

Proposed Right to Addiction Recovery (Scotland) Bill – WithYou response

January 2022

With You is a charity that offers free, confidential support and treatment to people in England and Scotland who have issues with drugs, alcohol or mental health. We provide people with support in a way that's right for them, either in person in their local service, community or online.

With You has been working in Scotland since 2004. We are the largest charity provider of drug and alcohol services in Scotland and deliver harm reduction, assertive outreach, recovery, mutual aid, and pre and post rehab services. In addition, we also deliver KnowTheScore, Drinkline, a webchat service and a Never Use Alone service¹.

1. Which of the following best expresses your view of the proposed Bill? *

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- **Partially opposed**
- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome comments on any experience you have had of accessing, or trying to access, addiction treatment.

People who use drugs and alcohol continue to face unacceptable delays and barriers in accessing treatment and support, and like other patient groups, people who use drugs and alcohol must have access to health and social care treatment and support. We Are With You supports the overall aim of the proposal to address these issues. However, though well-intentioned, there are important areas of this proposal which we think need additional clarity, and need to be re-examined in order for it to achieve the cross-party and cross-sector support it will need.

¹ Since this consultation response was published, the Never Use Alone pilot has ended.

Most importantly, the language used in the proposal has to reflect all available treatment options that play a vital role in the treatment and recovery system. Though the proposal does not purport to champion one form of treatment over another, or be a criticism of any government, it needs to find the right balance between abstinence-based approaches and harm reduction approaches. Medical treatment or rehabilitation aren't the only options and this needs to be appropriately reflected in the proposal which needs to be re-balanced to include an appropriate focus on the right to access other treatment options including, harm reduction, stabilisation and substitute prescription services.

The proposal does not adequately address the quality of the services (including residential rehab) and how this is going to be measured or improved. If the quality of services being offered are not adequate, or if services are not functioning properly, this will result in people not getting the help they need.

We don't think a sufficient case has been made as to why new legislation is required, and additional clarity explaining why other alternative measures, such as strengthening some of the existing mechanisms that currently exist, are not sufficient would be welcome.

Lastly, the terminology used in the consultation document is often inconsistent and can at times be stigmatising. For example, 'treatment' and 'recovery' are often used interchangeably but are markedly different concepts. There are also references to 'addiction', but this term can have different interpretations, and can be excluding to people who are not dependent but still require support. The Scottish Drug Forum has published guidance on using appropriate language which may be relevant.

2. Do you think legislation is required, or are there other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

New legislation requires significant political capital and resources and there may be other options that could achieve the same objectives as this proposal. A clear case needs to be made as to why new legislation is the most effective and efficient way to address these issues, as opposed to other measures.

The Scottish Government has committed to introduce a new Human Rights Bill that would incorporate four international human rights treaties into Scottish law. This includes the International Covenant for Economic, Social and Cultural Rights (ICESCR), of which Article 12 refers to the right to the highest attainable standard of physical and mental health. The new human rights law would mean public bodies and others have duties to uphold these rights, and the rights will be enforceable in Scottish courts. In

addition to the right to health, it will include rights such as the right to education, the right to fair employment conditions, and the right to adequate housing. The introduction of the Human Rights Bill could undermine the need for an additional 'right to recovery' Bill as this would be covered under Article 12 of the ICESCR.

There are also several laws and policies relevant to the proposal that with amendments could achieve the objectives this proposal is intending but without the need for new legislation. For example, the Patient Rights (Scotland) Act 2011 set out the rights of patients when receiving health care. This could be given relevant amendments and specific sanctions or enforcement mechanisms. The Local Delivery Plan (LDP) Standards also includes an objective that 90% of people referred for help with their drug or alcohol problem will wait no longer than three weeks for treatment that supports their recovery. Though this does not establish any rights or routes for redress for individuals who receive support that falls short of these standards, this again could be given relevant amendments. The Equalities Act could also be amended to ensure all people with lived or living history of drug and alcohol use are defined as having protected characteristics and given additional legal protections. This could improve access to wider support services (housing, general health, mental health) which should not be determined whether you have an identified alcohol or drug issue.

3. How do you think the right to treatment established in the Bill would be most effectively implemented and enforced? Tick all options that apply.

- **Duty on Scottish Ministers**
- **Duty on Health Boards**
- **Duty on Integration Joint Boards (IJB's)**
- **Established targets/standards**
- **Requirement for the Scottish Government to report progress on duty**
- **Other (For example Local Authorities – please specify below).**

Please explain the reasons for your response.

As we are partially opposed to the proposal in its current form, we will leave this question blank.

4. Which of the following best expresses your view of creating a specific complaints procedure, in addition to the existing NHS complaints procedure?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**

- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome comments on any experience you have had with the existing NHS complaints procedure.

