Justice Committee

Inquiries into Fatal Accidents and Sudden Death etc (Scotland) Bill

Written submission from Autism Rights

Autism Rights receives no funds from the public purse or from commercial enterprises, and so is able to speak freely and honestly. We campaign for the rights of people with Autistic Spectrum Disorders (ASD) and our mental health campaign has been ongoing for some years now. We are responding to this call for evidence as part of this.

I will use the Justice Committee's questions as the framework for our written evidence.

The Committee is particularly interested in hearing views on the following questions:

Whether the circumstances for mandatory FAIs provided for in the Bill are sufficient

No, they are not, because they fail to legislate for mandatory FAIs for the deaths of people who are subject to compulsory `treatment` under the Mental Health Act[i]. Although there are mandatory Fatal Accident Inquiries for deaths in custody within the criminal justice system in Scotland, there is no such requirement for deaths of patients within the mental health system, for people who have committed no crime and who, as has been seen in the BBC's investigation of Winterbourne View hospital, are particularly vulnerable to criminal abuse by those employed to care for them.

On the basis of the views of 2 organisations who might well wish to cover their incompetence – the Mental Welfare Commission and the Royal College of Psychiatry (see Paragraph 78, page 16 of the Policy Memorandum) – the Scottish Government is not going to include mental health patients in its legislation or rules on FAIs, making it fall even further behind the English legal system, which is moving towards fully independent FAIs, from one where these are mandatory, but not fully independent. It also flies in the face of the recommendations in the recent inquiry reports by INQUEST and the EHRC into deaths in mental health detention – and here it should be noted that it was not possible for the EHRC to undertake its inquiry in Scotland, as there was insufficient data to enable this.

The credibility of the Scottish Government is at stake here, as civil servants have claimed in meetings that Autism Rights has had with the former Minister for Public Health – now the Cabinet Secretary for Justice – that the plans for mandatory FAIs for this very group would somehow ensure scrutiny of the deaths of these patients – and yet, they have now reneged on these plans, without any commitment to the collation of data or compilation of statistics that constitute basic measures of human rights compliance within any custodial system. **Autism Rights has stressed that FAIs are useless on their own, without the collation and publication of data and statistics on deaths, suicides, `adverse events`, such as assaults and restraints, and drug side effects. Although the English mental health system at**

least collates and publishes statistics on deaths, suicides, assaults and restraints within their mental health system, it has been left to Autism Rights to highlight that there are no statistics available for any of these categories within Scotland. My FOI to the Mental Welfare Commission resulted in the first ever publication of deaths statistics, in the form of a report:
http://www.mwcscot.org.uk/publications/visit-monitoring-reports/
- Death in detention monitoring (.pdf, 2KB)
13 March 2014

The MWC have privately admitted to me that this report was commissioned because of my FOI. This report was published within 4 months of my FOI and uses information which was only retrospectively obtained, and so therefore has significant gaps and is otherwise unreliable.

My FOI revealed that there were 78 deaths over the past year in the mental health system. This compares to 97 Deaths over 5 Years in Scottish Prison Custody:-
https://www.ncjrs.gov/App/publications/abstract.aspx?ID=246263
and to 98 deaths within the English mental health system over that same year:-
http://www.communitycare.co.uk/2014/06/10/mental-health-deaths-inquiry-launched/#.U5oWnXYSay

My FOI to **Police Scotland** confirms that **they do not hold, nor are they required to hold, any information on deaths or injuries to people who are the subject of police restraint while receiving compulsory treatment under the Mental Health Act**:-
https://www.whatdotheyknow.com/request/police_restraint_of_people_who_a/new
This is spite of the fact that almost half of those who die in police custody in England are being treated in the mental health system.

There is no data on the numbers of suicides within the mental health system. There are overall statistics for Scotland, but these do not give a definite picture of what is happening either in the mental institutions or the wider system. There were, for instance, 3 suicides/ deaths in less than 2 weeks in one hospital - a supposed place of safety. The health board were considering asking the police to assist in the wards in this mental hospital. There are assumptions made about suicides, which are convenient to the mental health system in avoiding liability. There is no mention in any of the official reports, whether from the MWC or ISD, of the known risks of psychotropic drugs – particularly SSRIs – in creating suicidal ideation.

Another activist's FOI discovered that **health boards are not required to collate data on restraints of patients within the mental health system**. This is in contrast to the Westminster government's decision to ban face-down restraints, after their statistics revealed that 40,000 of these type of restraint, which are acknowledged to be risky, were carried out in just one year in England's mental institutions.

