1. SAMH

SAMH is Scotland’s leading mental health charity and is dedicated to mental health and wellbeing for all. SAMH provides both direct services and an independent voice on all matters of relevance to people with mental health and related problems.

SAMH has over 80 services throughout Scotland which address a range of individual needs. Our services support people who have experience of mental health problems and other forms of social exclusion including homelessness and addictions.

SAMH promotes the development of legislation, policy and practice that is based on the real life experiences of people with mental health and related problems and respects their human rights.

2. GENERAL COMMENTS

SAMH welcomes moves to help simplify and improve the landscape of Scottish public bodies. However, the Public Services Reform Bill also presents risks and challenges which must be addressed.

Initial decisions to take the functions of The Mental Welfare Commission (MWC) into the Bill have at this stage been removed. SAMH understands that the intention is to bring forward proposals in relation to the MWC at Stage 2. At this stage we would reiterate that the MWC is not a scrutiny body, it is an independent rights based body set up to safeguard the interests of individuals with mental health problems. It is essential that this independence is not compromised and SAMH would oppose moves resulting in any diminution of the MWC’s purpose or function.

The implementation of this Bill could enable common approaches to standards and assessment across all healthcare services. However, consideration must be given as to what these standards and assessments might entail and how we can best ensure that those using services are placed at the heart of any changes which affect them.

3. SPECIFIC COMMENTS

1) Overall policy objectives: in particular, whether the Bill is likely to achieve its overarching purpose

The Bill seeks to bring together bodies with similar skills, expertise and processes in order to create a government which is better able to achieve its core functions.
In the development and delivery of publicly-funded services, government along with voluntary and community sectors have distinct but complementary roles.

There is added value in working in partnership to common aims and objectives and, while the public and voluntary sector have different forms of accountability and are answerable to a range of stakeholders, common to both is the need for integrity, objectivity, accountability, openness and honesty.

The Concordat and the subsequent development of Single Outcome Agreements mean that local authorities now have much greater autonomy in funding voluntary organisations. SAMH’s contribution to publicly-funded services is predominantly facilitated through the commissioning process. However, there is a gap between central government policy and the reality of the funding situation, particularly in respect of funding by local authorities and the NHS.

Few charities are able to obtain full cost recovery whilst grant giving charities seek to fund ‘additional’ provision as opposed to ‘basic’ services; which they feel should be the responsibility of the State.

SAMH has serious concerns about the sustainability of charities subsidising public services, and the impact of this on the services concerned as well as on the voluntary sector as a whole. Charities and other voluntary organisations may be using up reserves in order to bridge funding gaps in public service delivery, which is unsustainable and potentially harmful in the long term.

The distinctive skills, expertise and experience of the voluntary sector risks being lost through contracting with public authorities which can be inflexible, with bureaucratic commissioning processes and unrealistic service specifications. There can also be a clash of cultures and misunderstanding between the public and voluntary sectors, and there remains a need to educate public sector staff about the nature and role of the voluntary sector.

The voluntary sector is an essential component of any society which aims to be truly democratic and socially inclusive. Voluntary organisations make a major contribution to ensuring the meaningful involvement of service users in the design and delivery of services, provide advice and information and act as advocates for people who have no voice. It is absolutely essential that the voluntary sector’s involvement in public service delivery be driven by their mission and not by funding opportunities or government policy.

The question of whether, in light of the current financial situation, this is the appropriate time to be pursuing both the Bill in particular and the wider public services reform programme, must be considered in light of the situation outlined above. Similarly, the success of the Bill in meeting its overall policy objectives will depend largely on whether the concerns raised above are afforded due consideration in relation to the Bill, and meaningfully addressed.
2) Whether the order-making powers proposed in part two of the Bill are appropriate in seeking to deliver a “public sector landscape and public sector functions that are proportionate, responsive and efficient.”

SAMH fully supports the overarching aim of these order-making powers - specifically to improve the exercise of public functions and remove/reduce burdens in the public, private and voluntary sectors.

The consultation states that the changes delivered through the Scottish Government’s Simplification Programme to date, and those set out within the Bill, will deliver only part of the Government’s commitment to reduce the number of public bodies and that further changes will be delivered without the need for legislation.

The powers make provision for modifying, conferring, abolishing, transferring, or delegating any function of a large number of persons, bodies and office holders. This includes transferal from an existing body to a new body established under the power. An example given is the facilitation of the transfer of functions should Ministers decided to move existing tribunal functions into a new Scottish Tribunal Service.

SAMH is clear that order-making powers must not be used to diminish or remove any existing protections from individuals or organisations. In particular, SAMH is concerned that these powers extend to cover the Mental Welfare Commission and the Mental Health Tribunal for Scotland.

It is true that there may be situations where necessary improvement is delayed until a suitable primary legislative opportunity arises, or where a change is not taken forward as it may not merit the procedure of a full Bill. These powers could potentially provide the Government with the opportunity to consider organisational changes and to respond to issues such as duplication, bureaucracy and overlap through proportionate arrangements.

However, the proposed powers also entail potential risks which must be taken into account. While primary legislation may not be appropriate every time changes need to be made to a statutory body, Statutory Instruments and other forms of delegated or secondary legislation are subject to less scrutiny and there is normally little public awareness about the changes being made or opportunity for comment and consultation.

