

Ms Mary Harney, T.D.
Minister for Health and Children
Department of Health and Children
Hawkins House
Hawkins Street
Dublin 2

[Insert date]

Dear Minister,

I am writing to you to express my desire for your department to bring forward the review of the Mental Health Act 2001. The recent High Court case of *SM v The Mental Health Commissioner and Others* and the emergency adoption of the Mental Health Act 2008 highlight the urgent need for a comprehensive review of the Act. In my view the nature of the human rights issues involved (including the right not to be arbitrarily detained) require attention by your Department as a matter of the highest priority through undertaking such a review at the earliest opportunity.

This should avoid further legal challenges and the need for additional emergency legislation, which does not provide an opportunity for the Oireachtas to engage in necessary consultation and debate.

You will be aware that, in the report of its review of the operation of the Act published in May 2007, your Department recognised the incomplete nature of that review: "The limited timeframe for the review did not allow for a comprehensive review as the full provisions of the Act have only been in operation since 1 November 2006." A number of elements of the Act were earmarked for further consideration (e.g. informed consent to treatment), while other concerns were ignored altogether (e.g. the burden of proof placed on 'patients' who seek to appeal the decision of a Mental Health Tribunal). The report recommended that a **detailed** review of the Act should be undertaken by the Department within five years of the full implementation of the Act (i.e. on or before 1 November 2011).

While I appreciate this commitment to a detailed review of the Act, a number of important developments since its enactment, have, in my view, placed the need for a review on a more urgent footing. This can no longer wait until 2011.

These developments include various issues that have arisen in the Irish courts, including in the *SM* case, as well as the commencement of drafting work towards the proposed new Mental Capacity Bill, the publication of the Mental Health (Involuntary Procedures) Bill, the enactment of the European Convention on Human Rights Act 2003, recent case law from the European Court of Human Rights, the enactment of the Criminal Law (Insanity) Act 2006 and, more broadly, the evolving international human rights framework (in particular Ireland's signature and planned ratification of the UN Convention on the Rights of Persons with Disabilities), all of which should inform the legislative framework for mental health service provision in Ireland.

I would like to comment finally on one specific recommendation of your Department's 2007 report; that is, the setting up of a monitoring group, consisting of representatives of the Department of Health and Children, the Department of Justice, Equality and Law Reform, the HSE, the Mental Health Commission, service providers and service users. Recommendation 51 states that, "[t]his group could identify any difficulties with the Mental Health Act 2001 as they arise and examine possible solutions. In addition, this group could have an oversight role in the linkages between the Mental Health Act 2001, the Criminal Law (Insanity) Act 2006 and contribute to any proposed capacity legislation." I think that this would be a very useful initiative but as yet I am unaware of the existence of any such group.

I would be grateful for responses to the following questions:

- Will the Government commit to bringing forward the review of the Mental Health Act 2001 from the end of 2011 to 2009?
- Will the Government commit to producing draft legislation as a matter of urgency following this review to bring Irish law into line with international human rights law and standards relating to mental health?
- Has the Government acted on Recommendation 51 of the 2007 report of the review of the Act that recommends the establishment of a monitoring group? If not, when will such a group be established and who will its members be?

The rights of people that experience mental health difficulties are something that myself and many others care deeply about. I am urging the Government and your Department in particular to seize the opportunity to take a fresh look at how Ireland's legislative framework could be expanded and improved to ensure that the human rights of people using mental health services are respected, protected and fulfilled

I look forward to hearing from you,

Yours sincerely,

[Your name here]