

## PE1786/A

W. Hunter Watson submission of 14 February 2020

I am aware that a consultant psychiatrist has been charged with, but not prosecuted for, committing the offence of knowingly making a false statement on a relevant document. The reason for the failure to prosecute should be investigated by the Scottish Government in this and any other known cases as called for in Petition PE01786.

Petition PE01786 also calls for an investigation into the reason for there having been no prosecutions for the offence of ill-treating a mentally disordered person. It appears that the petitioner was mistaken in his belief that there have been no prosecutions for this offence. Nevertheless, consideration of this part of the petition might lead to an examination by the Scottish Government of what the ill-treatment of a patient could involve. It should be noted that the International Committee of the Red Cross has provided definitions for torture and other forms of ill-treatment. Unsurprisingly, these make clear that treatment which is inhuman or degrading constitutes ill-treatment.

When the Minister for Mental Health appeared before the Public Petitions Committee on 21 March 2019 to answer questions relating to my petition PE01667, the Convener asked whether some of the treatment given to mental health patients "*falls foul of the absolute right not to be subjected to inhuman or degrading treatment*". The Government's senior medical adviser answered on behalf of the Minister. He did not attempt to refute the allegation that mental health patients could be subjected to inhuman or degrading treatment. Instead he stated that:

*"Article 2 of the ECHR, which is the right to life, is an absolute right. That means that there is a duty not to take away anyone's life and a duty to take reasonable steps to protect life. Article 14 is the right not to be discriminated against, which could be interpreted in terms of people having the right to the same effective treatments as other people. Article 25 is the right to the highest attainable standard of physical and mental health. Those are illustrations of the counterpoint between the different articles, and protecting an individual while still protecting human rights is challenging".*

For the reasons given below that answer is mere waffle:

- Involuntary mental health patients are commonly forced to take psychiatric drugs, particularly antipsychotic drugs. Since this treatment is liable to shorten their lives it is clearly untrue that a duty to take reasonable steps to protect life requires that mental health patients be forced to take these drugs.
- In one case familiar to me, a young man with epilepsy and "treatment resistant psychosis" has been subjected against his will to depot injections with antipsychotic drugs for well over two years even though experts in epilepsy have advised against giving an epileptic this treatment. I have no doubt that not only is this young man being subjected to inhuman or degrading treatment but that his life is also being put at risk.
- Contrary to what was implied by the medical adviser, Article 25 ECHR makes no reference to the right to the highest attainable standard of physical and

mental health.

- Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD) does, on the other hand, require that "*persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability*". However, this Article imposes an obligation on States Parties to "*Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care*".
- Far from Article 25 CRPD providing a justification for forced treatment, it makes clear that there should never be recourse to forced treatment when treating a patient with a disability. The CRPD Committee made clear that this applies to mental health patients in its General comment No 1 (2014), paragraph 38 of which states "*As has been stated in several concluding observations, forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art 17), freedom from torture (art 15), and freedom from violence, exploitation and abuse (art 16). This practice denies the legal capacity of a person to choose medical treatment and is therefore a violation of article 12 of the Convention. ... State parties must abolish policies and legislative provisions that allow or perpetrate forced treatment ....*".

Thus the CRPD Committee has expressed the opinion that forced treatment can be tantamount to torture, to violence or to abuse and hence must be ended.

Resolution 2291 (2019) of the Council of Europe also has relevance to the ill-treatment of mental health patients. Paragraph 3 of that resolution states

*"Moreover, evidence from sociological research in the field of persons with mental health conditions points to overwhelmingly negative experiences of coercive measures, including pain, trauma and fear. Involuntary "treatments" administered against the will of patients, such as forced medication and forced electroshocks, are perceived as particularly traumatic. They also raise major ethical issues, as they can cause irreversible damage to health"*.

The Public Petitions Committee might wish to invite the Minister to make known to it whether she agrees that these major ethical issues should be considered by the group which, under the chairmanship of John Scott QC, is reviewing Scottish mental health law. The Committee might also wish to ask the Minister whether she agrees that the relationship between health professionals and their patients is liable to suffer when treatment is given against the will of the patients and that, if the relationship does suffer, then that will make the ill-treatment of those patients more likely.

As a consequence of my campaigning, I have been supplied with much written evidence which demonstrates that NHS patients are sometimes the victims of ill-treatment. One of the reasons that there has been only a tiny number of prosecutions for this offence is probably that there has been a failure to appreciate that medical treatment can rightly be regarded as ill-treatment if it is carried out against the will of

the patient. Hopefully petition PE01786 will help to remedy this situation and reformed Scottish mental health law will not be based on the premise that health professionals do not require to obtain consent if they are of the opinion that the treatment which they deem necessary is in the "best interests" of their patients.