

PE1494/J

Cabinet Secretary for Health and Wellbeing

Alex Neil MSP

T: 0845 774 1741

E: scottish.ministers@scotland.gsi.gov.uk



David Stewart
Convener of the Public Petitions Committee
Room T3.40
Scottish Parliament
Edinburgh
EH99 1SP



By email: petitions@scottish.parliament.uk

22 January 2014

Dear David

I am writing in response to the Public Petitions Committee consideration of Petition PE1494, lodged by Mr W Hunter Watson and your letter of 18 December 2013. I welcome the opportunity to contribute to the Committee's deliberation of this petition.

I think it is important to say that when the Mental Health (Care and Treatment) (Scotland) Act 2003 came into force in 2005; it was well received by service users and practitioners, both legal and medical alike. The Act is internationally recognised as an innovative, principles based and patient focussed piece of legislation.

Section 1 of the 2003 Act¹ sets out the factors according to which people performing functions – such as any doctor, member of medical staff or mental health officer taking a decision concerning emergency or short term detention of a patient – under the 2003 Act in relation to a patient over 18 must discharge those functions. The Tribunal is bound by the principles when making decisions about a patient.

The principles require that, after taking into account the matters set out in section 1 and any other relevant circumstances, the person discharging the function must then carry it out in the way that appears to that person to involve the minimum restriction on the freedom of the patient that is necessary in the circumstances. The key point in all of this is that the best interests of the individual are of paramount importance and I consider that both the 2003 Act and the concomitant mental health regulations do safeguard the interests of the individual.

As with any significant legislative changes, the 2003 Act took some time to become embedded and as both practitioners and service users became familiar with the legislation a

¹ Link to section 1 of 2003 Act <http://www.legislation.gov.uk/asp/2003/13/section/1>

number of issues arose with regard to how the Act was operating in practice. This led to a limited review of the civil provisions of the 2003 Act being undertaken by an external review group. The Scottish Government's formal response to the review group's report advised that whilst some matters could be progressed without recourse to primary legislation, other matters would require primary legislation. There are always competing priorities for the Scottish Government's legislative programme which mean sometimes difficult decisions have to be taken. The Scottish Government's *Programme for Scotland 2012-2013* said that a draft mental health Bill would be published for consultation by the end of December 2013.

I am pleased to be able to say that a consultation paper on proposals for a Mental Health (Scotland) Bill – along with a draft Bill - issued for public consultation on 23 December 2013. The Bill's overarching aim is to ensure that people with a mental health disorder can access effective treatment quickly and easily. Specifically, the draft Bill brings forward changes most notably in relation to named persons, advance statements, medical matters and suspension of detention. In addition the draft Bill makes provision for a Victim Notification Scheme for victims of Mentally Disordered Offenders. The consultation runs until 25 March 2014 and the Scottish Government aims to introduce a draft Bill to the Scottish Parliament before the 2014 summer recess.

I would also like to make clear that both the Minister for Public Health and I attach great importance to all correspondence we receive; whether that be from individual members of the public or from organisations. I am aware that over a number of years, Mr Hunter Watson has raised a variety of mental health issues – through his MSP Alison McInnes - with the Scottish Government. I believe that since April 2012, the Minister of Public Health has carefully considered and responded to over 20 such letters. Whilst the Scottish Ministers always look to provide helpful and informative responses there will be times when a viewpoint expressed by a correspondent differs from that held by the Scottish Government.

The Scottish Government does not consider that the short-term detention provisions of the 2003 Act are incompatible with ECHR legislation. Mr Hunter Watson has provided no relevant case law to support his viewpoint. The Scottish Government is not aware of a human rights case, relevant to the 2003 Act short term detention provisions, and ultimately it would be for the UK Courts, or the European Court of Human Rights, to consider and assess this matter in the context of the case presented to them.

I hope the Committee finds this helpful.

ALEX NEIL