

## *Integrity4Scotland*

### Integrity4Scotland's submission to the Public Petitions Committee on Public Petition PE 1494

- 1) Integrity4Scotland is an association of people who campaign for the highest ethical standards, transparency and public accountability within our Scottish public services bodies.
- 2) We wish to make this submission to the Public Petitions Committee on Hunter Watson's petition which calls for Scottish mental health legislation to be made to comply with the European Convention on Human Rights. We hope that our submission will meet with an interested reception from the Committee.
- 3) We do not claim to possess any particular expertise in respect of either the treatment of mental health conditions or human rights legislation. However, we have done our best to inform ourselves on both issues and now have reason to believe that the human rights of our fellow Scots may be being violated within Scottish mental health establishments. We therefore wish to make what contribution we can towards the campaign to ensure through law that the human rights of everyone are respected within our mental health system.
- 4) It would now seem to be generally accepted that psychiatry is not so much a science as an art. Within psychiatry human judgement is paramount. However, human judgement is highly fallible and an opinion formed on the judgement of one competent person is often contradicted by an opinion formed on the judgement of another equally competent person. In this respect psychiatry is no different from other arts or quasi-sciences. Where the differences between psychiatry and most other judgement-centred practices lie is in the consequences which can follow from a wrong opinion or diagnosis. Treatment which can follow from a wrong psychiatric opinion can have a life-ruining effect on a patient.
- 5) We are now seeing radically different approaches towards psychiatry and the treatment of mental disorder throughout the world and it would be very complacent to assume that Scotland's present mental health culture and practices are the best that we can have. Human progress is made overwhelmingly by watching how other people who are having better results are doing things and then trying to do that even better. We believe that this is a time when everyone who is committed to improving mental health treatment in Scotland is obliged to look to current practices and results achieved in other countries.
- 6) We hear claims that often dangerous drug treatment needs to be started immediately diagnosis is made. However, bearing in mind that dangerous drug treatment can be "the cure that kills" and that accurate prognosis for mental health patients is virtually impossible we

clearly need to be wary of too hastily applying that kind of treatment. People do not go from being mentally stable to requiring dangerous drug treatment overnight and with modern “safe” sedatives it has to be doubtful that courses of dangerous drugs need to be applied as a first resort. Given that we are told that a mental health tribunal can be convened within days we need to ask if it would really be such a disadvantage to delay treatment where dangerous drugs are prescribed until the tribunal has given its opinion on whether or not such treatment is either required or advisable. It may also not be too unreasonable to believe that the few days between the diagnosis and the tribunal hearing would allow psychiatric staff the thinking time to explore the possibility of safer treatments.

7) The assumption that a tribunal can always be depended upon to deliver a decision which is in the best interest of the patient would also appear to require review. The tribunal starts from a position where a mental health professional is telling it that in their opinion the patient is so mentally ill that they are unfit to make a decision on their own treatment, while the patient - whom a mental health professional has labelled as too mentally ill to make the decision and who may at this point already be on dangerous drug treatment and showing its effects - is saying that despite the health professional saying that they are too mentally ill he or she is confident that they are sufficiently mentally well to make the decision. In those circumstances it is less than surprising that tribunals prefer the opinion of the professional to that of the patient who, in effect, has been professionally judged to be incapable of rational decision-making. However, regardless of the opinion of the professional psychiatrist whose responsibility is to ensure to the best of his ability that the wellbeing of the patient is protected, society demands that the rights of the patient remain the paramount consideration. This is something which in the heat of the circumstances tribunals are liable to forget, with the consequence that patients who may, despite the psychiatrist’s opinion, be perfectly fit to make decisions on their treatment being forced to undergo potentially life-ruining treatment.

8) Since the rights of patient are paramount and the treatment so potentially harmful psychiatrists should clearly face a higher hurdle than presently exists if they are to persuade tribunals that they should make the decision on whether or not to begin an unwilling patient’s treatment. Extra safeguards are clearly needed to ensure observance of mental health patients’ human rights and we would suggest that those safeguards be the subject of a consultation which would seek the views of professionals, patients and the public.

9) Clearly, in deciding whether or not involuntary treatment should be given the patient’s family must to be given its proper place. Since, after the patient themselves, the effect of an unwilling patient being given damaging treatment falls heaviest on the patient’s family members and their right to a share in the decision on whether or not to begin treatment clearly has to be respected. It is a glaring current violation of right that the family of a mental health patient is very often excluded from the decision making in respect of treatment. This needs to be rectified at the earliest opportunity.

10) The possible consequences of dangerous drug treatment need to be given more weight in deciding what treatment to give to a patient whether willing or not. Research carried out

abroad suggests that therapy-based approaches to mental health conditions may well be more successful than treating patients with dangerous drug, the long-term consequences of which cannot be known.

11) There is a school of thought that holds that when the treatment proposed for an unwilling patient exposes the patient to life-threatening or life-ruining risk the policy of “Do least harm” should prevail. This would seem to us to be a more ethical and civilised approach than the “Men in white coats” alternative.

12) It has been alleged that the real purpose of initiating dangerous drug treatment is often not to treat any diagnosed mental condition but to render the patient harmless either to themselves or to medical staff. This as you will be aware is an allegation which is often made by patients who have been forced to submit to dangerous drug treatment. Clearly if it were possible to substantiate these allegations it would constitute the gravest of violations of human rights. That the allegation continues to be made must add force to the demand that current Scottish mental health legislation must be amended so as to provide effective protection against the alleged human rights abuse.

13) Within Scottish society there is a widespread and undeniable fear of the state taking more and more control over our lives. Within that general fear is a fear that if it suits the purposes of the state or its servants any of us could become subjected to enforced, potentially fatal or life-ruining dangerous drug treatment. For the wellbeing of our society this fear needs to be removed from our peoples’ minds. However, that fear can only be removed by the unambiguous assurance of law. Therefore, legal steps require to be taken to remove this threat to the security of many of our fellow Scots.

14) The defence of individual human rights has to be the prime purpose of any progressive democratic government. In present-day Scotland that means that the rights of a person when they are diagnosed as having a mental health condition – at one of the most difficult and vulnerable points in their life – must be safeguarded. Since those rights can clearly now only be safeguarded by strengthened current law it is for our Scottish legislators, MSPs, to take action to amend the present mental health legislation in accordance with the petitioner’s call i.e. to comply with the requirements of the European Convention on Human Rights.

Yours sincerely,

Arthur McFarlane  
Secretary, Integrity4Scotland

Dated: 6<sup>th</sup>, February, 2014