

## EAST AYRSHIRE COUNCIL

CABINET 4 NOVEMBER 2009

### CONSULTATION – REVIEW OF THE MENTAL HEALTH (CARE & TREATMENT) (SCOTLAND) ACT 2003

#### Report by 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 a review of the Mental Health (Care and Treatment) (Scotland) Act 2003.

#### 2. BACKGROUND

- 2.1 On 7<sup>th</sup> August 2009 the Scottish Government issued a consultation document with respect to a limited review of the Mental Health (Care and Treatment) (Scotland) Act 2003. The consultation closes on 6 November 2009.
- 2.2 The review followed on from some 'issues' identified in respect of the operation of the Act, specifically relating to named persons, advance statements and multiple tribunal hearings.
- 2.3 The Review Group which included a range of personnel from health, social work, the legal profession and independent advocacy services reported to Scottish Ministers in March 2009.

#### 3. AREAS OF CONSIDERATION

- 3.1 The Mental Health (Care and Treatment) (Scotland) Act 2003 is well regarded by service users, carers and mental health professionals in Scotland; it is also viewed internationally as ambitious in its approach and principles.
- 3.2 Specific issues have been identified in its operation which the Review Group and subsequent consultation focused on.

Namely:

- **Named Persons** – which enables the person to identify someone to act on their behalf as opposed to a nearest relative.
- **Advanced statements** – where the person concerned is able to set out how they wish to be treated in the event they become mentally unwell.
- **Independent Advocacy** - which supports a person's rights to have their own voice heard in decisions about their health and wellbeing.

- **Medical Matters** – relates to issues concerning medical information provided to inform decisions about an individual's care and treatment.
- **Tribunals** – the independent body introduced by the Act to hear evidence and make decisions about an individual in terms of statutory orders required to meet their needs. This was previously considered within a court by a Sheriff.

#### 4. RESPONSE TO CONSULTATION

- 4.1 **Named Persons** – 19 recommendations were made by the Review Group which will strengthen the requirement of all concerned to raise awareness of individual's rights to identify a named person and ensure that person accepts and understands their role.
- 4.2 **Advance Statements** – 8 recommendations were made to raise awareness and enhance the potential for individuals to make advance statements, including a central register being retained by the Mental Welfare Commission of advance statements.
- 4.3 **Independent Advocacy** – 6 recommendations were made to ensure there is robust independent advocacy across Scotland - "with associated funding" - and ensuring independent advocacy arrangements were in accordance with the Scottish Independent Advocacy Alliance principles and Standards and Codes of Practice.
- 4.4 **Medical Matters** – 16 recommendations were made including the need for a G.P to provide a report where application for a compulsory treatment order is made along with the psychiatrist's report.
- 4.5 **Tribunals** – 65 recommendations were made including the suitability of tribunal venues, the training of lawyers and tribunal members and procedures and timescales for hearings to be heard.

#### 5. RESPONSE TO CONSULTATION

- 5.1 The proposed response to the consultation accepts and agrees with all recommendations, highlighting some areas for further consideration. Such as:
- The proposal to establish a Central Register of Advance Statements will provide additional support for individuals who may lead more transient lifestyles with the onus being placed on mental health practitioners to check the central register at initial point of contact.
  - With respect to named persons and young people under 16 we would seek clarity as to how this may sit alongside parental rights and responsibilities.
  - We feel strongly that the medical reports should inform any application for a Compulsory Treatment Order, one being prepared by the G.P to ensure primary care needs are considered.

## **6. FINANCIAL IMPLICATION**

- 6.1** The requirement to ensure continuity of robust independent advocacy as currently exists in East Ayrshire may have financial implications at some point, the review highlights this to the Scottish Government.

## **7. POLICY IMPLICATIONS**

- 7.1** The consultation is a direct consequence of government commissioned review of current legislation.

## **8. LEGAL IMPLICATIONS**

- 8.1** The consultation is limited to the Mental Health (Care and Treatment) (Scotland) Act 2003.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1** The Act and the review recommendations enhance the support available to individuals impacted by mental disorder.

## **10. COMMUNITY PLANNING IMPLICATIONS**

- 10.1** The consultation and potential outcomes impact on the Improving Health and Wellbeing and Improving Community Safety priority themes of the Community Plan.

## **11. EQUALITIES IMPACT**

- 11.1** Enhancing and supporting the voice of individuals affected by mental disorder, promote the equalities agenda.

