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Current AWI Issues & Schedule 2 MHO Reports

Demand

Demand for AWI MHO reports across Scotland has risen steadily over recent years (and this picture is replicated across Scotland) which has seen already pressured MHO services placed under further unsustainable pressures. AWI reports account for some 50% of the workload for MHO's. The other main area of work around the Mental Health (Care & Treatment)(Scotland) Act 2003 has also generated more work for MHO's as the number of detentions under the Act has risen by 16% year on year and associated reports and applications for Compulsory Treatment Orders (S63) and subsequent Tribunal hearings further add to pressures on the system.

Last year Renfrewshire received 155 requests for AWI MHO Reports (reporting period 01/04/2016 – 31/03/2017), the previous year saw 137 such requests, and the year prior 152. There is an average of some 35 hours work for an MHO in preparing such a report.

Orders where the Chief Social Work Officer (CSWO) is appointed Welfare Guardian have also risen significantly in recent years from 79 in March 2015 to the current figure of 107 as at time of writing this briefing note. Each of these orders requires a Social Worker to be identified to act as the 'Nominated Officer' on behalf of the CSWO for day to day management of the case. There are some 15 further cases currently at various stages of process for the CSWO to be appointed as guardian.

AWI Issues Local / National

Renfrewshire have robust systems in place to deal with cases where AWI is required to 'facilitate' a discharge from hospital where an adult is deemed fit for discharge' and other measures such as using the provisions of S13za of the Social Work (Scotland) Act 1968 (as amended by the Adult Support & Protection (Scotland) Act 2007, cannot be used. Renfrewshire have the best delayed discharge figures (bar one very small island authority in Scotland). However the number of cases coming from the hospital sector can vary daily and this demand has to be met. We have also developed robust measures to link to local solicitors to expedite these cases to avoid unnecessary delays in obtaining legal aid or drafting and providing the 'Draft Summary Application' at an early stage to enable work to commence. The use of Interim Powers to facilitate a discharge from hospital is also encouraged. The picture varies across Scotland but many authorities are now adopting similar approaches to this area of work.

We have in Renfrewshire a good relationship with our local solicitors and the Team Manger MHO Service who coordinates AWI work is in regular contact with many of our local agents There can however be some significant delays arising from system and processing issues from some solicitors that can result in some delays. This can result in disadvantaging the adult and applicant.

A further delay can arise from the provision and obtaining of the required medical reports by the solicitor. Normal practice is for the solicitor and MHO to discuss the report timescales once allocated and agree when these should be instructed. This is important as the MHO has to interview and assess the adult for the purpose of the AWI2 MHO report after the date of the first of the two medical examinations and within 30 days of this. We are encountering many local agents who are now struggling to find S22 doctors able to complete such reports and GP's to provide reports within requisite timescale (and correctly completed).

The National Picture

Across Scotland – AWI has become a significant demand on MHO services. This has arisen from an aging population, increased awareness of AWI, promotion of AWI by some solicitors and organisations, especially around the 'transitions group', self directed support. The average rise in AWI report requests across Scotland is 75% a rise from 25% in 2015.

There is also a rise of some 16% in the use of the Mental Health (Care & Treatment) (Scotland) Act 2003 and the numbers of people being made subject to 'measures of compulsion' has risen year on year. This brings increased workload pressures on MHO services especially with attendance at Mental Health Tribunals.

Authorities across Scotland report that they are struggling with this increased demand upon already over stretched MHO services. Authorities report cross cutting difficulties with recruitment, retention of MHO's and this is in keeping with other professions within the health & care sector.

Despite numbers undertaking the MHO award increasing in recent years the demographic of the MHO workforce across Scotland shows over 50% of MHO's are over 50 years of age and the numbers coming through training simply do not match the numbers leaving the service either from retirement or other reasons.

Undertaking the MHO Award requires dedication, time, energy, commitment and academic acumen, as well as support from the employer both during and after the duration of the course. The current financial pressures faced by the public sector present challenges to authorities in this area. There are key issues facing the supply of qualified Mental Health Officers across Scotland at this time and Social Work Scotland as a national organisation is seeking to engage with the relevant government minister on how this issue is addressed at a national level.

The Legislation

The timescales laid down in the legislation are unhelpful and indeed contradictory in practical terms.

The Act states the local authority must produce the report within 21 days of receiving the request. A number of difficulties arise from this some of which have already been alluded to in sections above.

The Act makes an assumption that resources are available to allocate such reports immediately on receipt.

The Act further requires the MHO to undertake various tasks in connection with the report including assessing and interviewing the adult – which as indicated earlier has to be done after the date of the first medical examination and within 30 days of same.

The MHO also has to consult other relevant parties in connection with the report to obtain their views on the proposed application. Often it can prove difficult to contact parties some of whom are essential to consult with.

The MHO also has to be sighted on the first medical report (although the Act is not specific in this regard) at very least the solicitor must advise of date this medical examination was undertaken to ensure MHO Interview and Assessment of the adult concords with the legislative provisions.

It is widely recognised following the recent consultation in respect of the Scottish Law Commission Report into AWI published in June 2016 that the current AWI legislation was requiring a major review. The Scottish Government responded to this by appointing a Policy Lead (Kirsty McGrath) who is now leading a reform of the AWI Act and a public consultation is due to be launched around late September / early October 2017 with a proposed Bill being introduced to the Scottish Parliament the following year. (Subject to Parliamentary business timetables).

The direction of travel would appear to be towards a system of Graded or Tiered Guardianship – the exact details have yet to emerge and preliminary views are emerging that some aspects of the AWI process could possibly be moved into a Tribunal System. Full details will not be known until the consultation is published.

Bob Leslie

Team Manager

MHO Service – Renfrewshire & Chair Social Work Scotland MH Sub Group