



Commission Position Statement on Role and Responsibility in relation to coronavirus, 2 April 2020

The Commission's role

1. The Mental Welfare Commission occupies a unique role in mental health care in Scotland. It has statutory duties under the Mental Health (Care and Treatment) Act 2003 to investigate deficiencies of care and treatment, to advise on best practice with regards to the Act, and to monitor the Act.
2. It acts as a safeguard of the human rights of people with mental illness, dementia, learning disability and related conditions. It does this through: its advice line, which operates every working day and is staffed by medical, nursing and social work professionals; through its visiting function to people in wards, other services and their own homes across Scotland; in its role in monitoring the Act, and through visits to patients conducted by Commission appointed Designated Medical Practitioners. The Commission also seeks to influence and challenge policy makers and service managers where it deems this necessary and will investigate cases where it is concerned about care and treatment.

The impact of coronavirus on the Commission's role

3. The restrictions through social distancing measures advised and now enforceable through the UK Coronavirus Act (2020) to prevent the spread of the viral pandemic has necessarily changed the way the Commission works, however the key functions mentioned above continue. Indeed in the Commission's view, the monitoring role and 'watchdog' functions are as important as ever for patients, carers and professionals to retain trust in the mental health sector and to help ensure practice follows a human rights based approach.

UK Coronavirus Act legislation

4. The UK Coronavirus Act was passed in part, to make provisions for emergency powers that may be needed to ensure that services can respond if a significant section of the workforce in different key sectors was unable to work. There are aspects of this Act that have major implications for the mental health and social care sectors in Scotland. Our [guidance note](#) provides the details of key provisions that change for the Mental Health (Care & Treatment) Act 2003 and Criminal Procedure (Scotland) Act (1995). We are working with Scottish Government and other stakeholders on guidance notes that will be available when the provisions of the Act are triggered. The Scottish Government is coordinating data and advice from the mental health sector, including the Commission. The Chief Medical Officer (CMO) will advise the Government on triggering the emergency provisions based on this.
5. The Commission notes and is vigilant around the significant implications that the emergency measures have for the safeguarding of human rights of people with mental

illness and associated conditions. Detentions can be applied with less multidisciplinary input, can last longer, will have less scrutiny and a single doctor will be able to make a recommendation for an order for treatment of six months. These orders could be extended without mandatory reviews. Treatments might be administered to non-consenting adults without the authorisation of an independent doctor that the Commission appoints to review this.

6. We note that there is no change to the duty on health boards to ensure advocacy for people with mental illness and associated conditions. The Commission welcomes this.
7. The Commission feels that it is important that these changes are viewed as the significant reductions in safeguards that they amount to, and are not described as 'easements' or 'reductions in administrative burdens'.
8. The Commission notes the significant changes to how S13ZA might operate under emergency powers in the Coronavirus Act, which was passed on 1 April, 2020. The Scottish Government has now agreed that the Mental Welfare Commission will be key to that scrutiny process.

Advice Line Calls

9. The provisions mentioned above are not yet in force and yet through the Commission advice line function we are already aware of issues that are facing the sector as restrictions are imposed on visitors to people in hospital, and services are planning for a difficult time ahead. Many of the concerns fall into the following groups:
 - i. **An exacerbation of an existing lack of resource** due to new restrictions on patients being admitted e.g., forensic medium secure estate, IPCU provision for young people
 - ii. **A lack of clarity or misinterpretation of guidance** around visitors/carers accompanying people with dementia, learning disability or autism into hospital (for non-covid reasons) causing confusion and distress
 - iii. **Distress to patients and relatives/carers** as services move to phone-call only, or reduce the available services
 - iv. **Miscommunication causing distress** as services, organisations and primary care send out information in haste without taking time to consider the implications e.g., writing to advise relatives (with no discussion with either patient or relative) that their loved one now had a DNACPR in place.
 - v. **Concerns from health and social care** colleagues about safety of themselves, and people they come into contact with, both in hospitals and community settings e.g., CPR in acute hospitals, safety when administering depot medications.
 - vi. **Additional pressure on relatives/carers.** We have received calls about the additional pressure on relatives/carers with service closures and carers/family picking up the slack for services.
10. The Commission, where possible, is creating advice on common or serious issues that we become aware of and these are added on a regular basis to our advice note.
11. We note the comments of colleagues at the Scottish Human Rights Commission: <http://www.scottishhumanrights.com/news/commission-flags-human-rights-implications-of-coronavirus-emergency-laws/>

With regards duties under UNCRPD that provide a helpful framework to assess the concerns noted above:

It should be noted that the UN Convention on the Rights of Persons with Disabilities (CRPD) also sets out a range of duties to ensure disabled people experience their rights equally with others. In particular, Article 11 of CRPD sets out a duty on states to take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”. Rights for disabled people must continue to be upheld, alongside everyone else. In practice this includes a need for reasonable adjustments and accessible information relating to Coronavirus and associated measures (Article 9 CRPD) and support for decision-making (Article 12 CRPD) (from [SHRC position paper 30 March 2020](#)).

Scrutiny Function

12. Transparent scrutiny mechanisms to prevent the abuse of the emergency powers and to safeguard the rights of the most vulnerable before and during the measures are imperative if trust in the sector is to be maintained through, and after this pandemic. The Commission has agreed with Scottish Government that it will lead on the scrutiny of emergency measures. We plan to work closely with stakeholders to ensure that the Commission fulfils its statutory duty around monitoring the Act, including emergency measures within this, raising issues of deficiency of care and treatment (whilst supporting colleagues in the sector through our advisory function).
13. We recognise that any emergency measures should be used for as short a period as is necessary and intend to use our data to help support the decision that Scottish Government will take as to when the measures start and stop.
14. We will seek to remind colleagues through guidance notes and advice that emergency provisions should only be used if it is impractical to follow the usual practice without reductions in safeguards

Visiting Function

15. The Commission is part of the UK National Preventive Mechanism, which has statutory duties and international responsibilities to monitor the places where people are detained and deprived of their liberty to prevent ill-treatment. Other members of the NPM are experiencing similar issues in maintaining this role in the pandemic. The Commission is exploring options with colleagues in the NPM around maintaining this mechanism through the pandemic.

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