

Supporting equal and non-discriminatory enjoyment of rights by persons with mental disabilities in crisis situations: the role of advance planning

Effective police responses to mental health related calls

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Outline

- **Persons with mental disabilities/distress in encounters with law enforcement agencies**
 - International human rights requirements - protect and respect the views of the person.
 - Rights impacted - liberty, autonomy/choice, dignity, health and access to justice.
 - Importance of exercising legal capacity.
- **Achieving better outcomes**
 - UN Convention on the Rights of Persons with Disabilities (**CRPD**) approach and use of advance planning (“mental health advance statements”)?
- *Note: actual/suspected commission of criminal offences a separate issue.*

Paradigm shifts: a new era



“..for 650 million persons around the world living with disabilities, today promises to be the dawn of a new era -- an era in which disabled people will no longer have to endure the discriminatory practices and attitudes that have been permitted to prevail for all too long.”

Kofi Annan (UN Secretary-General), press release on date of adoption of UNCRPD (13 December 2006)

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CRPD

- **The CRPD: a break with the past**

- Traditional international human rights not working for persons with physical and mental disabilities.

- **CRPD social model to disability:**

- Completely refocuses human rights approaches.
- It's all about equality - the *exercise and limitation* of human rights on an equal basis by all:
 - Disability/related impairment must not justify a limitation of rights.
 - Proactive support for rights enjoyment by persons with mental disabilities (removing obstacles, providing appropriate support).

- **State parties and the need for CRPD compliance**

Art 12 CRPD: right to exercise legal capacity

- **Persons with mental disabilities/distress have the right to exercise legal capacity on an equal basis with others**
 - The ability to make one's own decisions and have these respected under the law, be authors of our own lives.
 - This is fundamental to being able to exercise all one's rights/having agency.
 - May require support (supported decision-making) to achieve this.
- **CRPD Committee – 'supported decision-making' includes 'advance planning'** (General Comment No. 1, para 17).
- **Proactive role of law enforcement agencies**
 - In ensuring equal and non-discriminatory respect for wishes – will and preferences - of persons with mental disabilities with others (CRPD General Comment No 1, para 39 and CRPD General Comment No 6, para 55(e)).

What we know about mental health advance statements

- **Mental health advance statements defined**

- (Broadly) Allow individuals to express their psychiatric treatment wishes when they are unable to communicate such wishes.
- May also be referred as, for example, psychiatric advance directives or Ulysses contracts.
- Have found expression in legislation and practice in several jurisdictions, e.g. Scotland, England and Wales, the United States, India and Canada.
- Their form and content and their legal weight may differ between jurisdictions.

(Maylea et al, 2018)

- **Reflects wider human rights developments**

- Emphasising the need to respect and support the autonomy and choices of persons with psychosocial disabilities (Weller, 2012).

Proven benefits of mental health advance statements in clinical crises

- **Evidence that psychiatric advance directives/similar have been found to have benefits in clinical crises situations:**
 - Improve individuals' experiences of crises (Ruchlewska et al, 2014, 2015).
 - Increase the likelihood of medication being taken (Wilder et al, 2010).
 - Reduce coercion (Swanson et al, 2008; Morrissey, 2010).

Beyond clinical settings: extending the role of mental health advance directives

- **Recovery**

- Evidence that psychiatric advance statements have benefits in terms of assisting recovering and improving care, e.g. by providing opportunity for holistic, whole life, experience approach to recovery (Deegan, 1996; Bland et al , 2015; Maylea et al, 2018).

- **Potential human rights challenges if ignored**

(Stavert, 2013;CRPD General Comment No. 1)

- **Scope to extend their use beyond clinical settings to crisis situation involving law enforcement agencies**

– multi-agency approach and human rights (CRPD) based approach?

Challenges/considerations

- **Lack of uptake**

- Lack of awareness of existence or scope of advance statements.
- Not wanting to revisit mental distress episodes (note also likely to be considered only after an episode of mental distress).
- Perceived futility of use.
 - Legal weight - this also effects where there is uptake!
 - Overrides

- **Lack of recording**

(Morriss et al, 2017; Bartlett et al, 2016; Maylea et al, 2018)

Challenges/considerations

- **Capacity issue**

- Mental health advance statements traditionally linked to capacity/incapacity.
- Art 12 CRPD requires that legal capacity is not linked to decision-making capacity. However, no an entirely insurmountable problem.

