



SAMH Response to Consultation on Scottish Civil Courts Review

SAMH

SAMH is the leading voluntary sector organisation in its field in Scotland 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 including supported housing, home support, crisis support, training, employment and structured day services. Our services support people who have experience of mental health problems and other forms of social exclusion including homelessness and addictions.

The SAMH Centre for Research, Influence and Change 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. The Centre also provides an information service, offering general mental health information and specialist legal and benefits advice. Both the Centre and the wider organisation are committed to challenging the stigma and discrimination experienced by people who live with mental health problems.

GENERAL COMMENTS

The SAMH Information Service provides general mental health information to people with mental health problems, their families and carers, MSPs, GPs and health professionals, members of the public, teachers and students also make use of our service. We provide a varied range of information leaflets on such subjects as psychiatric drugs, coping with mental health issues, understanding the procedures in Scotland following a suicide, recovery and service user involvement.

Through the service, SAMH has for many years advised the public on legal issues, through qualified solicitors on our staff. Our legal adviser does not take on cases, but refers people to solicitors if appropriate. This means we have an important overview of the availability of legal advice throughout Scotland.

SAMH has also had a major involvement in legal reforms in this area, including the Adults with Incapacity Act and mental health law reform.

DETAILED COMMENTS

Access to Justice

SAMH strongly believes there is a need to improve access to justice for people with mental health problems in Scotland. We urge the Review to consider ways of making the civil courts system accessible to people with mental health problems. The Scottish Court Service should take expert advice on the changes which might be necessary.

SAMH was concerned to hear that the current disability equality scheme of the Scottish Court Service still concentrates on physical disability. We urge the Review to ask the Scottish Court Service to consult further about the needs of those with mental health problems.

The Committee welcomes the important reforms in the Vulnerable Witnesses legislation. We have campaigned for such changes for many years. We believe that there remains a need for further reform. We hear from service users and carers about the stress of attending court, and that court processes and the language used in court are not always comprehensible or accessible to them.

Training

We believe that many of the issues could be resolved by effective training of all those involved: judges, lawyers, court clerks and those scheduling hearings. Such training could cover timetabling of hearings, the language used, how to reduce the stress of people attending court, reducing formality etc. Witness supporters (available under the Vulnerable Witnesses Act) could reduce the stress people experience. SAMH would be happy to be involved in further discussions about how to make the judicial system more accessible to people with mental health problems.

Reporting of cases

We were concerned to read in the response of the Law Society's Mental Health and Disability Committee that the anonymity of people involved in mental health appeals is not always protected. We urge the Review to consider the need to establish a consistent policy in this area.

Chapter 2, question 1: Importance of public education

We agree with *Modern laws for a modern Scotland* that high quality advice and information improves access to justice. In addition, in our experience, it can also reduce the use of the courts. Our legal adviser is familiar with, and will often suggest, alternative remedies which can be more effective and less stressful for clients. She often recommends that clients use official complaints procedures, ombudsmen or that they make complaints to regulatory bodies, such as the GMC.

We also direct complainants to other organisations which may be able to resolve the problem, such as the Mental Welfare Commission, the Public Guardian and the Commission for Equality and Human Rights. Sometimes a letter written by our legal adviser may be enough to resolve the problem. SAMH provides and contribute to a wide variety of written training materials, leaflets and internet based information, for service users, carers, and legal, social care and health professionals. We also give advice, assistance and training to lawyers (including, on occasion, sheriffs!) on this specialised and still relatively unfamiliar area of the law.

The funding of our service is, however, a constant challenge. Additional funding would enable us to increase the amount of advice and written information materials we produce and expand our training services. We believe that services like ours make a major contribution to educating the public about mental health and incapacity law. We see this as a significant contribution to the access to justice of people whose needs might otherwise be marginalised. Expansion of our service or even permanent, guaranteed funding, would enable us to improve the depth and breadth of the information, advice and support we provide.

Chapter 2, question 2: Gaps of provision in civil legal advice or representation

Access to legal advice and assistance

Our Information Service is aware of the difficulties people face in obtaining good quality legal advice and representation. It can be difficult to find a solicitor who has familiarity with these issues outside the central belt. We are familiar with the Fife mental health representation project (financed under Part V of the Legal Aid (Scotland) Act 1986) and we look forward to seeing its final findings. Interim findings to December 2007 reported low percentages of legal representation for both young people and elderly people with mental health problems or learning disability, and lack of information about solicitors willing to act for people detained under mental health legislation.

The project appears to have improved access to legal representation in Fife, but its final report may indicate the need for further research to identify the extent of unmet legal need for people with mental health problems throughout Scotland.

Legal aid

With continued problems in accessing solicitors prepared to offer legal aid, we believe that there may be an argument that the Legal Aid Board should consider employing salaried solicitors to represent people with mental health problems. Mental health work is not immediately popular with solicitors, as it may be time-consuming and is often difficult, both legally and personally.

We hope that the Review will consult with the Legal Aid Board and Law Society about possible options to provide adequate access to justice for clients with mental health or learning difficulties.

Chapter 4, question 4: Specialisation in civil courts

From the outset, we supported the Scottish Law Commission recommendation that Adults with Incapacity Act cases be dealt with by specialist sheriffs. We believe that incapacity is a specialist area of law, raising important ethical and practical problems. As such it is difficult to fit into a busy sheriff court practice.

Specialist sheriffs would benefit from training about mental health and incapacity and about the community care options for people with mental incapacities. They would receive training in communication skills, as well as gaining increased knowledge of this area of the law. We are aware that in Glasgow, at least, such specialisation is already occurring, and we believe this could be encouraged more widely.

March 2008