

Proposed Provision of Mental Health Services LCO

The following is Hafal's response to the Proposed National Assembly for Wales (Legislative Competence) (No 6) Order 2008 (Relating to Provision of Mental Health Services) Committee call for written evidence.

(i) About us

- Hafal is a mental health charity run by those it supports: people with severe mental illness and their carers. Our 1,000 Members are overwhelmingly the very people who would be directly affected by the proposed Mental Health Measure.
- Hafal also provides services and gives a voice to many more clients and families using our services in all 22 counties of Wales.
- During our years of campaigning for a better Mental Health Act, Hafal Members across Wales have formed clear expectations of what they seek as fair mental health legislation.

(ii) Anticipating a Mental Health Measure

We understand that consultation on the LCO does not require full clarity about what an eventual Measure might look like. However, we suggest the proposed LCO should be tested as far as possible against the likely, intended Measure. To this end we have explored options for development of a Measure based on the Draft Explanatory Memorandum and discussion with others concerned with this matter. Of course we appreciate that there may well be other ways to take these matters forward but we offer the following as a practicable approach.

- We believe that the starting point for considering a Measure are the duties placed on health and social care agencies under the NHS and Community Care Act.
- There may be merit in developing a general, "light weight" duty on assessment as in the Scottish Act but that should not be the main priority.
- We suggest the priority for the Measure would be to create duties in relation to a smaller group of patients based on current practice in the Care Programme Approach. Duties might be created as follows:
 - Subject to agreement/referral by a GP (or other doctor?), a right to a joint health and social care assessment under C.P.A. within a set time.
 - Subject to that CPA assessment determining that illness was sufficiently serious to require specialist mental health care, a right to a CPA Plan with components specified in regulations. We suggest that such regulations would require the Plan to include attention to
 - (a) Medication for mental illness
 - (b) Physical health
 - (c) Employment
 - (d) Other treatment and therapy for mental illness
 - (e) Money
 - (f) Social life
 - (g) Accommodation
 - (h) Training and education

- and include a requirement for demonstrable patient involvement in creating the plan.
- A right to full review of the CPA Plan not less than annually.
- A right to advocacy services for those who pass through the CPA assessment “gateway”.
- The right to a regulated Care Plan and to advocacy services would effectively be confined (by the gatekeeping of CPA assessment) to a smaller group of patients with the most serious mental illnesses.
- It would make sense to develop a Measure alongside some reorganisation of the Care Programme Approach in Wales (this would be timely anyway) so that regulations dovetail with recommended practice.

(iii) Amendment of the Order

We suggest that in order to deliver the required Measure the Order might be amended to read:

“Matter 9.[]

Provision for and in connection with -

- (a) The assessment by the health service and local authority social services in Wales of persons who are or appear to be mentally disordered persons;
- (b) Duties on the health service and local authority social services in Wales to provide care and treatment for mentally disordered persons;
- (c) Independent mental health advocacy for persons who are or appear to be mentally disordered persons.

This matter does not include assessment of, treatment or advocacy for persons detained, liable to be detained or liable to recall under the Mental Health Act 1983 (or any statutory modification or re-enactment thereof).

(3) Under the heading “Interpretation of this field” before the definition of “patient” insert – “mentally disordered persons” means persons having any disorder or disability of the mind”.

We explain our reasoning for these amendments further in answer to the Committee’s questions below.

(iv) Response to the Committee’s questions

1. Would the terms of the proposed Order confer the appropriate powers on the National Assembly for Wales to allow for the implementation of the policy proposals outlined in the Explanatory Memorandum?

See 3 below.

2. Is the scope of the proposed Order appropriate, too narrow or too broad to allow the Assembly to bring forward the Measures to address issues you believe should be addressed via legislation in the field of Mental Health in Wales? If necessary, how should the proposed Order be re-drafted and why?

There is an argument for devolution in due course of wider powers in relation to mental health on the grounds that the National Assembly has the main responsibility for providing and regulating services for people with a mental illness. It could well be argued that the Assembly needs to tailor a “whole system” of mental health support in terms of policy, services, regulation, and legislation.

However, we have realistic expectations. Hafal recognises that the historical legislative

and service delivery ties between England and Wales make abrupt changes inappropriate.

We also believe it would be a mistake to attempt to apply “corrective” measures to mitigate disappointing aspects of the current U.K. legislation.

We further believe there needs to be caution: overlaying new safeguards at the point of compulsion or during compulsion in addition to the current U.K. legislation could create significant resource implications which reduce capacity for early intervention and treatment.

Finally, our sense is strongly that it would in any case be politically difficult to gain acceptance from Westminster for legislative powers which would “interfere” with the workings of the (very recent) 2007 Mental Health Act.

For all these reasons we agree that the powers sought are generally appropriate and suggest that wider powers in relation to mental health are for another time.

3. The proposal is to impose duties on the Health Service to provide assessment of and treatment for mentally disordered persons. Should it cover duties on other bodies?

We would argue that the duty should extend to social care (in particular local government) agencies. The Scottish Act’s right to assessment is a duty on local government as well as the NHS, though we would argue strongly that a “light-weight”, general duty on assessment is not the main priority for a Welsh Measure which (we understand) would aim to give more substantial rights but to a much smaller group of people.

4. The parts of the proposed matter which relate to assessment and treatment (paragraphs (a) and (b)) are limited to “the health service in Wales”. Would this deal appropriately with any cross-border issues?

We believe aspects of care planning could remain responsibilities of Welsh services for people normally/originally resident in Wales even if they are treated outside Wales. It is standard practice for the care plans of Welsh residents treated in England to be co-ordinated in Wales; it seems to us therefore that those patients could be covered without conferring a duty on English services.

5. In relation to assessment of persons and advocacy services, the matter applies to persons “who are or may be mentally disordered”. What are your views on this?

It seems likely that the intended beneficiaries of the duty would be covered by the definition. We wonder if better wording would be persons “who are or appear to be mentally disordered” : “may be” could be too open-ended.

6. Is it appropriate to limit legislative competence to exclude persons detained under the Mental Health Act 1983?

Our understanding is that the main purpose of a Measure would be to give rights to those not so detained. We accept that it would be problematic to confer rights in the context of compulsory treatment where there is already a framework of safeguards under the

2007 Act (even if we do not believe those safeguards are altogether sufficient). We suggest that there should be compatible, similar requirements on care planning in both the Welsh Code of Practice on the Mental Health Act 2007 and in due course in the Measure.

7. Is the definition of “mentally disordered persons” in the proposed Order appropriate? If not, how should the definition be re-drafted and why?

The definition seems sufficient – the key point is that a Measure will also need to identify a much narrower definition in order to provide more substantial rights: our understanding would be that this should be possible as there would be no requirement to provide the same (or any) rights to all people as defined by the LCO.

8. Should the term “treatment” also be defined within the matter?

We are concerned that the term “treatment” would need to be understood in a sufficiently broad sense and, if this was in doubt, a definition might be useful which clarifies that treatment could include a range of forms of therapeutic care. The definition of treatment in Section 145 of the Mental Health Act 2007 is quite wide but we would want to be certain that a truly holistic definition would be covered.

(v) Evidence

Hafal will be pleased to provide evidence in person on 14 April 2008.

(vi) Contact

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