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David Melding AM
Chair, Proposed Provision of
Mental Health Services Legislative Competence Order Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

David
Dear Mr Melding

**PROPOSED PROVISION OF MENTAL HEALTH SERVICES LCO COMMITTEE –
THE NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (NO 6) ORDER 2008
(RELATING TO PROVISION OF MENTAL HEALTH SERVICES)**

Thank you for inviting the Trust to comment on the proposed Mental Health Services Legislative Competency Order. In generating this response, the Trust has consulted with colleagues within both its Mental Health and Learning Disabilities Services and can confirm general support for the aims to provide increasing patient access to assessment, treatment and advocacy. The Trust also recognises the need for a planned programme of service developments to ensure that local providers are able to deliver any new duty placed upon them as a result of this new Order.

In terms of the specific questions raised in your letter, I would like to comment as follows:

- 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?**

It is likely that the terms of the proposed Order would allow for the development of a measure by the Assembly for the delivery of the policy although the detail of the measures produced and the degree of additional resources made available by the Government would determine whether the policy proposals could be achieved.

Chairman/Cadeirydd: **Win Griffiths**
Chief Executive/Prif Weithredydd: **Paul Williams OBE; DMS; CIHM; CCMi; FRSA**



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Whilst there is general support for this legislation, there is concern that local mental health provision could be distorted by, for example, drawing many new people into assessment who have no significant mental disorder. The legal duty to provide treatment would require significant investment in certain areas, particularly in the field of Psychological Therapy. Whilst improved efficiencies could be delivered through the further development of group therapy activity, there is no doubt that a significant programme of service development would be required to complement new legal duties.

The Welsh Prisons are acknowledged to contain significant volumes of mental ill-health amongst their in-mates. Whilst Mental Health In-reach Services are funded to deliver a level of mental health provision within these establishments, local Prison Healthcare staff gate-keep access to this service. The proposed LCO may have very significant resource implications when applied to the Welsh prisoner population.

In implementing any new legislation in this area, there would be a need for robust evaluation of outcomes. It is suggested that it would be necessary to determine whether the benefits, for example, the planned reduction in the number of patients requiring detention under the Mental Health Act, were delivered following the introduction of any new Order.

- 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?**

The definition of 'Health Services' under the Order would need to be clearly described. It is not clear at present whether the proposals are focused on specialist secondary Mental Healthcare Services or if the new duties would also apply in local Primary Care. General Practice currently manages the significant majority of patients with mild to moderate mental health problems and the Order would need to clarify whether a Mental Health Assessment and Treatment under the terms of the new legislation could be delivered within the Primary Care setting.

- 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?**

The Trust believes there is a strong case for including Local Authority Social Services Departments within the remit of this legislation. Mental Health Services are often provided in partnership between the NHS and local Social Services Departments, both of whom may be involved in providing a Mental Health Assessment and subsequent Treatment Plan. Should the Assembly decide to include Local Authority Social Services Departments within the scope of this legislation, a clear distinction would need to be made between this new responsibility and their existing duties under the Community Care Act of 1990 to assess people who they consider may require Community Care Services.

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?**

The Trust can see the value of offering Welsh residents who receive treatment from English services access to the proposed Advocacy Service. Welsh Health Commissioners could helpfully monitor Welsh patient access to mental health assessment and treatment from English services in the border areas. They could equally assess the extent to which English patients benefit from the proposed additional duties being placed on Welsh services. A critical analysis of the Scottish experience may be helpful.

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?**

The Trust welcomes the proposed duty to provide Advocacy Services which would support the statutory arrangements for Independent Mental Capacity Advocacy and Independent Mental Health Advocacy for detained patients as part of the 2007 Mental Health Act. The Trust does, however, believe that this new Advocacy Service should be independently commissioned from the provider organisations and that there may be some opportunities for collaborative working with the statutory Advocacy Services identified above.

The application of the Advocacy Service to persons "who are or may be mentally disordered" seems sensible and will allow patients to receive this valuable service at the earliest opportunity. This may help in the early identification of people developing a serious mental health problem.

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

The Trust believes it is appropriate to limit legislative competence in this way. It would, however, be helpful to ensure that there is no confusion about the interface between both pieces of legislation. One example could be the circumstances surrounding a request for assessment under an Assembly Mental Health measure which is superseded by an assessment under the Mental Health Act. Would this Mental Health Act assessment satisfy the assessment duty conferred on the Mental Health Service by the Assembly 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 Trust believes it is helpful for the definition to mirror that contained within the Mental Health Act 2007.

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

The Assembly may consider drawing upon the Mental Health Act 2007 definition of "treatment" which includes nursing, psychological intervention, specialist mental health habilitation, rehabilitation and care.

There may also be some specific treatment phasing issues relating to dual diagnosis which may need to be carefully considered. Currently, for example, there are waiting lists for patients identified as requiring treatment for their substance misuse problem. Where there is a co-occurring mental health issue, treatment for this element is often deferred until the substance misuse treatment has been delivered. This and other such issues may affect the way in which providers are able to respond to any new duty to provide treatment.

I hope you find the above comments helpful. Please let me know if you wish to the Trust to provide any further information.

Yours sincerely



PAUL WILLIAMS
CHIEF EXECUTIVE

- c.c. Dr Tegwyn Williams, Director of Mental Health Services
Stephen Wade, Director of Learning Disability Services
Chris Jones, Divisional General Manager, Mental Health Services (West)
Robert Goodwin, General Manager, Mental Health Services (East)
Sheelagh Lloyd Jones, Assistant Chief Executive (East)