



CALL FOR EVIDENCE – PROPOSED MENTAL HEALTH SERVICES LEGISLATIVE COMPETENCE ORDER (LCO)

INTRODUCTION

This submission has been prepared on behalf of the Chief Executive of Powys Teaching Local Health Board (tLHB). It constitutes the response of Powys tLHB to the Assembly Government's consultation on the proposed Mental Health Services LCO. As well as dealing specifically with the questions set out in the invitation to submit evidence, it includes additional information that may be of benefit to the Mental Health Services LCO Committee during its deliberations.

We are content for this submission to be published and attributed to Powys tLHB. We would be prepared to give oral evidence to the Mental Health Services LCO Committee if required.

CONTACT DETAILS

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DECLARATION OF INTEREST

Peter Meredith-Smith is currently seconded to the tLHB, from the Welsh Assembly Government's Department of Public Health and Health Professions (DPHHP). His substantive post within the DPHHP is Nursing Officer (Mental Health & Learning Disability). Before joining the tLHB's Executive Team, he was a member of the Welsh Assembly Government's Mental Health Act Implementation Team, and still acts as a consultant to that team.

ABOUT US

Powys tLHB was established as a statutory body in April 2003, and awarded Teaching Local Health Board status in 2006. The tLHB is responsible for both commissioning and providing health services for the

people of Powys (a model of service commissioning and provision that is unique within Wales).

The tLHB provides services throughout Powys via 10 community hospital sites and various community-based facilities. Within our portfolio we commission and provide both mental health and learning disability services.

Most of our mental health services are provided directly by the tLHB within the borders of Powys. Some services, including significant in-patient provision, are provided by organisations beyond the boundaries of Powys (including some healthcare providers in England). This scenario, plus the rural context of Powys, contributes to a situation whereby mental health service commissioning and provision within our catchment area is viewed as being more challenging and complex than many other areas of Wales. This will be relevant as we tackle agenda that emerges as a result of the commencement of any new Welsh Assembly Government legislation on mental health.

The organisation has recently been subject to a review by the Welsh Assembly Government's Clinical Governance Support and Development Unit. The review included consideration of our mental health services. The outcome of the review is influencing the way that we are modernising the mental health services that we provide for the people of Powys, including how we respond to the demands of the new Mental Health Act and any Wales specific legislation drawn up by the Welsh Assembly Government.

OVERVIEW COMMENTS ON THE PROPOSED LCO

Devolution allows flexibility in the way that healthcare provision, including the provision of mental health services, is delivered within Wales. Specific legislation for Wales will assist service planners and providers to respond to the needs of our citizens in an appropriate manner. Consequently, devolved legislative competence with regards to mental health issues must be seen as a positive development. Notwithstanding this, policy and law makers in Wales must undertake their responsibilities in such a way that they are mindful of cross-border issues (this is particularly relevant to the people of Powys). They must ensure that that English and Welsh mental health law is complimentary. Failure to do so could result in a situation whereby the practice of mental health professionals within Wales is compromised and patient safety and the quality of care diminished.

RESPONSES TO THE SPECIFIC QUESTIONS POSED BY THE MENTAL HEALTH SERVICES LCO COMMITTEE

Would the terms of the proposed Order confer the appropriate powers on the National Assembly for Wales to allow for the implementation of the policy proposals outlined in the Explanatory Memorandum?

Yes.

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?

The proposal to potentially create a right for anyone to demand:

- (a) assessment of their mental health needs
- (b) demand treatment for any mental health problem or emotional difficulty (even lesser mental health difficulties)

is likely to prove unjustifiably costly, limiting the potential of services to target their resources on those in most need (including the most vulnerable patients, suffering from serious and/or enduring mental health problems). A sensible and practicable approach is needed to avoid this risk.

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?

Effective and efficient mental healthcare is only achieved by means of interagency, multidisciplinary working. This principle informs the way that the Mental Health Act for England and Wales is framed, and underpins current service models in Wales. By imposing duties only on health services, the proposed LCO will have limited benefits for service users. Mental health assessment and treatment must at least involve health and social care staff. Any Welsh legislation on these issues needs to apply to both health and social care services.

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?

There may be significant cross border issues that fall out of these proposals; particularly for Powys tLHB, given its current dependence on services in England for the provision of some of its acute in-patient care (where much mental health assessment and treatment occurs).

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?

Introducing the right of access to advocacy services for any person who is suffering from serious or enduring mental health problems must be as an appropriate development. Extending this right to all with any mental health diagnosis is an unnecessary and probably undeliverable development. Such a development will limit the potential of assessment and advocacy services to target their resources on those in most need (including the most vulnerable patients, suffering from serious and/or

enduring mental health problems). A sensible and practicable approach to this proposal is needed to avoid this risk.

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

Yes. Applying it to patients subject to compulsion under the Mental Health Act would cause unnecessary confusion. The Mental Health Act already provides patients that are or may be subject to compulsion with the right to assessment, treatment and advocacy.

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

The definition is appropriate, in that it should be, consistent with the definition within the Mental Health Act for England and Wales. Notwithstanding this, such a broad definition (without sensible guidance to underpin it) could lead to unmanageable and inappropriate levels of demand for services, limiting the ability of services to appropriately care for those most in need.

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

This would be helpful to service users, planners and providers (including mental health clinicians and practitioners). We would recommend that the definition of treatment within the current Mental Health Act for England and Wales should be adopted.

CONCLUDING REMARKS

Colleagues within the committee need to be reminded that LHBs and Trusts are facing very significant challenges in preparing for the commencement of the Mental Health Act on October 1st 2008. The introduction of additional Wales specific legislation in the near future would add to the real pressures that service are currently experiencing.

Notwithstanding these concerns, the committee can be reassured that Powys tLHB is committed to working diligently with our Local Authority partners to prepare our services for any changes to the legal framework underpinning the way that we deliver our mental health services.

24th April 2008