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**Scottish Mental Health Law Review consultation**

**Coalition for Racial Equality and Rights**

**May 2022**

(Originally submitted via Citizen Space)

**What are your views on our purpose and principles?**

CRER approves of the scope and ambition of the review's purpose and principles. With non-discrimination and equality being core to the purpose and principles of the review, the recognition that fair treatment does not mean uniform treatment is positive. This must recognise the intersectional dynamics of race, sex, gender and sexual orientation and how these may influence the prevalence and treatment of mental health. Ideally, such an intersectional approach to understanding and treating mental disorders should be explicitly stated and centred within the principles of the review, with specific mention of how each inequality is addressed.

**What do you think about the approach that we are proposing for Scottish Government to meet core minimum obligations for economic, social and cultural rights in this area?**

The shift towards a rights-based approach is a positive change and the review clearly recognises the scale of the structural changes required to ensure that economic, social and cultural rights are respected and protected. In terms of establishing a systematic data monitoring process: it is essential to recognise that data scarcity remains a significant problem for understanding mental health inequalities in relation to race in Scotland, which would likely impede tracking rights standards and obligations. Currently, inequalities like ethnic disparities are overwhelmingly presented in heavily extrapolated and aggregated forms, which, if continued, would significantly impede the effective monitoring of human rights standards for Black and minority ethnic (BME) groups. Therefore, it is essential that proposed changes to data collection and monitoring highlight the importance of collecting disaggregated ethnicity data (in line with categorisations in the Scottish census). Data collection should be transparent (with participants aware of why the data is collected and how it is used), after which, it must be efficiently processed and made available through services like the Equality Evidence Finder in a timely manner. When refreshing the Mental Health Strategy to better realise the economic, social and cultural rights of people with mental disorders, it must be in line with Scottish Government commitments to race equality. The addressing of racial inequalities should be explicitly stated within these commitments as a fundamental part of protecting people's rights - it cannot be reduced to a side note on equality. The recognition that mental health strategies should not be confined to health and social care settings is a significant step and demonstrates a strong understanding of wider structural processes linking to mental health and its effective treatment. However, in order to achieve this, practitioners must be suitably trained to understand these structural connections and inequalities surrounding them in a culturally sensitive manner.

**Do you have suggestions on how law could be reformed to address stigma, and issues with attitudes towards mental disability?**

While there is a considerable stigma surrounding mental health in general, people with mental disorders within certain BME groups can be particularly stigmatised and discriminated against (both within and outside of their communities). As national strategies to date have largely failed to effectively impact BME communities, law reform must embrace alternative delivery systems (like group support based on mutual sharing and learning, phone- and digital-based channels for welfare support, and the use of local ‘champions’ for mental health) and culturally sensitive practices to better reach BME groups, including children and young people.

**Do you have suggestions on how the law could lead to prevention, and how the law could address the social determinants of mental health?**

Addressing the social determinants of mental health requires major systemic changes in healthcare services and wider society. Preventative measures for tackling mental health issues and inequalities for BME groups must recognise structural and interpersonal acts of racism as linked and the impact of racism on mental health. Law reform should encourage policy change that ensures practitioners and carers are adequately trained to recognise and address these issues.

**What are your views on our proposals on adequate income, housing and independent living, inclusion in society, and accessible information?**

The observation of the rights to security and to not be discriminated against are essential to addressing the needs of BME people with mental disorders. In order to effectively address ethnic disparities in the prevalence of mental disorders and their unequal treatment, race equality should be explicitly stated as part of people's fundamental economic, social and cultural rights.

**What are your views on the system-wide changes which we think are needed?**

Proposed system-wide changes demonstrate a thorough understanding of mental health and its structural influence. However, across all headings, specific attention is needed to ensure racial inequalities are addressed, particularly regarding cultural shifts and support to professionals (particularly for BME staff).

**What you think about the Review’s proposed approach to reducing coercion, including reducing the use of involuntary treatment?**

The development of community-driven and alternative (non-institutional) support structures is fundamental to tackling mental health inequalities for BME groups. These not only help tackle intensified mental health stigma within certain BME communities but also improve the capacity for early intervention, reducing the risk of future coercion. However, the development of these structures must be collaborative, with sufficient investment to ensure communities are suitably equipped and trained to meet their needs. In terms of reducing coercion more widely, it is essential to recognise the disparate use of coercive practices on BME individuals - e.g., emergency detentions are disproportionately used on the Black population, with 54% of Black detentions occurring under emergency protocols compared to 41% of white Scottish detentions. Further, SHELS report that the psychiatric admission of BME individuals was 4.8 times more likely to use 'compulsion' than that of white Scottish individuals. Specific training and culture shifts are required to prevent BME individuals in times of mental distress from being perceived as a greater threat to themselves and others than their white Scottish counterparts. As these statistics clearly indicate major systemic failures and prejudices, they should be central to and explicitly stated within the review's approaches to reducing coercion, rather than sidelined to broader issues of inequality within mental healthcare settings.

**Please share your views on whether law reform could drive changes which could reduce the use of coercion.**

Changes must include specific anti-racist training for all mental health staff, so they can challenge structural biases and prejudice and handle mental health issues in a culturally sensitive manner. If BME individuals have improved experiences of accessing mental health services, the likelihood of early intervention may improve, reducing the need for coercive measures down the line.

**Do you think that safeguards for medical treatment in Part 16 of the Mental Health Act should be strengthened?**

Yes. The disparate forcible treatment of BME groups clearly demonstrates significant shortcomings in current safeguards and their underutilisation for BME patients. The safeguards for medical treatment must be strengthened and specifically retailored to prevent this.

**We seek your views on whether the Mental Welfare Commission should have stronger powers to oversee the use of coercive interventions and to identify areas for action.**

As identified by the Mental Welfare Commission and others, there are significant problems relating to data scarcity on ethnicity within mental health settings. By extending the scope of and improving data collection and monitoring practices, a better picture of mental health treatment pathways can be obtained, identifying which groups are particularly affected and allowing for better analysis and action on the underlying inequalities contributing to the disparities. While providing and improving the infrastructure necessary for such data collection may be costly and resource-intensive, it is an essential step towards understanding BME mental health inequalities and challenging the structural failings contributing to them.

**Please share any suggestions that you have for the Review’s ongoing work on understanding rising rates of detention and community-based Compulsory Treatment Orders.**

In order to effectively understand rising rates of detention and CTOs, there must be considerable engagement with the groups most affected by the practices. There is considerable evidence of racism affecting how these compulsory treatments are implemented in Scotland, indicating that system-wide anti-racist changes are required and should be centred within proposals for mental health law reform. Based on this recent and continuously emerging data, any future work on detention rates and CTOs cannot neglect the stark inequalities in their implementation and must aim to address them as a primary target in line with Scottish Government racial equality commitments.

**Further comments**

While there are many positive aspects to the consultation, particularly regarding the scope of its proposed changes and considerably improved understandings of mental health inequalities, there remains a concern over the effectiveness of tackling racial inequalities in the prevalence of poor mental health and its treatment. Low engagement with BME individuals and organisations during the review process (particularly at late stages, as seen on the 18th May event) may lead to certain perspectives being excluded, potentially perpetuating racial inequalities. However, perhaps this engagement has improved since the online review meeting. Anti-racist analysis and action should hold a central position in legislation change to effectively address racial inequalities in Scotland, particularly when literature highlights findings as disturbing as that of the Mental Welfare Commission's report.