

Members of Justice Committee

Our ref: MWC  
*Please quote when replying*

Enquiries to: Colin McKay

Date: 27 October 2015

Dear Christine

FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) BILL

I am writing on behalf of the Mental Welfare Commission in advance of the consideration of Stage 2 amendments for the above Bill.

Our particular concern is the investigation of deaths involving people in contact with psychiatric services, including those subject to detention under the Mental Health (Care and Treatment) (Scotland) Act 2003 at the time of their death. At the Stage 1 debate, there was discussion about whether there should be a mandatory fatal accident inquiry for all such deaths, as recommended by Lord Cullen in his review. Amendments have been tabled by Margaret Mitchell seeking to achieve this. It may be helpful if I set out our general position, then add some comments in relation to the specific amendments.

The Commission believes that the system for the investigation of deaths of detained patients needs to be improved, particularly in the small number of such cases where the person takes their own life. However, it does not believe that a mandatory FAI for every death of a detained patient is desirable.

I enclose for ease of reference our earlier [submission](#) to the Committee which sets out our reasoning. Our medical director, Dr Gary Morrison, gave evidence to the Committee on 12<sup>th</sup> May.

In short, our analysis of deaths of detained patients in 2012/13 would suggest that an additional 70 or 80 FAIs would be required each year. In at least 2/3 of these cases, the investigation would be into deaths from natural causes not related to mental health treatment. Even if held in some expedited manner, FAIs seem more likely to add to the distress of bereaved relatives than to provide useful learning.

For those cases which do require further investigation, we believe it is important to reform the whole system, rather than to concentrate solely on FAIs. That requires

consideration of the way in which NHS Boards conduct critical incident reviews, and the role of agencies such as Healthcare Improvement Scotland, the Mental Welfare Commission and the Health and Safety Executive, as well as the Crown Office.

Fortunately, as a result of amendments put forward by Dr Richard Simpson to the recent Mental Health (Scotland) Bill, we have an opportunity to undertake this necessary reform.

Section 37 of the Mental Health (Scotland) Act 2015 provides that Scottish Ministers must carry out within 3 years a review of the arrangements for investigating the deaths of patients who, at the time of death, were detained in hospital under mental health law. The review also extends to psychiatric in-patients who have been admitted voluntarily to hospital.

The Commission believes that this review is an important opportunity to create a system of investigation of deaths of psychiatric patients which is proportionate, streamlined and effective. We anticipate that Fatal Accident Inquiries will form an important part of this overall system, particularly for the small number of particularly concerning cases which require full public scrutiny.

Of course, the review may conclude that FAIs should be held in a wider class of cases, or even that they should be mandatory.

At this stage, though, we believe the priority should be for the review to be established and for its work to begin. To legislate to make FAIs mandatory at this stage would seem to us to pre-empt a review which Parliament has only just initiated.

Turning to the amendments tabled by Margaret Mitchell, I would add the following comments.

Firstly, Amendment 2 extends the scope of mandatory enquiries beyond detained patients to any person 'admitted voluntarily to hospital for the purpose of receiving treatment for a mental disorder'. This is an enormous number of patients, including large numbers of elderly people being treated for dementia. Sadly but inevitably, many of these patients will die in hospital, and we do not believe FAIs would serve any useful purpose.

Secondly, there is a qualification to the requirement for mandatory FAIs, in cases where the Lord Advocate is satisfied that the death has been appropriately investigated under the Mental Welfare Commission's statutory powers of investigation under sections 11 and 12 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

While this may mitigate the impact of mandatory FAIs to some extent, it raises other difficulties. It is not obvious that all investigations short of FAIs in relation to people being treated for mental disorder should be undertaken by the Commission, and there has been no discussion of how the Commission would be resourced to carry out this

significant increase in its workload. These issues are complex and require thorough scrutiny. We believe the statutory review is the best vehicle for this.

I hope these comments are of assistance, and I would be happy to discuss them further.

Yours sincerely

A handwritten signature in black ink, appearing to read "Colin McKay". The signature is fluid and cursive, with a long, sweeping underline that extends below the name.

COLIN MCKAY  
Chief Executive