Alongside the NHS and Local Government, every organisation working with people who use drugs and alcohol will have their own complaints procedure. There are a number of legal routes someone could take against a provider where harm has been caused. However, raising complaints can already be a confusing process, and adding an additional mechanism could make this process even more complicated. Rather than developing a new specific complaints procedure for each client group which we do not think is necessary, existing complaints processes need to be streamlined, simplified and additional steps taken to ensure people are empowered to use them, and provided with legal support when doing so.

Lastly, the consultation does not provide sufficient legal clarity on what remedies would be available under a new complaints procedure or detail who may be held liable under such a process. To assess the viability of such a process, additional details are needed.

5. Which of the following best expresses your view of allowing those suffering from addiction to choose a preferred treatment option, and for them to receive that option unless deemed harmful by a medical professional?

- Fully supportive
- **Partially supportive**
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome suggestions about how this could work in practice.

With You fully support people in having a choice over their preferred treatment option. However, this choice must be appropriately well-informed.

It can be difficult for a person to choose the right treatment option without help. In our experience, it is helpful for decisions about a person's preferred treatment option to be made collaboratively with professional involvement. A service user may have a

preferred treatment option which could be inappropriate, unsustainable and unlikely to be beneficial. An unsuccessful attempt at engaging in treatment could ultimately reduce the chance of their recovery. It is critical this proposal does not undermine the role treatment professionals play in ensuring people have the best chance of having a successful recovery journey.

In our experience, it is helpful for a decision about a specific treatment course to be made in collaboration between the service user, key workers/care managers/treatment professionals/clinicians and be based on evidence of best practice.

6. Which of the following best expresses your view of the proposed Bill seeking to prevent treatment being refused?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome suggestions about how this could work in practice

Refer to question 5

7. Which of the following best expresses your view of requiring the Scottish Government to establish a national funding scheme?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- **Partially opposed**
- Fully opposed
- Unsure

Please explain the reasons for your response.

There is a significant disparity in costs between statutory provision, residential rehab and the costs to run community based third-sector services. There is a risk that this proposal, which in its current form is heavily focussed on rehab treatment options, would implement a new funding model that would favour a very resource-intensive part of the treatment system. This could take critical resources away from the other parts of the treatment and recovery system. Any reduction in resources towards non-rehab treatment and support services would lead to higher caseloads, longer

waiting times and reduce access to services

While it's important to acknowledge the recent significant investment that has been made by the government into both residential rehabilitation and into community treatment and recovery services, our view is that community treatment services need significant investment to drive caseloads down and to improve service quality so that recovery becomes attainable for more people. A new national funding scheme could be a significant undertaking and the potential disruption of implementing a new system, at a time when significant investment is being made across the treatment and support system, could have a damaging short-term impact. To assess the viability of a new national funding scheme, additional details will need to be provided.

8. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- **a significant increase in costs**
- **some increase in costs**
- **no overall change in costs**
- **some reduction in costs**
- **a significant reduction in costs**
- **don't know**

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc).

You may also wish to suggest ways in which the aims of the Bill could be delivered more cost effectively.

Residential rehab is an integral part of the drug treatment system, a vital option for some people requiring treatment for drug dependence. Anyone who needs it should be able to access rehab, whether close to their home or further away. However, residential rehab incurs significant costs and increasing the number of people entering into residential rehabilitation could drive up costs across the treatment and recovery system. Alongside the additional cost of providing more rehab places, increasing the use of residential rehab will lead to additional costs to community services which have to support people coming out of rehab and integrating them back into the community.

A further consideration is the costs associated with potential legal actions launched against a treatment provider. If a treatment provider loses in a legal action, the costs associated with this could result in considerable funds being taken out of the system, ultimately reducing the available money for treatment. Will steps be taken to address this risk, and have estimates been made as to what these potential costs be?

9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- **Unsure**

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.

Though this Bill could have benefits to those with protected characteristics, there is a risk that this proposal could benefit those service users with higher social and cultural capital (capacity, education, networks, skills and resources). While some service users may have greater capacity to negotiate with service providers about their preferred treatment options, or be able to navigate a new legal complaints procedure, many will not have the capacity to do so, and this is something that needs to be addressed in this proposal.

10. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

- Yes
- No
- **Unsure**

Please explain the reasons for your response

11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier

questions)?

The proposal is not clear on what is meant by an 'enforceable right' to treatment in Scottish law, and this will need additional clarity. For example, would this be a fully justiciable right, a right to be progressively realised, or simply codification of a right without any legal effect?

For this legislation to be enforced, the proposals would also require the use of case law to set a precedent of how the legislation can be realised. This could be a lengthy process taking several years.

Lastly, if the proposal was to go through it would need to be cognisant of some of the other changes going through Scotland at the moment, such as the National Care Service proposal, and what impact this could have.