## **12. RECOMMENDATIONS**

- 12.1** It is recommended that Cabinet.

- (i) Note the consultation response;
- (ii) Approve its submission on behalf of East Ayrshire Council to the Scottish Government;
- (iii) Given that the timescale for submitting a response to the Scottish Government is 6 November 2009, agree to implement the decision taken at recommendation (ii) above prior to any consideration of the Governance and Scrutiny Committee under the call-in process on the grounds of urgency; and
- (iv) Otherwise note the contents of the report.

**Graham Short**  
**Executive Director of Educational and Social Services**

**26 October 2009**

**BACKGROUND PAPERS**

Proposed Consultation Response.

*Limited review of the Mental Health (Care and Treatment) (Scotland) Act 2003: Report  
Mental Health (Care and Treatment) (Scotland) Act 2003.*

**IMPLEMENTATION OFFICER:**

**Eddie Fraser: Head of Service Community Care**

## CONSULTATION QUESTIONS

### Question 1: Advance Statements

**Your views are sought on any or all of recommendations relating to advance statements found in Chapter 2 of the Report. If you have any separate issues in relation to advance statements which you would also like to address, you are invited to include those in your response to this question.**

We welcome recommendations designed to enhance the routes individuals are supported to make Advance Statements. All points contained in the full list of recommendations by the Review Group are positive and should ensure opportunities to complete Advance Statements are maximised with clear records being available with respect to efforts made to address an individuals wishes. The proposal to establish a Central Register of Advance Statements will provide additional support for individuals who may lead more transient lifestyles with the onus being placed on mental health practitioners to check the central register at initial point of contact.

### Question 2: Independent Advocacy

**Your views are sought on any or all of recommendations relating to Independent Advocacy found in Chapter 3 of the Report. If you have any separate issues in relation to independent advocacy which you would also like to address, you are invited to include those in your response to this question.**

We welcome all recommendations with respect to independent advocacy. It should be noted there are resource implications for retaining and extending independent advocacy provision and consideration by the Scottish Government of funding issues would be valuable. Alternatively, direct Scottish Government funding would ensure consistency across all areas in Scotland of independent advocacy.

### Question 3: Named Persons

**Your views are sought on any or all of recommendations relating to Named Persons found in Chapter 4 of the Report. If giving your views on any of the further thoughts relating to named persons raised in [Part 2](#) of this paper, you are invited to provide these here in answer to this question. If you have any separate issues in relation to named persons which you would also like to address, you are also invited to include those in your response to this question.**

We support recommendations relating to supporting and enhancing awareness and identification of Named Persons. With respect to a young person under 16 we would seek clarity as to how this may sit alongside parental rights and responsibilities.

The provision of a central register of named persons may also enhance the support available to individuals, specifically at points of health crisis.

#### **Question 4: Medical Matters**

**Your views are sought on any or all of recommendations relating to Medical Matters (medical examinations / reports; medical examinations and conflict of interest; revocation of emergency detention certificates; suspension of detention requirements in relation to compulsory treatment orders; consent; and care plans) found in Chapter 5 of the Report. If giving your views on any of the other options relating to medical reports posed in [Part 3](#) of this paper, you are invited to provide these here in answer to this question.**

**If you have any *separate* issues in relation to medical matters which you would also like to address and which are not covered in the Chapter 5 of the Report, you are also invited to include those in your response to this question.**

We feel strongly that the medical reports should inform any application for a Compulsory Treatment Order, one being prepared by the G.P to ensure primary care needs are considered. We welcome the development of a standardised care plan template but ask this is developed in line with current SSA paperwork.

#### **Question 5: Tribunals**

**Your views are sought on any or all of recommendations relating to the Tribunal (multiple hearings; excessive formality and legality; and availability, quality and style of legal representation) found in Chapter 6 of the Report. If giving your views on any of the other options relating to multiple hearings posed in [Part 4](#) of this paper, you are invited to provide these here in answer to this question.**

**If you have any *separate* issues in relation to Tribunals which you would also like to address and which are not covered in Chapter 6 of the Report, you are also invited to include those in your response to this question.**

We are supportive of all recommendations by the Review Group. In particularly developing the knowledge and understanding of the legal profession with respect to mental health and highlighting the different approaches required in the judicial and tribunals systems.