- **Information sharing/confidentiality**

- Privacy issues across agencies - provided individual consent?

- **Won't cover every situation**

- Complements other support.

Conclusion

- Potential exists for mental health advance statements in law enforcement involvement situations – better individual outcomes – autonomy respect and joint agency working.
- More empirical research as to how and what works but equally legal enforceability and institutional ‘buy in’ required.

References

- **Appelbaum, P S** (2013) 'Psychiatric Advance Directives and the Treatment of Committed Patients' in *Applied Ethics in Mental Health Care: An Interdisciplinary Reader*, Eds H Rimon-Greenspan, A L. Caplan and DA. Sisti. Basic Bioethics. Cambridge: The MIT Press.
- **Bartlett, P. et al** (2016) 'Advance decisions under the Mental Capacity Act 2005 in cases of bipolar disorder', *28 J Soc Welf Fam Law* 263–86.
- **Committee on the Rights of Persons with Disabilities** (2014) *General Comment No 1: Article 12 - Equal Recognition before the Law*, April.
- **Committee on the Rights of Persons with Disabilities** (2018) *General Comment No. 6: Article 5 Equality and Non-Discrimination*, March.
- **Gooding, P** (2015) 'Psychiatrists' Perceptions of Supported Decision-Making: A Victorian Empirical Study' *22 Psychiatry, Psychology and Law* 701–22.
- **Javed, A. and Amering, M** (2016) 'Mental Health and Human Rights: Working in Partnership with Persons with a Lived Experience and Their Families and Friends' *58 Indian Journal of Psychiatry* 250–52.
- **Kim, M M. et al** (2007) 'Understanding the Personal and Clinical Utility of Psychiatric Advance Directives: A Qualitative Perspective' *70 Psychiatry* 19–29.
- **Maylea, C, et al** (2018) 'Consumers' Experiences of Mental Health Advance Statements' *7(2) Laws* 22
- **Morriss, R et al** (2017) 'National survey and analysis of barriers to the utilisation of the 2005 mental capacity act by people with bipolar disorder in England and Wales', *Journal of Mental Health*, DOI: [10.1080/09638237.2017.1340613](https://doi.org/10.1080/09638237.2017.1340613)
- **Morrissey, F** (2010) 'Advance Directives in Mental Health Care: Hearing the Voice of the Mentally Ill' *16(1) Medico Legal Journal of Ireland* 21.

References

- **Reilly, J and Atkinson. JM** (2010) 'The Content of Mental Health Advance Directives: Advance Statements in Scotland', 33 *International Journal of Law and Psychiatry* 116–21.
- **Ruchlewska, A., et al** (2016) 'Determinants of Completion and Use of Psychiatric Advance Statements in Mental Health Care in the Netherlands', 67 *Psychiatric Services* 858–63.
- **Ruchlewska, A., et al** (2014) 'Crisis Plans Facilitated by Patient Advocates Are Better than Those Drawn up by Clinicians: Results from an RCT', 41 *Administration and Policy in Mental Health and Mental Health Services Research* 220–27.
- **Shields, LS. et al** (2013) 'Unpacking the Psychiatric Advance Directive in Low-Resource Settings: An Exploratory Qualitative Study in Tamil Nadu, India' 7 *Int J Ment Health Syst.* 29.
- **Stavert, J.** (2013) 'Added Value: Using Human Rights to Support Psychiatric Advance Statements' 17(2) *Edinburgh Law Review* 210-223.
- **Stavert, J.** (2018) 'Paradigm Shift or Paradigm Paralysis? National Mental Health and Capacity Law and Implementing the CRPD in Scotland', 7(3) *Laws* 26.
- **Swanson, JW. et al** (2008) 'Psychiatric Advance Directives and Reduction of Coercive Crisis Interventions' 17 *Journal of Mental Health* 255–67.
- **Szasz, TS.** (1982) 'The Psychiatric Will: A New Mechanism for Protecting Persons against "Psychosis" and Psychiatry' 37 *American Psychologist* 762–70.
- **Weller, P.** (2012) *New Law and Ethics in Mental Health Advance Directives: The Convention on the Rights of Persons with Disabilities and the Right to Choose*. Abingdon: Routledge.
- **Wilder, CM. et al** (2010) 'Medication Preferences and Adherence among Individuals with Severe Mental Illness and Psychiatric Advance Directives', 61 *Psychiatric Services; Arlington* 380–85.