REPORT NO 1135/08

ANGUS COUNCIL
SOCIAL WORK AND HEALTH COMMITTEE

13 NOVEMBER 2008

RESPONSE FROM ANGUS COUNCIL ON REVIEW OF THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

REPORT BY THE DIRECTOR OF SOCIAL WORK AND HEALTH

ABSTRACT

The Scottish Government has established an Independent Mental Health Act Review group to undertake a limited review of the Mental Health (Care and Treatment) (Scotland) Act 2003 with a view to identifying minor amendments which it is hoped will lead to more streamlined processes and resolve some ‘technical issues’ in the administration of the Act. The group are currently consulting on this issue. This report seeks Committee approval for the draft response (copy attached) to be sent on behalf of Social Work and Health.

1 RECOMMENDATIONS

It is recommended that the Social Work and Health Committee:-

i) endorses the contents of this response;
ii) instructs the Director of Social Work and Health to forward the proposed response to the consultation on the Mental Health Act Review to the Scottish Government.

2 INTRODUCTION

The Mental Health (Care and Treatment) (Scotland) Act 2003 was enacted in October 2005. There have been a range of issues arising for practitioners since its inception. The review has identified some of the key issues namely:

- Named persons
- Advance statements
- Second opinions
- Mental Health Officer availability
- Tribunals
- Suspension of detention

These issues encompass a range of related matters which go to the heart of the operation of the Act.

3 ANGUS COUNCIL RESPONSE

The attached response to the consultation responds directly to questions on each of the key areas. The issues and responses are briefly summarised below.

- Named persons
The concept of named persons was an attempt to modernise the ‘nearest relative’ rules whereby a patient’s nearest relative would be informed about their detention regardless of the quality of that relationship. Named persons on the other hand can
be nominated by the patient or by others and are more likely to have a positive caring relationship with the patient. Issues have arisen about the volume of information given, the responsibilities placed on a named person and the nomination processes.

The response broadly supports the concept of named person and suggests that nomination processes should largely stay the same, albeit simplified, and that named persons should be assisted to fully participate with support of the care team rather than be excluded from parts of the process.

- **Advance statements**
  These allow anyone to make a statement regarding their wishes, in relation to medical treatment, should they become subject to the Act. The consultation seeks views on how to improve uptake which has, so far, been very low across Scotland.

  The response again broadly supports the concept, highlights local efforts to raise awareness and suggests a national campaign to this end might help increase uptake.

- **Second opinions**
  Some areas experience difficulty in obtaining second medical reports required when applying for long term compulsion, usually completed by the GP. Where a GP is not available doctors from the same hospital may not provide reports. Proposals to change the requirements for this to only require one medical report are suggested.

  The response strongly rejects the idea of single reports which would exclude GPs from the process. Rather a relaxation of the conflict of interest rules allowing doctors from the same hospital to provide reports is suggested.

- **Mental Health Officer Availability**
  The Act requires MHO consent for short term detentions but where this is not possible an emergency detention may take place without that consent. In rural areas MHO response time can be slow leading to increased emergency detentions. The possibility of a 'holding period' following medical examination is suggested.

  The response suggests no change to existing procedures as the order must be reviewed as soon as the patient is admitted and this would allow time for MHO attendance. Any other solution would unreasonably extend the period of detention.

- **Tribunals**
  Concern is growing at the number of tribunals being held, both in terms of resource issues and stress on patients and their families. Various proposals are suggested to reduce numbers of interim tribunals. Further questions are posed in relation to representation, confidentiality and appeal processes.

  The response acknowledges the problems and offers constructive solutions. However many of the proposals in the consultation are either unworkable or will seriously compromise patient rights and these issues are highlighted.

- **Suspension of detention**
  The Act allows patients to be discharged from hospital on limited passes (suspension) restricted to 9 months in any given year. The consultation highlights the fact that this is an arbitrary timescale which causes logistical difficulties.

  The response fully supports the need to review this and makes practical suggestions as to how this might be achieved.

- **Other issues**
  Most other issues are covered under one of the above headings, though the response does also highlight the need to further review the application forms, which are numerous and not particularly user friendly. Further guidance is also sought on processes for electronic submission of applications.
Elected members should note that the scope of this review is much greater than the intended limited review and the likely changes to the legislation will need to be quite significant. Nevertheless the response from Angus Council welcomes the review and the very comprehensive consultation process which has been undertaken.

4 FINANCIAL IMPLICATIONS

There are no financial implications arising from this report

5 HUMAN RIGHTS IMPLICATIONS

There are no Human Rights implications arising as a result of the recommendations contained in this report.

6 EQUALITIES IMPLICATIONS

The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

7 CONSULTATION

The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law and Administration have been consulted in the preparation of this report.

R Peat
Director of Social Work and Health

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.