

# SHRC

Scottish  
Human Rights  
Commission

## A Human Rights Based Approach to the Mental Health Strategy

Participation

Accountability

Non-discrimination

Empowerment

Legality

October 2016

# The Commission has responded to the Scottish Government's consultation 'Mental Health in Scotland – a 10 year vision'.

The consultation document expresses a desire to take a human rights based approach to the strategy, using the PANEL principles (Participation, Accountability, Non-discrimination and equality, Empowerment and Legality). In this response, we set out our views on what would be necessary to make a human rights based approach meaningful in this context.

## Key points summary:

- ✦ The Scottish Government has made a commitment to take a human rights based approach to the Mental Health Strategy<sup>1</sup>. However, much more is required to make this meaningful than is contained within the planned priorities and actions.
- ✦ All elements of the PANEL principles (Participation, Accountability, Non-discrimination and equality, Empowerment and Legality) must be addressed for the approach to be meaningful. In particular, Participation and Legality are not sufficiently addressed at present.
- ✦ Human rights should be mainstreamed across the whole strategy. The priorities all impact on human rights and considering human rights standards would help shape the planned work; however, they are not currently considered.
- ✦ Action should be taken to follow-up on recommendations from the joint report of the Scottish Human Rights Commission and the Mental Welfare Commission, '*Human rights in mental health care in Scotland*', under the previous Mental Health Strategy. These recommendations identified challenges and opportunities for realising people's human rights. It can be accessed at <http://www.scottishhumanrights.com/resources/reports/Mentalhealthreport>

<sup>1</sup> Made by Jamie Hepburn, the Minister with responsibility for mental health at the launch of the report, '*Human rights in mental health care in Scotland*' on 28 September 2015

- + A 10 year vision should be developed using a broad participatory process, so that it will be fully informed by people with lived experience of the issues.
- + We support calls for a root and branch review, as called for by Rights for Life and the Scottish Mental Health Partnership, with such a review being guided by the rights framework.
- + A range of resources are already available within Scotland (Rights for Life, SAMH's Ask Once, Get Help Fast, The Scottish Mental Health Partnership, Mental Welfare Commission) indicating priorities for the long term vision.
- + International guidance is also available. The World Health Organisation (WHO) Quality Rights Tool Kit provides practical information and tools for assessing and improving quality and human rights standards in mental health and social care facilities.
- + The 10 year vision should seek to progressively realise human rights obligations, including the United Nations Convention on the Rights of Persons with Disabilities ("the Disability Convention"). It should include steps to move away from substitute decision-making (making decisions on behalf of people considered unable to make such decisions for themselves, such as compulsory treatment) to supported decision-making (providing a range of supports to allow people to exercise autonomy over their own care and treatment).

# Suggested PANEL outline

We also outlined how the PANEL principles could robustly be employed in the strategy:

<p><b>Participation</b></p>	<p>Everyone has the right to participate in decisions which affect them. Participation must be active, free, and meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.</p>
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- + A move to new models of support which are genuinely participative and person-centred
- + The development of a 10 year vision developed alongside and fully informed by people with lived experience
- + Concerted efforts to reorient services towards a supported decision-making model
- + Action to support and reinforce existing supported decision-making mechanisms e.g. advocacy, Advance Statements

<p><b>Accountability</b></p>	<p>Accountability requires effective monitoring of human rights standards. For accountability to be effective there must be appropriate laws, policies, administrative procedures and mechanisms of redress in order to secure human rights.</p>
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- + Aligning the indicators to be developed with human rights standards
- + Taking steps to address “exploration of service users’ understanding, views and experiences of accountability procedures e.g. whether people know where to seek redress and have support to do so (whether advocacy or legal support); the accessibility of legal and complaints mechanisms; and meaningful redress.” (per Commitment 5 report)
- + Linking the planned review of how deaths of patients in hospital for mental health care and treatment are investigated to a strategic approach to accountability which commits to systems which allow for learning from things that go wrong in mental health care

## Non-discrimination and equality

A human rights based approach means that all forms of discrimination must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most vulnerable situations who face the biggest barriers to realising their rights.

- + Consideration of whether all marginalised groups have been taken into account, both in terms of intersectional discrimination (e.g. LGBT, older people etc.) and the groups of people with mental health issues who do not 'fit' in current services (e.g. borderline personality disorder, ASD, young people not deemed ill enough to qualify for Child & Adolescent Mental Health Services). The International Covenant on Economic, Social and Cultural Rights also requires action in relation to people marginalised by living in poverty, a group disproportionately impacted by poor mental health)
- + Priority 7 to ensure parity between mental health and physical health should be guided by Article 25 of the Disability Convention providing the right to health for people with disabilities on the same basis as others, which specifies the areas that must be addressed to provide both the same range, quality and standard of health care as is available to the general population, and services specifically required because of disability

## Empowerment

People should understand their rights, and be fully supported to participate in the development of policy and practices which affect their lives. People should be able to claim their rights where necessary.

- + Actions to promote self-management abilities (Priorities 4, 6) concern aspects of empowerment
- + People's awareness and understanding of their rights in mental health care and treatment. This should also encompass the workforce, who should be empowered to understand the rights of those they work with as well as their own rights
- + Efforts to increase the focus on recovery and on a wider public health agenda which promotes good mental health and protects against mental ill health, as a means of empowering both services users and the wider populace

## Legality

The full range of legally protected human rights must be respected, protected and fulfilled. A human rights based approach requires the recognition of rights as legally enforceable entitlements, and is linked in to national and international human rights law.

- ✦ Mainstreaming human rights throughout the priorities of the strategy. Identifying the human rights on which they impact, looking to those standards to guide the areas which must be addressed and the outcomes sought
- ✦ Realisation of human rights standards, in particular, the UN Disability Convention. The Scottish Government's Disability Convention Delivery Plan 2016-2020 coincides with the new Mental Health Strategy and the review of the UK's compliance with the Convention is anticipated to take place in 2017
- ✦ A root and branch review guided by the Disability Convention framework (utilising WHO Quality Rights Toolkit)
- ✦ The various reviews of mental health and incapacity legislation carried out as a co-ordinated and comprehensive review of the legal framework for non-consensual care and treatment, based on the principle of supported decision-making
- ✦ Implementing each of the Commitment 5 recommendations to improve the focus on rights in mental health care
- ✦ Action to make more meaningful and effective rights which have already been set out in legislation, for example the rights to effective support in the community contained in sections 25-27 of the Mental Health (Care and Treatment) (Scotland) Act 2003