

EAST AYRSHIRE COUNCIL

CABINET REPORT - 30 SEPTEMBER 2009

CONSULTATION: THE CARE & TREATMENT OF PEOPLE WITH MENTAL DISORDER & LEARNING DISABILITY (SCRUTINY, QUALITY IMPROVEMENT & PROTECTION) MENTAL WELFARE COMMISSION FOR SCOTLAND: FUTURE STRUCTURE

Report by the Executive Director of Educational and Social Services

1. Purpose

- 1.1** To seek approval of a response from East Ayrshire Council to the public consultation with respect to the future role of the Mental Welfare Commission for Scotland.

2. Background

- 2.1** On 1st August 2009, the Scottish Government issued a consultation document with respect to the future structure and governance of the Mental Welfare Commission for Scotland.
- 2.2** This followed on from the Crerar's recommendations relating to the reform of scrutiny in public services.
- 2.3** While initially the Mental Welfare Commission for Scotland were included in the overall review of scrutiny bodies, it was subsequently decided to review the operation of this organisation and step back from taking its functions into the new health body (Healthcare Improvement Scotland) or the new social care body (Social Care and Social Work Improvement Scotland).

3. Area for Consideration

- 3.1** The Mental Welfare Commission for Scotland was established in 1960 as an independent body whose role was to exercise protective functions in respect of persons who may be incapable of protecting themselves on account of a mental disorder.
- 3.2** Duties of the Mental Welfare Commission for Scotland included:-
- (i) Enquiring into cases where there may be ill-treatment or improper detention of people with a mental disorder.
 - (ii) Visiting and interviewing patients detained in hospital.

- (iii) Bringing to the attention of NHS or council services concerns about treatment, remedying deficiencies in care and terminating improper detention.

- 3.3 Changes in legislation and the establishment of other regulatory bodies such as the Care Commission or the Mental Health Tribunal system has resulted in some of these duties overlap with other bodies and the duties conferred to local authorities to investigate ill treatment and neglect.
- 3.4 The introduction of the Mental Health Care and Treatment Act 2003 provided the Mental Welfare Commission for Scotland with additional responsibilities to promote best practice, report to Ministers matters of concern and publish guidance.
- 3.5 The Mental Welfare Commission for Scotland has established itself as the expert body on ethical and legal principles in relation to these affected by mental disorder and there would be risks associated with losing this level of knowledge and understanding.
- 3.6 Current governance of the Mental Welfare Commission for Scotland has previously been reviewed and assessed as unwieldy. If the Mental Welfare Commission for Scotland does remain as an independent structure, then the management and monitoring arrangements will require to be addressed in line with previous recommendations.

4. Response to Consultation

- 4.1 The proposed response to the consultation is that there is a continued role for The Mental Welfare Commission within the revised scrutiny arrangements.
- 4.2 The governance arrangements within the Mental Welfare Commission may require to be adapted if the decision is reached that it remains as an entity in its own right, separating the governance and operational functions.

5. Financial Implication

- 5.1 There are no financial implications for the Council.

6. Policy Implications

- 6.1 The consultation is a direct consequence of government policy to realign scrutiny of the public sector.

7. Legal Implications

7.1 The consultation is directly limited to the proposed legislation Public Services Reform (Scotland) Bill.

8. Risk Management Implications

8.1 Risks to very vulnerable individuals affected by mental disorder have been reduced by the introduction of Mental Health Tribunals. There is a concern that the loss of the scrutiny and educational role of the Mental Welfare Commission for Scotland would impact on good and equitable practice nationally.

9. Community Planning Implications

9.1 The consultation and potential outcomes impact on the Improving Health and Wellbeing, and Improving Community Safety priority themes of the Community Plan.

