

Petition PE 1741:

Response by Mental Welfare Commission for Scotland

The Mental Welfare Commission is grateful for the opportunity to respond to the above petition, which calls on the Scottish Parliament ‘to *urge the Scottish Government to introduce a new law addressing the needs and rights of people with lifelong learning disabilities in Scotland.*’

The Commission believes that there have been substantial improvements in the support given to people with learning disabilities in recent decades, but agrees that, despite progressive policies, many difficulties remain. We cannot be satisfied that the human rights of people with learning disabilities are fully respected.

A particular concern, to which the Commission has repeatedly drawn attention, is the long delay in providing appropriate community accommodation for people with learning disabilities being cared for in hospital. This was highlighted in our *No Through Road* report in 2016¹. At that time, we found that 32% of patients were experiencing long waits for discharge. Subsequent follow up suggested that the problem had, if anything, got worse. Despite further work sponsored by Scottish Government, including the *Coming Home* report in 2018², we have yet to see a credible plan to solve this problem in a reasonable timeframe.

It is notable that some of the people in hospital units will be subject to detention under the Mental Health (Care and Treatment) (Scotland) Act 2003. The Act is intended to safeguard a patient’s rights where detention is necessary. However, if detention is only necessary because appropriate services have not been made available, it is arguable that the Act is being used to legitimise a breach of the patient’s rights, rather than to protect them.

Another example of what we consider to be discriminatory treatment can be found in our recent *ST investigation*³. In that case, a woman with learning disabilities was kept in an acute hospital for 18 months beyond when she could have been discharged, essentially because of a dispute between the social work department and the family. Although proceedings under the Adults with Incapacity Act eventually brought about a limited resolution, we do not feel the woman’s rights were properly respected during this period.

We are also aware of concerns that hard-won gains in promoting independent living, as required by Article 19 of the UN Convention on the Rights of Persons with Disabilities, are under threat. Because of acute pressures on social work budgets, there is a risk that services will resort to more institutional models to save money.

Unequal treatment is sometimes inadvertent, but nevertheless harmful. People with learning disabilities have significantly poorer health outcomes, which can be contributed to by lack of access to routine health screening, and a failure by mainstream health services to address additional support or communication needs.

¹ https://www.mwscot.org.uk/sites/default/files/2019-06/no_through_road.pdf

² <https://www.gov.scot/publications/coming-home-complex-care-needs-out-area-placements-report-2018/pages/5/>

³ https://www.mwscot.org.uk/sites/default/files/2019-09/Ms_ST_investigation_FullReport_12September2019_SECURED.pdf

We are therefore sympathetic to the suggestion that the legal rights of people with learning disabilities should be reviewed and, where possible, strengthened. However, it is important not to minimise the complexity of this.

Most of our health and education services are universal and intended to be delivered on the basis of need, not a particular diagnosis or condition. Creating an additional entitlement for one group can raise difficult issues of where the boundary lies, and which other groups should receive particular special treatment - for example, should the same law apply to people with autism, or dementia? If not, should they also have their own special law?

The issue of learning disability and the criminal justice system is also complex. Most people with learning disability who offend do not receive mental health disposals, and prisons and mainstream community services are often wholly inappropriate. For those who are diverted into the mental health system, it is true that this may result in a period of detention which is significantly longer than the person might have received if they had received a criminal sentence. But it isn't obvious that the solution to this is to place them back into the criminal justice system.

These are all important questions which deserve consideration. Many of them are being looked at in the Independent Review of the Mental Health Act as it affects people with learning disability and autism⁴. Its Stage 3 consultation is open until 1st November and asks about its proposals to

- Embed a human rights culture in mental health services for people with learning disability
- Provide stronger support for decision making, to ensure that adults with learning disability can exercise their legal capacity
- Establish a right in law for people with learning disability to access the support they need
- Change the way offenders with learning disabilities are given support, in a way which respects their human rights
- A shift away from compulsory treatment in hospital to voluntary treatment in the community
- Develop new human rights assessments as the basis for professional decision making about people with learning disability.

The Commission will respond separately to these proposals. We would respectfully suggest that many of the issues raised by the petition are in the scope of this review, which is due to report by the end of the year. Its proposals will afford an opportunity for the Parliament, Government and civil society to continue to debate these important issues and, we hope, to strengthen the rights and protections of people with learning disabilities.

Colin McKay, Chief Executive
25 October 2019

⁴ <https://www.irmha.scot/>