

Consultation Response

The National Assembly for Wales (Legislative Competence) (No 6) Order 2008 (Relating to Provision of Mental Health Services)

1 Introduction

- 1.1 Age Concern Cymru is pleased to respond to the Proposed Provision of Mental Health Services Legislative Competence Order (LCO) Committee's request for evidence. We are very pleased that the important issue of mental health service provision is being addressed by the National Assembly for Wales and we very much welcome the proposed use of new legislative competence in order to take this forward. Age Concern Cymru is the leading all-Wales charity working with and for older people. Age Concern in Wales is made up of Age Concern Cymru and 27 locally based, independent Age Concern Organisations. Our activities include campaigning, research, advocacy, information, support for forums of older people and befriending. Through the combination of an all-Wales presence, local community based organisations and our network of over 200 older people Age Concern in Wales is well positioned to be in touch with the issues affecting older people.
- 1.2 The provision of good quality mental health services is a key issue for older people and their carers. Over a third of older people in the UK experience symptoms of mental health problems and within the next 15 years over 6 per cent of the total UK population will be an older person experiencing a mental health problem¹. However, mental health problems are not an inevitable part of ageing and many older people who receive preventative services and appropriate support are able to lead productive and fulfilling lives. We feel that the National Assembly for Wales should take the opportunity offered by the new legislative powers to create mental health legislation and services based on the principles of human rights, equality and respect.
- 1.3 We appreciate that, at this stage, the primary purpose of the Committee is to consider whether the Assembly should have the power to legislate in this area. To this end we have confined the majority of this response to the questions set out in the consultation letter. However, we have also provided some further information at the end of this response on some issues that we feel are important to consider.

2 Consultation Questions

- 2.1 **Would the terms of the proposed order confer the appropriate powers on the National Assembly for Wales to allow the implementation of the policy proposals outlined in the explanatory memorandum?**

¹ Improving Services and support for Older People with mental health problems: The second report from the UK Inquiry into Mental Health and Well-Being in Later Life (Age Concern & The Mental Health Foundation, 2007)

Whilst we are not in a position to offer legal advice on the terms of the proposed order it does appear that the proposed order will allow the National Assembly for Wales to implement the policy proposals set out in the explanatory memorandum. We very much support the proposals and in particular the focus on the right to independent advocacy. We hope that the committee will take as much advice as they can on the terms of the proposed order from those qualified to provide it to ensure that it will apply in all areas required and provide a suitable route for as many positive changes in mental health service provision as possible.

2.2 Is the scope of the proposed Order appropriate, too narrow or too broad to allow the Assembly to bring forward the Measures to address issues you believe should be addressed via legislation in the field of Mental Health in Wales? If necessary, how should the proposed order be re-drafted and why?

We are pleased that the scope of the proposed Order is fairly broad and feel that this is appropriate. We would like the Order to be as broad as possible to allow as many of the decisions about mental health service provision for the people of Wales to be made in Wales. Age Concern Cymru feels that it would be beneficial to all users and potential users of mental health services in Wales for the powers in this area to be devolved to the Welsh Assembly Government and in this respect we feel that the scope of the Order should be as broad as possible whilst still ensuring that it will successfully pass through the Legislative Competence process.

One area that we would like to see addressed under the proposed legislative competence framework is age discrimination in mental health services. We hope that the Order will be broad enough to allow for this and if not we would like to see it re-drafted to include this. Age Discrimination is the most common form of Discrimination experienced in later life². Age Discrimination is a particular problem within mental health services and this creates an unfair and inequitable system within which older people are disadvantaged. Mental health services are often split between those for “adults of working age” (up to 65) and those for “older people” (65 and over). The result is that many people are forced to move to a different service upon reaching 65 often leaving a familiar service that is working well for them and joining a new, unfamiliar and often inappropriate one. Other older people find that they no longer fit the support criteria for their local service and are therefore excluded from sources of support that they require. Age Concern Cymru believes that this is an unacceptable situation and goes against commitments in both the Welsh National Service Framework (NSF) for Mental Health which aims to “... provide equitable, accessible, comprehensive mental health services for all the people of Wales based on need, irrespective of where they live, their age, gender, sexuality, disability, race, ethnicity or their social, cultural and religious background. This will require services that: ensure a non-discriminatory and consistent level of advice and support for people with mental health problems across Wales”³ and the Welsh National Service Framework for Older People which sets “Rooting out age discrimination in the Health Service” as one of its standards. The

² Age Concern Research Services and the University of Kent (2005) *Technical research report: Age discrimination*. London: Age Concern England.

³ Raising the Standard: The Revised Adult Mental Health National Service Framework and an Action Plan for Wales (2005 Welsh Assembly Government).

NSFs themselves reinforce an age discriminatory approach given that the Mental Health NSF, which had funding attached to it, is focussed on adults of working age whereas the mental health needs of Older People are covered by the NSF for Older People which is to be delivered without extra funding resources.

Age Concern Cymru would like to see the Welsh Assembly Government remove age discrimination from the mental health system, and the health system more widely. Specialist mental health services for older people should sit within mental health services for all adults and not alongside them. Older People should be treated on the basis of need rather than age and given equal access to treatment such as counselling and Cognitive Behaviour Therapy as well as equal choice and quality of treatment. This does not happen in a number of cases at present and legislation is needed to create a fair, just and equitable mental health system in Wales.

To this end we would suggest that the Order be re-drafted to include: “duties on health and social care services⁴ in Wales to provide fair and equal access to mental health services for all persons.”