In order to create a public sector that is proportionate, responsive and efficient, the said powers must be accompanied by the appropriate levels of scrutiny. The Bill sets out provisions requiring certain information to be included within the explanatory document accompanying any statutory instrument made under the power. This document must confirm the consultation undertaken on the proposals, as well as any representations received and changes made in response. It is essential that consultation takes place where the views of services users and stakeholders are taken into account and taken seriously. This is the only means by which the proposed powers will establish a public sector which is truly proportionate, responsive and efficient.
3) Whether the proposed duty on listed scrutiny authorities to secure continuous improvement in part 6 of the Bill is likely to ensure that users of public services are better involved

SAMH believes that the needs and views of service users should be placed firmly at the heart of any changes involving public services. We would like to see a situation where service users are empowered to determine their own needs and ‘outcomes’ and where providers are able to respond appropriately with innovatively designed services.

Traditionally, the people who use health related services have often been ‘done to’ and their views and rights have either not been considered, or asked for and then ignored. Many have been treated with a lack of dignity and respect, including not being told their diagnosis, and have not been given adequate information about the treatments, services and support they receive. Service users must be fully involved, so far as they are able to be, in all aspects of their assessment, care, treatment and support. They should also be provided with the information and support necessary to enable them to participate fully.

SAMH greatly welcomes the proposed duty of ‘user focus’, requiring bodies to make arrangements to secure and demonstrate continuous improvement in ‘user focus’ in their work. This duty could help embed a culture of ‘user focus’ within provider organisations and promote consistent approaches across the public sector.

There are currently a number of theories underpinning service user involvement. Official guidance in this area has traditionally treated service users more as consumers of services rather than active citizens; this may be particularly true of public services. The voluntary sector has a long history of considering the needs of service users when planning and delivering services and of seeing them as individuals with rights. SAMH believes that the public sector should seek to pro-actively engage with voluntary organisations in this area.

SAMH also has concerns that current resource constraints and other drivers for public service reform are creating a situation whereby personalised support is being afforded increasingly less priority.

As a service provider, SAMH is subject to a range of assessment and scrutiny processes. The voluntary sector fully recognises that receipt of public funds carries with it responsibilities to the funding body and to the public. Any legislation which streamlines scrutiny (without having an adverse effect on the quality of service provision) and prevents duplication for providers is welcome. However, there should be greater clarity as to what a quality service consists of. If greater weight is placed on pre-specified input standards than personalised services and outcomes, we risk stifling the capacity of the voluntary sector to innovate and place service users at the heart of the services they use.
4) Whether the proposals in parts four and five of the Bill are consistent with the five guiding principles recommended by the Crerar Review of public focus, independence, proportionality, transparency and accountability

The establishment of new improvement and scrutiny bodies is intended to provide a stronger emphasis on achieving better outcomes, as well as supporting service improvement by enabling integrated scrutiny. SAMH believes that there is a need to ensure consistency in the scrutiny of social care, social work, and healthcare services, across the public, private and voluntary sectors.

SAMH fully supports the stated guiding principles for external scrutiny; public focus, independence, proportionality, transparency and accountability. It is important that scrutiny bodies work together to support improvement and that the skills and expertise existing in the current bodies is brought together, not duplicated, diluted or lost.

This would also be a good opportunity to create a central repository of core information for each provider that regulators, local authorities and other government bodies can access. This would prevent multiple requests for the same - or very similar - information, which can be a considerable drain on providers’ resources.

Current scrutiny processes often rely too heavily on measuring input-based compliance and the views of professional staff; as opposed to the views of people who are actually using services and progress in achieving the outcomes that are important to them. This Bill states a clear intention to focus on better outcomes for individual service users, their carers and families. SAMH believes that consideration needs to given as to what is meant by ‘better outcomes’; this is something which must be agreed collaboratively between providers, scrutiny bodies and people who use services.

In order to support continuous improvement the new bodies should actively seek to promote effective partnerships, and consider ways to improve communication between the sectors. This would go far in ensuring public focus, independence, proportionality, transparency and accountability. Improving consultation and communication should be a key component of this Bill.

The Bill states that Scottish Ministers are being given the power to modify key definitions including the category of services (e.g. care home, housing support). While SAMH agrees that this should mean any future changes in this area can be introduced quickly and flexibly, we would still expect an extensive consultation process to be carried out with providers, service users, etc.

The Bill also states that persons seeking to provide a care service must apply to the new body, Social Care and Social Work Improvement Scotland (SCSWIS), for registration of the service. SAMH believes that this must be done through a simple transfer, or transition process, in order to minimise the burden on providers who already have multiple registrations.
SCSWIS and Healthcare Improvement Scotland (HIS) will be required to establish suitable procedures for dealing with any complaints made to it about regulated services by service users, their relatives or advocates or staff. The perceived independence of the Care Commission has been important in assuring those wishing to raise a complaint that there was no conflict of interest between their rights being upheld and the demands of being part of any statutory body. It should be made absolutely clear how complaints will be dealt with and by whom. Steps should be taken to ensure that service users and carers are able to access the complaints system and have confidence that they will be treated fairly.

A further point is that, regardless of any decisions taken in respect of the MWC, where SCSWIS and HIS are involved with mental health services, they must take full responsibility for this aspect of their role, and not see it as a function somehow outwith their remit. Both SCSWIS and HIS must also possess the necessary knowledge and expertise to perform this function to the highest possible standard.

CONCLUDING COMMENTS

If the proposals in this Bill are implemented correctly, and the wider issues are addressed, then it could go far in harmonising activities, avoiding duplication, and ensuring co-operation and greater efficiency in the delivery of public services.

In order for this Bill to meet its objectives, those using services as well as providers across all sectors must have the opportunity to influence the design and commissioning of services, engaging in positive dialogue with commissioners, procurers and regulators at an early stage.

It is essential that the needs and views of the beneficiaries of the voluntary sector remain at the heart of what it does, and that the skills and expertise of the voluntary sector can be used across all sectors in the delivery of services.

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SAMH