Written Submission

Children
IN SCOTLAND
CLANN AN ALBA
working for children and their families

Mental Health (Scotland) Bill

for Health and Community Care Committee on oral evidence to be given on 6th November 2002 at 9.30am

PRINCIPLES

Children in Scotland fully supported the ten principles outlined by the Millan Committee. The proposal that the Bill be firmly based on the ten principles was accepted in the policy document but is not fully reflected in the Bill.

The omission of two principles are of particular concern for children and young people. These two principles should be included in the Bill.

(1) **The reciprocity principle** would help ensure suitable and appropriate services are made available to children and young people, should they be detained. At present, children and young people under the age of 18 continue to be treated in adult psychiatric wards. Between April 2001 and March 2002, **7 out of 10 admissions of children and young people (under the age of 18) were to adult wards (figures forthcoming from the Mental Welfare Commission**. Moreover, 72% of the admissions of young men under the age of 16 were to an adult environment.

(2) **The welfare principle** – i.e., the welfare of the child should be a primary consideration in all matters affecting the child – would be another means to promote suitable service for children and young people. It would also ensure that decisions made in relation to a child, such as those made by the mental health officer and within care plans, prioritise a child's welfare.

The UN Committee on the Rights of the Child has recently criticised the UK for failing to ensure key principles are incorporated into all areas of law (4.10.02). The inclusion of the welfare principle in the Mental Health (Scotland) Bill would help meet this criticism.

DEFINITION OF MENTAL DISORDER

Including learning disability in the definition is potentially problematic because people with learning disability have, in most cases, very different needs from those who have a mental disorder. In the policy statement on the Bill the Executive have said that they will carry out a review of the appropriateness of including learning disability in the definition and that this should take place at the earliest opportunity. No plans have yet been announced for this.

Children in Scotland members expressed concern that personality disorder was included in the definition of mental disorder. A label of personality disorder can be very damaging to a child or young person. Given the perception that a personality disorder is untreatable and the stigma attached to it, a child's self esteem and life chances will be greatly affected by such a diagnosis. Although ICD10 (WHO diagnostic criteria) names personality disorders as an adult disorder, it would be useful if this was written into the law and specified in regulations.

EXPERIENCE AND KNOWLEDGE OF PROFESSIONALS

There are a number of areas where the Bill needs to make clear that those working with children and young people and making decisions on their care and treatment should have knowledge and experience of children's issues and child and adolescent mental health.

- **Mental Health Officers**: It is relatively rare that a child or young person is subject to long term detention in hospital. Nevertheless where this is the case or where a child is subject to short term detention, key staff who come into contact with them should have specialist training in child and adolescent mental health. This is particularly important for mental health officers (MHOs). The MHO will be making crucial decisions on applying for a compulsory treatment order and will produce a care plan that will be submitted to the Tribunal. **MHOs, working with children and young people, must have specialist knowledge and experience of child and adolescent mental health and this should be made clear in the Bill.**

- **Mental Welfare Commission:** The Bill does not stipulate that any person appointed by the Commission to discharge functions authorised by the Commission have any expertise and knowledge of children's issues. This is of particular importance in two areas:

  (1) where the Commission – or a person appointed by them – are investigating an incident where a child or young person may have been subject to or exposed to ill treatment, neglect or some other deficiency or

  (2) where a medical examination is required for the purposes of an investigation.

- **The Mental Health Tribunal:** The Bill does however remain vague on the make up of the Tribunal, particularly the third member. **There is no provision in the Bill that where a child or young person appears before a Tribunal a member of the Tribunal should have experience and knowledge of children's issues.** This should be included on the face of the Bill and not left to the Code of Practice or regulations.

- **Advocates**: Advocacy will be vital for children and young people under mental health legislation. An advocate should be appointed at the earliest opportunity when in-patient care is required. The advocate should be able to assist with all matters related to the children's care and would have a key role in ensuring that children understood what was happening to them in relation to their care and treatment. **Resources must be available to ensure that advocates appointed to children and young people have the necessary skills and experience to work with them.**

PROVISION OF SERVICES BY LOCAL AUTHORITIES

Children in Scotland welcomes the promise of Sections 21 and 25: i.e. duties on health boards and local authorities to provide or secure services that 'promote well-being and social development'. However, these duties fail to address the particular situations of children and young people in three ways:

a. The right to service provision is dependent on having or having had a mental disorder. The Bridges Project, one of Children in Scotland's members, points out that few children actually receive the label of mental illness. Children may receive other labels that are considered less stigmatising, such as 'social, emotional and behavioural difficulties'. Thus, the 'gatekeeping criteria' of the duty potentially excludes a significant number of children and young people who are mentally ill. **Children in Scotland would recommend that the criteria be widened to those 'at significant risk of having a mental disorder'.**

b. The specified services in Section 21(2) do not include school education, associated education services nor other learning opportunities. Research demonstrates the vital importance of school to children's well-being[1]. **Children in Scotland would recommend additional services be specified: 'education and associated services'.** This would have the particular benefit of a 'joined up approach', in ensuring that health services work with schools for these children and young people.

c. Despite the title of the section, there is no duty to provide *preventive* services. The Scottish Executive are keen to develop programmes for children and young people from the early years to adulthood to promote emotional well being and resilience. A duty to provide preventive services would ensure that local authorities and health boards planned and implemented joined up strategies that compliment the Executive's aims.

PROVISION OF SERVICES BY HEALTH BOARDS

The Millan Committee recommended that all children and young people are treated in an age appropriate environment. The Executive rejected this. It is wholly inappropriate that any child or young person be treated in an adult psychiatric setting. The statistics from the Mental Welfare Commission outlined above show that this is a continuing problem. **The Bill should make clear that health boards have a duty to provide appropriate treatment facilities for children and young people**.

CONSENT TO TREATMENT

Legal inconsistency remains on a child's ability to consent or refuse treatment, when the treatment is 'voluntary'. At present a child or young person who does not consent to treatment can still receive that treatment if their parent or guardian agrees. Children in Scotland would support the introduction of a section into the Bill laying out a framework for child's consent in such situations, to be further specified in regulations. For example, a second opinion could be required for certain, serious treatments. Such regulations should be adequately consulted upon with children's as well as mental health agencies.

NAMED PERSON

Those who have not attained the age of 16 will be unable to appoint a named person. The named person will be the individual with parental responsibility for the child. Adults will be able to make a declaration revoking their named person. There is no provision for a child or young person to do so. At present the only way a child can change their parent or guardian is through a sheriff, under family law provisions. It would be time consuming and impractical if the same process was in place for a child or young person under the Mental Health Act. **A competent child should be able to choose a named person as an adult can. A child should have the possibility of revoking a named person, through a prompt and accessible process.**