

# Petitioner submission of 16 February 2024

## PE1900/S: Access to prescribed medication for detainees in police custody

Sadly, after reading and fact checking the letter to my MSP Richard Lochhead by the Cabinet Secretary for Justice of Scotland, I find several statements factually incorrect. The Minister writes:

“Please see updated table below. An additional 6th column has been added to the recent table sent to you in August 2023, detailing the health boards follow up responses in bold.”

The facts in the columns regarding NHS Grampian, the incorrect statements are:

- a) Column 1, congratulations NHS Grampian the are no discrepancies in column 1.
- b) Column 2, NHS Grampian have admitted they had an unwritten policy later changed to no policy. They now claim that they have two policies which they are updating. Neither of these policies can be found on NHS Grampian list of policies.

The two named policies are fictional, they do not appear on Google like every other policy. You cannot update a non-existent policy.

Why do nurses have to be trained as Non prescribing Qualification? The methadone has already been prescribed, along with the personal prescription. Anyway, a nurse cannot prescribe methadone nor would it be safe or logical to prescribe it for the first time whilst in custody. That should be lifted to the local drugs and alcohol team, so that safe titration and monitoring can be carried out, I have never argued that an alternative treatment is needed for non prescribed heroin addicts.

- c) Acceptable if true, please forgive my scepticism but have been communicating with NHS Grampian for many years, and their word is not their bond.
- d) They may not have a controlled drug licence but they had no controlled drug licence for HMP Grampian for 9 years either but that didn't stop them from giving prisoners their methadone.

The year's delay in not achieving a controlled drug licence means another 7000 plus detainees have been given an unlicensed drug. This opens another question, where is Police Scotland's controlled drug licence for all the detainees prescribed medication they keep in the custody suite?

- e) NHS Grampian have missed several self imposed deadlines for having the licence in place, so the question is are they competent to carry out this task? Surely their drugs audit team should have picked up the missing licences in the custody suite and a large prison.

The Minister seems to be badly advised on her statement that the responsibility is with others, all my complaints and comments are ECHR concerns and issues.

Police Scotland and NHS Scotland are the services responsible for policing in Scotland. They are held to account by the Scottish Police Authority (SPA) and National Health Service Scotland, which are accountable to Scottish Ministers and the Scottish Parliament. The Scottish Government runs the country by implementing policies and is held to account by Parliament. A 'government policy' is a plan or course of action by the Government. Legislation is law. Policies must always comply with existing law but may also lead to the proposal of new laws.

So official guidance is not a law but should comply with current laws.

Dihydrocodeine breaches international law (Human Rights Act). It breaches Article 3, No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 7 means you cannot be charged with a criminal offence for an action that was not a crime when you committed it. This means that public authorities must explain clearly what counts as a criminal offence so you know when you are breaking the law.

Article 8- If an individual consents to treatment but has not been given sufficient information to make a fully informed decision that consent will not be valid. Arguably, the withholding of information is a breach of the Article. If an individual eg a detainee is given drugs without their consent.

Montgomery V Lanarkshire.

The court accepts that if Mrs Montgomery had been told about the risk of dystopia, she would have chosen to have a caesarean.

This means the onus is on the detainee to give informed consent, not the clinician deciding as in the old Bolam test. It is a patient based standard of care, not a doctor based standard.

Article 14 protects your right not to be discriminated against in connection with your human rights under the Human Rights Act. This means your human rights mustn't be protected differently because of who you are. This means you discriminate against detainees if you give them an unlicensed drug as a substitute for their legally prescribed medication without consent.

So, by not using the Scottish Police Authority (SPA) and National Health Service Scotland, which are accountable to Scottish Ministers and the Scottish Parliament and relevant Commissioners, the Scottish Government breaches the ECHR by proxy.

The Scotland Act 1998 ensures that laws passed by the Scottish Parliament can be challenged and overturned by the courts if they are not compatible with rights identified in the ECHR. Scottish Government Ministers have 'no power to act' or allow its agencies to act, in a way that breaches these ECHR rights.