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I am writing in response to the Public Petitions Committee consideration of Petition PE1550, lodged by Andrew Muir on behalf of Psychiatric Rights Scotland and your letter of 2 April 2015.

The Scottish Government's decision to hold a National Inquiry into Historical Child Abuse has been the culmination of work which has developed over a number of years to support survivors of historical child abuse. As abused children they had no voice, but as survivors the public inquiry will provide an opportunity for them to be heard.

The Mental Health (Care and Treatment)(Scotland) Act 2003 ("the 2003 Act"), which replaced the Mental Health (Scotland) Act 1984, is the legislation for treating people with a mental disorder in Scotland. I consider that both the 2003 Act and the concomitant mental health regulations do safeguard the interests of the individual.

As you are aware, the Health and Sport Committee are currently considering the Mental Health (Scotland) Bill. The Bill, which amends the 2003 Act, seeks to reinforce that the law and practice relating to mental health should be driven by a set of principles, particularly minimum interference in peoples' liberty and the maximum involvement of service users in any treatment. The Bill, makes a number of changes to practice and procedures to ensure that people with a mental disorder can access effective treatment timeously by providing improvements to the legislative framework.

I think it is important to say at the outset that the 2003 Act is internationally recognised as an innovative, principles based and patient focussed piece of legislation. The 2003 Act was the conclusion of a four year review process and since its inception it is widely accepted that this Act has significantly increased the degree of scrutiny and accountability of compulsory treatment.

Section 1 of the 2003 Act¹ sets out the principles according to which people performing functions under the Act, must discharge those functions. The principles apply to any professional, such as a doctor, nurse, mental health officer who is carrying out a function or exercising a duty in relation to a patient over 18. For example, any doctor, member of medical staff or mental health officer taking a decision concerning emergency or short-term detention of a patient, or applying for, renewing, or seeking to vary a compulsory treatment order is discharging a function under the Act.

The principles set out the importance of the patient participating as fully as possible in the discharge of the function. They 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.

There are also some treatments for mental disorder where further safeguards have been put in place justified particularly, but not only, in the circumstances where the treatment is given without the patient's consent. Part 16 of the 2003 Act puts in place a range of additional safeguards to ensure that people are given specialist treatments only where they have consented to it, or, if unable to consent/ refuse consent, only where authorised by an independent designated medical practitioner appointed by the Mental Welfare Commission.

The key point in all of this is that the best interests of the individual are of paramount importance and, the current mental health legislation contains various safeguards to protect individuals. Individuals can have a Named Person/Welfare Attorney/Guardian to look after their interests; recourse to the Mental Health Tribunal, the Mental Welfare Commission, free access to independent advocacy services, and a mental health officer who must give consent before certain orders can be granted.

Inquiries are major undertakings and the decision to launch them cannot be taken lightly. In this case there are significant protections built into the mental health legislation to both ensure that a patient's voice is heard in decisions about their care and treatment and that there is a route – through the Mental Health Tribunal - for said decisions to be challenged. The Mental Welfare Commission – which has service users & carers on its Board – plays an important role in ensuring an individual's care and treatment is: lawful; safe and in line with good practice; meets the individuals needs; and respects their rights. The NHS has a formal complaints procedure and beyond this there is the ability to raise matters with the Scottish Public Services Ombudsman and ultimately there is recourse to the Courts.

Finally, I would also like to make clear that both the Cabinet Secretary for Health, Wellbeing and Sport 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 Mr Muir has been in correspondence with the Scottish Government, over a number of years, on mental health issues. Whilst the Scottish Ministers and officials 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.

¹ <http://www.legislation.gov.uk/asp/2003/13/section/1>

I hope the Committee finds this helpful.

JAMIE HEPBURN