10. Equalities Impact

10.1 Robust external scrutiny of all elements of service delivery promote the equalities agenda.

11. Recommendations

11.1 It is recommended that Cabinet.

- (i) note the consultation response;
- (ii) approve its submission on behalf of East Ayrshire Council to the Scottish Government; and
- (iii) otherwise note the contents of the report

Graham Short
Executive Director
Educational & Social Services
9 September 2009

IMPLEMENTATION OFFICE: Eddie Fraser, Head of Service: Community Care

BACKGROUND PAPERS:
Nil

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Dear Joanna

Re – Consultation: The Care and Treatment of People with Mental Disorder and Learning Disability (Scrutiny, Quality Improvement and Protection) Mental Welfare Commission for Scotland: Future Structure.

Please find attached the East Ayrshire Council response with respect to the Consultation noted above.

Should you wish any clarification, please do not hesitate to contact Alison Findlay, Senior Manager Community Care Authority Wide Services on 01563 576895 or at .findlay@east-ayrshire.gov.uk.

Question 1

Do the protective functions and the scrutiny and improvement functions of the MWCS in relation to ethical and legal practice that is the current arrangements, work well together? If not, how should they be structured?

Answer: Currently the protective functions and scrutiny and improvement functions of the Mental Welfare Commission Scotland do work well together.

Question 2

If you think that the MWCS' current mix of functions does work well, do you think that the MWCS' role could be combined with other bodies? For example, with one of the new health and social care scrutiny and improvement bodies (HIS and SCSWIS)?

Answer: It would not in any way be advantageous for the functions of Mental Welfare Commission Scotland to be subsumed within either HIS or SCSWIS. The focus and functions of these bodies has the potential for conflicts of interest.

Question 3

How should the general improvement functions in respect of mental health and learning disability services be discharged, and how should the MWCS work with the body or bodies that carry out those functions?

Answer: The general improvement functions could be shared with Mental Welfare Commission Scotland having a role for those subject to or recently subject to compulsory measures. This would offer more clarity given Mental Welfare Commission Scotland role bearing in mind SCSWIS & HIS both having an extensive remit.

Question 4

What processes and structure could be put in place to maintain the improvement in mental health and learning disability services in the future, thinking in particular about Crerar's view (see paragraph 6.3 above) that self-assessment and scrutiny is necessary in the early stages of developing and improving services?

Answer: In terms of ongoing improvement of services self assessment by Local Authorities on a similar vein to the model currently in place with NHS Boards (in terms of HEAT) could be useful with SCSWIS adopting a similar role to the health equivalent in terms of scrutiny of individuals care but also performance of local authorities on a Red, Amber, Green traffic light system.

Question 5

If the Commissioners have a key role in respect of governance, what should their functions be in relation to the visiting and protective functions of the MWCS? Should they change or stay the same?

Answer: In future it might be advantageous to separate the functions of those Commissioners overseeing governance as opposed to those in Operational activity. It should be noted that the current system does not cause any significant difficulties to those involved in service delivery in gaining a comprehensive service from Mental Welfare Commission Scotland.

Question 6

Should some Commissioners be both on the Board for the organisation and conduct visits, or should these functions be split with there being Commissioners who only sit on the Board and Commissioners who only conduct visits?

Answer: As above, there are currently no difficulties in terms of a service from Mental Welfare Commission Scotland. Furthermore there should be some cross fertilisation between Operational & Non Operational Commissioners in the interests of service delivery whilst ensuring non operational commissioners are not too removed from direct service user experiences.

Question 7

Are there other changes that we should consider in respect of the organisation (not the functions or powers) of the MWCS at this time?

Answer: In respect of changes it may be useful for more attention to be given to Social Circumstances Reports by Mental Welfare Commission Scotland. It is understood they are currently not all read unless specifically requested by the MHO in writing. However in light of Mental Welfare Commission Scotland recommendations in the paper Social Circumstances Reports good practice guidance it may be the likelihood of those being read is increased. If needs be it could be considered by contracting additional external readers in the same vein of the external marker /examiner on MHO courses.