's have struggled with as medics still discuss capacity in a global and non-specific way in spite of practice guidance for the 2000 and the 2003 acts.

Some of the discussion suggests that appropriately evidence-based environments would significantly ameliorate difficulties an individual may be experiencing

when their liberty is restricted but there is a risk of over-estimating this.

In terms of risk assessment from an MHO perspective mental distress is already considered within a human rights framework with our current legislation

indicating that this is not the case, diminishes the current role of the Mental Health Officer.

Currently all persons are presumed to have capacity, unless otherwise indicated following assessment and we note the review of the 2000 act is not fully adopting

UNCRRPD. The consultation does not make it clear what provisions or timescales are in place for emergency situations or how this would fit with safeguarding practices.

3. Support for decision making

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

Most members showed strong approval for movements toward supported decision making and also feel that while more could be done within the framework of the current legislation that making it overt and signalling resource implications would make it a higher priority in terms of service provision, particularly with health colleagues.

The support for decision making by family members does cause some concern as it is not clear if this will be on an assessed basis of their suitability to do this or on a default basis. However unpleasant it may be to consider, at times, family members are the perpetrators of abuse against adults with learning disability and autism. They may be complicit in the abuse and they may also prioritise their own needs, wants and wishes above the adults. Many people in our discussion and workshops highlighted these risks.

It is necessary to formally reduce the hitherto undue authority of strangers or professionals making decisions which may not be indicative of what an individual really strives for.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

It is difficult for practitioners to envision how this would 'dovetail' with the suite of legislation available to adults in Scotland without examples of practice.

Questions that came up in our discussion with member's included;

What assessment or suitability test would be put in place to ensure supporters are appropriate and who would do this? E.g. Disclosure Scotland checks

What training would be available for supporters or advocates?

What is the role of speech and language therapy and MHO's in terms of promoting communication and decision making?

Would MHOs assess and monitor whether supported decision makers are conducting their role effectively and do not become substitute decision makers by proxy?

4. Support, care and treatment

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

Although the idea of specialist rehabilitation units for offenders was well received, members were concerned that individuals with autism and learning disability

could continue to be 'treated' in silos away from their community and without access to appropriate step down services.

Some members felt that legislation should ensure consequences for LAs to fulfil their obligations to match appropriate care as indicated in multidisciplinary assessments.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Members felt that they would like more detail on the specific models Scotland might draw upon e.g. Canada, Nordic countries & Australasia, where similar improvements have been effectively implemented.

Provision may need to prescribe whether teams have specialist autism workers or as part of 'mainstream services' or small specialist MDTs for these populations.

5. Where support, care and treatment happens

1 What do you think about the ideas in this section?

I like the ideas

Why do you think that?:

Generally, respondents felt the ideas of person-centred support in the community are in line with current thinking and practice. Some members were concerned

that the secure support centres are a backwards step towards institutional care that doesn't have the same safeguards for review and criteria that is afforded

under current legislation. However, others felt this was preferable to current care in the forensic estate.

There were a number of comments about crisis provision being a postcode lottery.

Members expressed concerns about our ability to ensure safety for those accessing any institutional care for example recent abuses highlighted at Castlebeck

and Durham. How could legislation ensure the proper level of external scrutiny and quality assurance for the additional vulnerability for those placed in group care

settings.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

What are the emergency needs of this service user group and how will their rights be protected in emergency situations?

The current information is open to interpretation and does not take account of current good practice in ascertaining what provisions are available to prevent

hospital admissions.

A clear idea as to what governance structures will be to ensure a social model and an appropriate skills mix to staff such services. A need to ensure their

integration into communities where people can access appropriate socialisation and move quickly toward greater independence.

6. How professionals make decisions

1 What do you think about the ideas in this section?

I like the ideas

Why do you think that?:

While starting from a global Human Rights framework rather than criteria of national legislation was welcomed there was concern about capacity and some of the

very short timescales for major pieces of work by an MHO or social worker.

2 Could these ideas be made better?

I don't know

How could these ideas be made better?:

There is a need to ensure MHO's have time to assimilate the new ideas with a staggered introduction and ongoing review as to what barriers there may be in day to day practice.

Some members mentioned that if new resource was feasible then why has it not been available until now.

7. How decisions are monitored

1 What do you think about the ideas in this section?

I like the ideas

Why do you think that?:

Safeguards need to be very robust and Mental welfare commission and Mental Health Tribunals Scotland need clarity in their responsibilities to enforce these.

2 Could these ideas be made better?

I don't know

How could these ideas be made better?:

8. Offenders

1 What do you think about the ideas in this section?

I like the ideas

Why do you think that?:

Members liked the idea of intermediaries or supporters and the adapted prison settings but had concerns about the ideas proposed in relation to risk assessment and appearing in court.

In terms of equality of treatment, when health conditions are lifelong there was some concern about the comparison between this and forensic service users in

mental health settings who may improve significantly in terms of insight following treatment.

2 Could these ideas be made better?

I don't know

How could these ideas be made better?:

Members queried how this fits with the vulnerable witness procedures and the use of appropriate adults.

Some respondents mentioned their current experience with service users not wanting to move on from pleasant if restrictive environments and communities they had become dependent on.

9. Where support, care and treatment happens for offenders

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

Some respondents felt there was lack of comment on the rights of victims and public protection issues.

Respondents generally felt that prisons would need significant adaptation to appropriately manage the needs of these populations.

2 Could these ideas be made better?

I don't know

How could these ideas be made better?:

Respondents felt significant training would be required for Prison officers in Autism and Learning Disability issues.

Some commented that many of those they work with have been in Prison at some point already.

10. What this means for the law

1 What do you think about the ideas in this section?

I like the ideas

Why do you think that?:

Members welcomed the aspirations of the consultation but feel that the 'positive discrimination' noted within the consultation is confusing. Questions were raised as to whether this takes account of supportive and protective practices in emergency situations.

Respondents said that a separate act may reduce the current significant confusion around diagnosis and more effectively address the reasons for offending particularly in terms of trauma, susceptibility, environment & relationships.

2 Could these ideas be made better?

Not Answered

How could these ideas be made better?:

About you

1 What is your name?

Name:

Scottish Association of Social Work

2 Are you taking part as an individual person, as a professional or as a group of people?

A Group

3 Do any of these apply to you?

None of the above

4 If you are taking part as a professional, what is your profession?

Profession:

Professional Association for Social Workers S

5 If you are taking part as a group, what is the name of your group?

name of group:

Scottish Association of Social Work

6 Do you live in Scotland?

Yes

7 Do you want us to publish your response?

Yes please publish my response anonymously

If you want to say anything else at all please say it here: