

## PE1494/W

Petitioner Letter of 25 February 2014

Final thoughts on PE01494

W. Hunter Watson

25 February 2014

The written submissions regarding PE01494 make it clear that a mental health patient cannot be guaranteed a fair hearing at a mental health tribunal. Parliament, therefore, should consider whether it should be a sheriff court which decides whether or not an individual should be deprived of his or her liberty on the grounds of unsoundness of mind. Parliament should also consider whether a case concerning possible detention on these grounds should go to court only if someone such as a procurator fiscal is satisfied that there is a realistic prospect that the application would be successful. (At present individuals can be detained for up to 28 days on the basis of a short-term detention certificate without proper enquiries having been made.) An amended Act should also specify the standard of proof required before an individual can be deprived of his or her liberty on the grounds of unsoundness of mind. With the present tribunal system, decisions are made on the balance of probability. That seems to be contrary to the ruling of the European Court of Human Rights in the case of *H.L. v The UK*: this stated that the individual “must be reliably shown to be of unsound mind” and that “the mental disorder must be of a kind or degree warranting compulsory confinement”. The evidence about those matters should be carefully tested **before** an individual is detained. There should be no question of the individual being first detained and then the court considering only whether the conditions which would warrant detention “continue to be met” as is the situation at present. It is noteworthy that those who oppose fundamental changes being made to the 2003 Act avoid attempting to provide a reasoned defence of the Act’s basic premise that a mistake is never made when a short-term detention certificate is granted on the basis that an approved medical practitioner considers it likely that each of the five criteria had been met. A study of particular cases reveals that mistakes have been made.

The written submissions regarding PE01494 also make it clear that the safeguards within the 2003 Act are ineffective and I can vouch for that myself! I was provided with documentary evidence that a mental health officer (MHO) had committed an offence under s 318 of the 2003 Act by making a false statement on a relevant document. The mental health patient concerned authorised me to act on her behalf so I drew to the attention of the police the evidence that, beyond reasonable doubt, a MHO had committed this offence. The police declined to investigate. I also made the Scottish Social Services Council (SSSC) aware of the evidence. I expected that the SSSC would agree that an MHO who had committed such an offence should be removed from its register. The SSSC, apparently, were not of this opinion because it

was not prepared to require the MHO to provide an explanation for the statements he had made on the document in question. I then complained to the Ombudsman about the failure of the SSSC to investigate the allegation that a MHO had committed a serious offence. Only yesterday I was informed by the Ombudsman that my complaint about the SSSC was not upheld.

The fact that safeguards within the Act are ineffective has particular relevance to its provision that ECT can be given against a patient's will. The World Health Organisation has expressed the opinion that this should never happen but this opinion is rejected by those who believe that the Act contains sufficient safeguards to ensure that there will never be recourse to involuntary ECT unless it is necessary. Parliament should now take account of the evidence that not only are the safeguards within the Act ineffective but also that involuntary ECT appears to fall within the definition of inhuman or degrading treatment, that ECT can cause permanent memory loss and that ECT does not always help people who suffer from severe depression. Basically, the 2003 Act makes it far too easy for people to be deprived of their liberty and then subjected to treatment which lies in the prohibited inhuman or degrading category and there is virtually nothing that the patient or the patient's family can do about it. Those who claim otherwise should now study the evidence submitted in support of petition PE01494.