

PE1849/A

Minister for Mental Health submission of 5 January 2021

I appreciate the Committee's consideration of this issue and I hope the Committee find the following information helpful in relation to the points that have been raised.

It is important to be clear from the outset that secure mental health services provide care and treatment for anyone who requires secure care. That is persons who are a risk to others as well as persons who cannot be safely managed in general adult mental health services. The majority of patients in high and medium secure hospitals are detained on orders made by courts under the Criminal Procedure (Scotland) Act 1995 which includes provisions for people who are accused of a criminal act and who may have a mental disorder. It is understood that it is persons detained under civil orders that the petitioner is referring to as non-forensic detentions.

In 2017, the Mental Welfare Commission undertook a thematic study of medium and low secure forensic wards. In their report they found that around 87% of patients in medium secure wards were detained under criminal orders. They found the quality of accommodation generally good and that most patients were managed with enhanced coordination of care and support. There was good patient participation in care planning and in general most patients spoke well of their care and treatment.

There are times when bed capacity at medium security means that the State Hospital exceptionally admits patients who have been assessed as requiring medium secure care. This allows such patients to receive care and treatment that may otherwise not be provided, with the clear expectation that they are moved to medium security at the very earliest opportunity. It is possible however that following assessment in the State Hospital it is determined that a patient requires high secure care.

There is a right for all patients in high and medium secure hospitals to make an application to the Mental Health Tribunal for Scotland ('the Tribunal') for an order declaring that they are being detained in conditions of excessive security. However, the mental health legislation does more than that, it places a legal duty on clinicians to regularly review the orders under which patients are detained and specific criteria must be met for an order to be made or extended. The Tribunal must review a patient's order, whether civil or criminal, at least every two years if a Tribunal hearing has not otherwise been held within that period. The Mental Welfare Commission for Scotland is an independent body that monitors mental health and incapacity law. There are therefore significant safeguards in both law and practice to ensure that only persons who require to be detained in hospital are so detained.

The petitioner raises concerns about the appropriateness of the State Hospital for persons with autism, intellectual disability or ADHD. Clinicians have the key and primary role in determining where patients are best cared for. The Forensic Mental Health Services Managed Care Network who bring a pan-Scotland approach to patient pathways has produced ['Guidance on Patient Referral To Or Within Scottish High and Medium Secure Services'](#) which rightly focuses on the needs of each patient and the risk each patient poses.

We are committed to improving the lives of people with learning disabilities and autism, ensuring all patients receive the care and support they require. Through our mental health strategy we are reviewing existing mental health care and treatment legislation to determine if new measures are necessary to fulfil the distinct needs of people with learning disabilities or autism.

As the Committee will be aware I have commissioned an independent review into the mental health and incapacity legislation which is expected to report in September 2022. Importantly in relation to the issues raised by the petitioner, I also commissioned an independent review into the delivery of forensic mental health services across Scotland. I expect this review to advise on issues that are fundamentally impacting on the delivery of mental health services in high and medium psychiatric hospitals. This includes the demand, capacity and availability of services as well as the flow of patients into and between levels of security. I have asked it to look at client groups with particular needs, including those with learning disability and autistic spectrum disorder. This review is due to conclude and report its findings and recommendations in early 2021.

The petitioner raises concerns about the use of restriction orders. Such orders are made under section 59 of the Criminal Procedure (Scotland) Act 1995 and can only be made by a court in relation to a compulsion order. This is a criminal order and cannot be applied to civilly (non-forensic) detained persons. A restriction order can only be made when it appears to the court that it is necessary to do so for the protection of the public from serious harm.

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