Mental Capacity (NI) Bill – NICVA Consultation Event

Thank you for the opportunity to contribute some thoughts on

1. Mental Health and the Mental Capacity Bill

* Human Rights Compliance
* Supporting Person to Make Decisions
* Advance Planning
* Automatic Review of Detention

1. Service Investment and Culture Change
2. Co-production of Regulations and Code of Practice: Timing and Process
3. **Mental Health and the Mental Capacity Bill**

* Although this Bill will apply to the whole population, the reality is it is the legislation under which people who experience mental distress will be assessed, hospitalised, detained and treated. We need to make sure that the Bamford Review’s call for unified legislation for the whole population in order to de-stigmatise mental health does not mean that we end up with legislation that does not fully take account of the particular journey that people with mental health problems, their families and carers take when they become unwell.
* For Niamh’s consultation we held a closed session for people with lived experience of mental ill-health and their advocates
* There was a real concern that the focus of the legislation is on codifying protection for professionals and not protecting the human rights of people with mental health problems
* There were concerns that the legislation does not put sufficient emphasis on supporting decision making, advocacy and advanced planning at an early stage so that crises are headed off or are managed differently.
* Supporting decision making, advocacy and advanced planning have been the central themes in our work on this legislation to date. Given the range of groups represented here, I encourage you to think through what these mean for your constituencies.

*Human Rights Compliance*

* We want the legislation to be complaint with UNCRPD particularly Article 12 Equal recognition before the law – action on this is happening elsewhere

*Supporting Person to Make Decision*

* Clearly set out that a decision to find a person to lack capacity is unlawful unless all practical steps have been taken to assist and support a person, no matter how vulnerable to make a decision for themselves
* Add a subsection that would set out a duty to demonstrate i.e. record each of the measures the professional took to ensure adequate support was offered; and to provide every measure was exhausted (record reasons why it was not effective; and why it was considered that no alternatives of support are available)
* Add a subsection list of supports ‘including but not limited to these forms of support’

*Advanced Planning*

* Add duty to promote uptake
* Advance planning allows a person to detail in advance which treatment they agree to and what treatments are ineffective for them
* We need to look at how and where these are lodged; and how we ensure that they are current
* [In Scotland the MHA provides for advance directives but there is a low uptake because there is no duty on Trusts to ensure people are aware of their right to make an advanced directive and are encouraged to do so. The Mental Health Welfare Commission says this is one of their main recommendations when their MHA is next reviewed.]
* If advance directives are not codified then there should be a legal duty on trusts to promote the uptake of Pasting Powers of Attorney

*Automatic Review Time for Detention*

Automatic review time at the Review Tribunal is 2 years. This is an exact replication of review time under the Mental Health Order. We are considering what review

1. **Service Investment and Culture Change**

* Legislation cannot happen in a vacuum – there needs to be investment in services, re-orientation of services and a change in culture including anti-stigma work with professionals across the civil and criminal justice system
* Need to address parts of the current system that are not working e.g. Mental Health Review Tribunal; and transfer of the Mental Health Commission powers to RQIA

1. **Co-production of Regulations and Code of Practice: Timing and Process**

* Need Regulations and Code of Practice to be developed alongside the passage of the primary legislation; and co-produced with people directly impacted by the legislation.
* It needs to be undertaken in a supportive and inclusive manner: not as a one off public consultation but as an ongoing dialogue. Our consultation event was impacted by the fact that 6 people who wanted to participate were unwell or in hospital; and others were concerned about the impact that discussing their experiences of the Mental Health Order would have on their mental health.
* Future development should be informed by the HOC Health Committee Report on the Mental Health Act 2007and HOL report on the Mental Capacity Act 2005 (both issued in last year) - particularly DOLS & advocacy
* Again, it may be valuable for you to comment on how the development of the Bill, Regulations and Code of Practice will include your constituencies
* time we will be advocating for