There is clear evidence of bias in the reporting of deaths, suicides and other `adverse events` within the mental health system, because there is no acknowledgement of the direct or indirect role that psychotropic drugs play in cause of death and suicide[ii]. Basic monitoring of health within mental hospitals is haphazard and inadequate – with 25% of long stay patients being found to

have no record of health checks. The MWC and the government think that annual and 15 month health checks are adequate for people who are being forced to take some of the most toxic drugs on the market. Absolutely no account is being taken of individual tolerance of these drugs, in spite of professional guidance recommending psychiatrists seek specialist medical advice where this is needed. Added to which, the situation of people with Autistic Spectrum Disorders, whose behavioural characteristics make them particularly vulnerable to misdiagnosis, is not recorded.[iii]

At every single level, the Scottish mental health system fails to put in place the most basic measures of compliance with human rights. Autism Rights is the only organisation that is alerting MSPs and the wider public to this situation. **There is no publication of deaths statistics, no separate collation of suicide data for the mental health system, no collation of data on `adverse events`, such as assaults and restraints, and no collation of data on drug side effects. Add to this, that the Scottish Government's claim of `high ethical and professional standards in the field of medicine` (see Paragraph 226, page 43 of the Policy Memorandum), which is used to justify `procedural aspects` supporting the Bill's compliance with Article 2 of the ECHR (the right to life), is rather contradicted by their failure to institute a searchable record of commercial payments to healthcare workers[iv]. This is needed, because the health boards have failed in their statutory duty to implement a voluntary register of payments and payments in kind (such as training). Given that almost all of the post-qualifying training of psychiatrists is supplied by the pharmaceutical industry, there is a clear conflict of interests between the career aspirations of psychiatrists and the rights of patients to receive appropriate treatments that are not based on psychotropic drugs.**

Whether the circumstances provided for in the Bill in respect of discretionary inquiries are appropriate

No, they are not – see the whole of this submission

Whether there are alternative approaches that should be considered

Yes, there are – see the whole of this submission.

Whether the provisions in relation to FAIs into deaths abroad are appropriate

It is notable that there is more of a commitment to justice for those who die outside of Scotland, than there is for those who die whilst receiving **compulsory** `treatment` with highly toxic drugs for mental illness or Learning Disability or ASD (neither of which disability is supposed to be treatable).

Whether the provisions in relation to the pre-inquiry procedure are appropriate

Consideration of these provisions are pretty much redundant for Autism Rights, given that the deaths of people with ASD who die whilst receiving compulsory `treatment` with highly toxic drugs are not considered worthy of mandatory FAIs, nor of any record of their numbers, whether or not they die whilst being physically restrained or

whilst their treatment involves risky drugs or combinations of drugs (polypharmacy).

What are the practical implications of the provisions of the Bill?

The practical implications are that the human rights of people with ASD within the mental health system will continue to be ignored.

Fiona Sinclair
On behalf of Autism Rights
28 April 2015

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[i] http://www.scottish.parliament.uk/S4_Bills/Fatal%20Accidents%20%28Scotland%29%20Bill/b63s4-introd-pm.pdf
Policy Memorandum
6
Independent investigation for the death of a person subject to compulsory detention by a public authority within the meaning of section 6 of the Human Rights Act
Not being taken forward
Lord Cullen recommended that the category of case in which an FAI is mandatory should include the death of any person who is subject at the time of death to compulsory detention by a public authority within the meaning of the Human Rights Act 1998.

[ii] http://bjp.rcpsych.org/content/176/5/405
- EDITORIALS
Sudden unexplained death in psychiatric in-patients,
Appleby et al
http://www.ncbi.nlm.nih.gov/pubmed/12544377
- J Clin Psychopharmacol. 2003 Feb;23(1):58-77.
Psychotropic drugs, cardiac arrhythmia, and sudden death.
Witchel HJ1, Hancox JC, Nutt DJ.

[iii] The MWC for the first time ever produced an estimate of the numbers of people with ASD within the mental health system in their 2012 Learning Disability Census. This undoubtedly happened only because of pressure from Autism Rights on the MWC and ministers - no other organisation or individual has pressed for statistics on people with ASD. The 2012 Learning Disability Census revealed that 42% of men with a Learning Disability who are receiving compulsory treatment within the mental health system have no additional mental illness. The MWC believes that men with ASD account for the higher proportion of men to women (15%) with Learning Disability but no additional mental illness within the mental health system, but cannot be certain because of the absence of reliable statistics.

[iv] http://www.scottish.parliament.uk/GettingInvolved/Petitions/sunshineact