

Investigating deaths occurring during compulsory care and treatment under mental health legislation in Scotland

Section 2: Summary of revised process proposed by the Commission

Q1. Q1: Do you agree that the Commission should be responsible for initiating, directing and quality assuring the process of investigating deaths during compulsory treatment in all cases?

Yes

Q2. Q1a: Do you foresee any difficulties with this arrangement?

No Response

Q3. Q1b: How could such difficulties be addressed?

No Response

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Q4. Q2: Do you agree that the Commission should be responsible for producing and disseminating an annual report on the results of the investigations as described in paragraph 30 of the consultation document?

Yes

Q5. Q2a: Do you foresee any difficulties with this arrangement?

No Response

Q6. Q2b: How could such difficulties be addressed?

No Response

Section 2: Summary of revised process proposed by the Commission

Q7. Q3: Do you agree that the Commission should develop guidance and standards for use by local services when undertaking investigations into deaths during compulsory treatment?

Yes

Q8. Q3a: Do you foresee any difficulties with this arrangement?

SIAA would like to highlight the role of independent advocacy in people's lives that have undergone compulsory treatment. The Mental Health (Care & Treatment) (Scotland) Act 2003 was the first piece of legislation that gave people a right of access to independent advocacy. It placed a duty on NHS Boards and local authorities to ensure the availability of independent advocacy for anyone with a mental disorder. Many people that have died under, or shortly after, compulsory treatment would have had an independent advocate or have been offered independent advocacy. Guidance for local services should consider the unique role that independent advocacy holds within the lives of people under compulsory treatment.

Independent advocacy safeguards people who are marginalised and discriminated against or whom services find difficult to serve, empowering people who need a stronger voice by enabling them to express their own needs and make their own decisions. One of the three key Principles of independent advocacy, as outlined in the Independent Advocacy Principles, Standards and Code of Best Practice is "independent advocacy is loyal to the people it supports and stands by their views and wishes". Independent advocate's primary loyalty is to those that it provides advocacy to, this means that it may not always be appropriate for independent advocates to be involved in investigations if it compromises independence or creates conflicts of interest for the independent advocacy organisation.

Independent advocacy is as free as possible from conflicts of interest, being completely separate from service providers and funders and with the organisation involved providing no services other than advocacy. It is structurally, financially and psychologically free from interests such as being a provider of services, a gatekeeper of services, a funder of services, a statutory body or family and friends.

Q9. Q3b: How could such difficulties be addressed?

Independent advocacy organisations should be consulted on the guidance for third sector partners before it is published, SIAA would be happy to facilitate this.

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Q10. Q4: Do you have any comments on the revised process as set out in Section 2, paragraphs 34 to 43, of the consultation document?

No Response

Q11. Q4a: Do you foresee any difficulties with this process?

No Response

Q12. Q4b: How could such difficulties be addressed?

No Response

Section 3: Involving families and carers

Q13. Q5: Do you think that the role of the Commission Liaison Officer will help to improve the involvement of, and communication with, families and carers during investigations of deaths?

No Response

Q14. Q5a: Do you have any concerns about this type of arrangement?

No Response

Q15. Q5b: How could your concerns be addressed?

No Response

Section 4: Other matters for consideration

Q16. Q6: Do you agree that the revised process, described in Section 2 of the consultation document, will meet the values and principles set out in paragraph 50?

No Response

Q17. Q6a: Please explain your answer.

No Response

Section 4: Other matters for consideration

Q18. Q7: Do you have any comments on the potential impacts of the revised process on those with protected characteristics?

SIAA would like to highlight the significance of the fact that people that have died during compulsory treatment or shortly after will have had their rights severely limited at or before their death. Equality impact assessment's that are carried out about the process should consider this limitation of rights in detail, in conjunction with the fact that most people will have been subject to the disability protected characteristic under the Equality Act 2010. Expertise from Disabled People's Organisations and organisations led by people with lived experience of mental ill health would be particularly helpful in informing any EQIA that is carried out. These organisations should be resourced for their contributions.

Q19. Q7a: Please explain what you think could be done to minimise any negative impacts on people with protected characteristics.

No Response

Q20. Q8: Do you have any comments on the potential impacts of the revised process on children and young people?

No Response

Q21. Q8a: Please explain what you think could be done to minimise any negative impacts on children and young people.

No Response

Section 4: Other matters for consideration

Q22. Q9: Do you agree that the revised process for investigating deaths during compulsory treatment (as described in Section 2 of the consultation document) is human rights compliant?

Not sure

Q23. Q9a: Please explain what you think could be done to ensure that the new process fully complies with human rights standards.

SIAA would, firstly, like to urge the Commission to consider the upcoming Human Rights Bill that will incorporate several different Human Rights treaties into Scots Law by the end of this parliamentary term, including the UNCRPD. Ensuring that the process the Commission proposes is compliant with the UNCRPD would future-proof the process.

Secondly, SIAA would encourage the Commission to engage with the work of the John Scott Mental Health Law Review in relation to the process that is being developed for investigating deaths under compulsory treatment, to ensure that the direction of travel in setting up the revised process is in line with the recommendations that will be made by the Law Review.

SIAA are encouraged to note that the PANEL principles are referenced in guiding the development of the Commission's proposals.

Section 4: Other matters for consideration

Q24. Q10: Do you have concerns in relation to any financial or administrative impacts the revised process may have, especially for local services?

No Response

Q25. Q10a: Please explain what you think could be done to minimise any negative financial or administrative impacts.

No Response

Section 4: Other matters for consideration

Q26. Q11: Do you have any other comments or concerns in relation to the revised process?

No Response

Respondent Information Form

Q27. Name of person submitting the response

Rhona Willder

Q28. Email address of person submitting the response

rhona.willder@siaa.org.uk

Q29. Are you responding as an individual, or on behalf of an organisation?

I am responding on behalf of an organisation

Respondent Information Form - individual responses

Q30. Are you a family member or carer of a person who has died whilst being treated under mental health legislation in Scotland?

No Response

Q31. Do you wish your response to be published?

No Response

Respondent Information Form - Organisational responses

Q32. Organisation name

Scottish Independent Advocacy Alliance

Q33. Organisational responses will be published unless otherwise requested. Please tick the box below if you do NOT want your organisation's response to be published. Note that the name of your organisation will be listed as a respondent to the consultation even if you request that your response not be published.

No Response