

National Secure Adolescent Inpatient Service Scottish Government Consultation

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

We note that we were not included in the original distribution of this consultation and, as a result, our response has had to be formulated in a very short timescale and should be understood on that basis.

We are concerned that these proposals appear to have reached this stage without the creation of a Children's Rights Impact Assessment (CRIA). It is likely that a CRIA would have brought to light, at an early stage, the concerns we outline below.

Our impression is that the starting point of these proposals is that Foxgrove would simply be added to the list of adult services¹ and, as a result, would automatically adopt the same measures as equivalent adult services.² This is at odds with the commitment made by Scottish Government regarding the incorporation of the UNCRC into Scots law.

Concerns have been raised, consistently and for some considerable time, about children being placed in adult mental health facilities. These concerns do not merely arise from the presence of adult patients.³ The regime present in these facilities fails to acknowledge the special protections to which all children under 18 are entitled, under the UNCRC.⁴

Simply applying the measures used in adult provision risks replicating the rights breaches which occur when children are placed in adult settings – for example the use of restraint, seclusion and restrictive practices; the taking of forensic samples; strip-searching; and the use of surveillance. The current proposals also appear not to address issues such as training for staff, rights to advocacy, and provision of a child-appropriate right of appeal.

The Scottish Mental Health Law Review demonstrated a thorough understanding of the human rights framework as it applies to mental health law and services, including

¹ The Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015

² Set out in The Mental Health (Safety and Security) (Scotland) Regulations 2005

³ Independent Review into the Delivery of Forensic Mental Health Service, Final Report, February 2021, Section 7.3. Available here:

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/02/independent-forensic-mental-health-review-final-report/documents/independent-forensic-mental-health-review-final-report/independent-forensic-mental-health-review-final-report/govscot%3Adocument/independent-forensic-mental-health-review-final-report.pdf>

⁴ Mental Welfare Commission for Scotland, Young People Monitoring Report, 2018-2019, Paragraph

on capacity and right to remedy. These proposals do not appear to reflect this approach and are also at odds with Recommendation 52 of the Independent Forensic Mental Health Review. The section on “Patient’s Rights” shows a lack of consideration of special protections children are entitled to, referring only to legal rights of those detained under domestic law.

We would recommend that alternative proposals be developed, using as a starting point the Secure Care Standards and Pathways⁵ and taking full account of children’s human rights. This should be accompanied by a CRIA which has been developed alongside the proposals. The CRIA should inform the development of the proposals.

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⁵ Secure Care Pathway and Standards Scotland <https://www.securecarestandards.com/>