We would also like the Order to be drafted widely enough to ensure that bodies are required to work to tackle the stigma of mental illness which is often a barrier to early treatment. Our anecdotal evidence highlights situations where family members have actively tried to prevent relatives accessing mental health services because of the stigma attached to this. We would like to see this problem addressed.

2.3 The proposal is to impose duties on the Health Service to provide assessment of and treatment for mentally disordered persons. Should it cover duties on other bodies?

We would very much like to see this LCO extended to cover social care services. As much of the intention behind this proposed LCO is prevention and early treatment we feel that it is essential that social care services are also included. Health and Social Care must work together to provide support and care for people with mental health issues and it would be unfortunate if important changes in services were only available to people being treated under health services thus creating further unnecessary division between health and social care.

However, we do appreciate that the process of gaining legislative competence isn't straightforward and if transpires that it will not be possible to extend this proposed LCO to cover social care then we feel it should proceed as it is with commitment to seek similar powers in the field of social care at a later date.

2.4 The parts of the proposed Matter which relate to assessment and treatment (paragraphs (a) and (b)) are limited to “the health service in Wales.” Would this deal appropriately with any cross-border issues?

⁴ The inclusion of social care services relates to our answer to question 3 regarding duties on other bodies. If it is decided not to extend this LCO beyond health services then the wording could be amended accordingly.

We do not envisage the potential cross-border issues that may arise from this proposed LCO being significant enough to outweigh its importance and the individual issues should be able to be dealt with as Matters are suggested. It is important however that anyone receiving treatment provided by the health services (and hopefully social services) in Wales should be covered by the proposed legislation. This will be especially important for older people who may be residents in care settings across the border. This issue also serves to highlight the importance of extending this proposed legislation to social care as those funded by the NHS under continuing-care may otherwise qualify for extra provision to those funded by local authorities.

2.5 In relation to assessment of persons and advocacy services, the matter applies to persons “who are or may be mentally disordered”. What are your views on this?

In response to this question Age Concern Cymru supports the suggestion made in Gofal Cymru’s response to this consultation which suggests that the term “persons in mental distress” may be a better phrase. This is preferable to the use of the “mentally disordered.” We feel that use of this definition should allow for the provision of early treatment for people with, for example, drug and alcohol issues and thus help prevent further mental health issues developing. For example, ten to thirty per cent of older people who misuse alcohol become depressed⁵, early intervention is key to addressing this and is entirely in the spirit of this proposed LCO.

2.6 Is it appropriate to limit legislative competence to exclude persons detained under the Mental Health Act 1983?

Whilst we are not entirely happy with the wider Mental Health Act framework within which this LCO will operate we understand why this decision has been taken in relation to this proposed LCO.

2.7 Is the definition of “mentally disordered persons” in the proposed Order appropriate? If not, how should it be re-drafted and why?

Please see point 2.5 for our response to this question.

2.8 Should the term “treatment” also be defined within the matter?

Once again on this point we would like to support the suggestions in the Gofal Cymru response that the terms “services” or “care and support” may be more appropriate. We are unhappy with the overly medical nature of the term “treatment” given that the preventative focus of the proposed LCO allows for a much wider understanding of the services and support that might be used in tackling the problems of mental illness. This can be particularly true for older people where issues of loneliness and isolation can lead to mental health issues – the solution to this may be enabling more social contact or providing some low level support at home, this may not fall under a traditional

⁵ Improving Services and support for Older People with mental health problems: The second report from the UK Inquiry into Mental Health and Well-Being in Later Life (Age Concern & The Mental Health Foundation, 2007)

understanding of “treatment” hence our preference for the terms “care and support” or “services.”

3 Further Comments

3.1 Advocacy Provision

Age Concern Cymru is pleased to see that a right to advocacy is part of the proposed Order. We have, however, always maintained that these services need more resources than those that are currently being provided and that the schemes need to be extended to cover more service users. For example, we believe that the Independent Mental Capacity Advocacy scheme should apply to people who have family or friends, as well as those who do not in order to prevent potential instances of abuse. Many Age Concern Organisations across Wales are providers of advocacy services and we have long campaigned for better resources for fully independent advocacy services in Wales. We believe that Welsh legislation should deliver a right to independent advocacy for anyone who wants it and that this should in turn result in increased and more sustainable funding for independent advocacy services across Wales.

3.2 Mental Health Inquiry - recommendations

In 2003 Age Concern and the Mental Health Foundation launched the UK Inquiry into Mental Health and Well-Being in Later Life to address a shared concern about the neglect of older people’s mental health policy to date. The inquiry has now ended and 2 reports have been produced based upon its findings. The first report “Promoting mental health and well-being in later life” was published in 2006 and drew upon evidence from older people, carers, organisations and professionals to make recommendations for ways to make positive mental health and well-being a reality for older people in the UK. The second report “Improving services and support for older people with mental health problems” again takes the views of older people and carers as its starting point and makes recommendations for ways to improve the services and support available to older people with mental health problems. The recommendations from these reports are included as supplementary evidence to this response and we hope that they will act as a useful prompt in thinking about what the proposed Order and subsequent Measures could be used to achieve.

4 Conclusion

4.1 Age Concern Cymru is pleased that the National Assembly for Wales is taking this important step to addressing the issue of mental health service provision. We hope that legislative competence will be achieved in this area and that the powers will be used to improve services for older people in Wales based upon consultation with service users and their representatives.

4.2 We would be happy to provide any further information to support this response and would be willing to give oral evidence to the Committee if required.