

Petitioner submission of 14 February 2023

PE1999/C: Fully implement the UN Convention on the Rights of Persons with Disabilities

Introduction

My petition PE1999 calls on the Scottish Government to fully implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD). I am disappointed that the response of the Scottish Government, PE1999/A, gives the impression that it does not intend to make the necessary changes to Scottish mental health law.

It should be noted that Article 25 UNCRPD makes clear that even persons with disabilities have the right to refuse treatment. The Scottish Government seems to believe that reformed mental health law need not incorporate this right provided that it contains effective safeguards. In that, it is mistaken. The Scottish Government does not seem to be aware that competent patients have an absolute right to withhold consent to treatment even if their refusal appears unreasonable and not in their own best interests.

The right to refuse treatment is of particular importance in care homes and mental hospitals.

In care homes, elderly residents with dementia are liable to be sedated with antipsychotic drugs even though these drugs increase their risk of stroke and premature death. It should be of concern therefore that Scotland's Health and Social Care Standards make uncritical reference to the use of "chemical restraint". It should also be of concern that the Code of Practice for Part 5 of the Adults with Incapacity Act states in section 2.60 that "The use of covert medication is permissible in certain limited circumstances, ...": regardless of the circumstances, the use of covert medication is not compliant with Article 25(d) UNCRPD.

Since Scotland condones the use of both chemical restraint and covert medication, it should be evident that the human rights of elderly care home residents are not adequately protected. In particular, there has been a failure to emphasise that any refusal of treatment by a competent patient must be respected since this right is enshrined in international human rights law. Further, there must be an assumption that a patient does have the capacity to refuse any proposed treatment unless the contrary has been properly established: it is not sufficient to claim that

an adult lacks this capacity simply because that adult has dementia or a mental illness.

The principle that competent patients have an absolute right to refuse treatment has been established by judgments in several court cases, including Re C(adult: refusal of medical treatment) and Re B(Adult, refusal of medical treatment).

As a consequence of these two judgments, it should be clear that health professionals cannot lawfully treat patients against their will simply because they believe that there is a significant risk that their well-being will suffer or even that they might die without the treatment. Yet these excuses are made by some health professionals who treat patients against their will.

Subsection 44(4)(b) of the Mental Health Act requires that only mental health patients who lack capacity can be treated against their will. However, if health professionals believe that it is necessary to disregard a refusal of treatment from any patient, then they should be required to apply to a court for an authorisation to treat, as happened in the two cases outlined above.

It has been established in court that ECT can be the cause of permanent memory loss. It should be of concern therefore that in the year 2020-21 there were 213 people in Scotland who were given ECT without their consent.

Incredibly, the Mental Health Act at section 242 indicates that even a capable patient who does not consent to ECT can be given it provided that “the responsible medical officer determines that it is in the patient’s best interests that the treatment be given”!

Further, each year in Scotland thousands of involuntary mental health patients are given psychiatric drugs in spite of the distress this causes them and in spite of the risks to their health which this treatment entails.

In reformed mental health legislation, there should be no place for forced treatment but it is possible that there should be a provision for detention in a mental hospital, though it must be recognised that the presence of a mental disorder does not in itself provide a sufficient condition for such detention.

Some people are reluctant to seek help from a psychiatrist, even when they are aware that they have a mental health disorder. One reason is

an understandable concern that seeking help from a psychiatrist could lead to their being sectioned, especially if they are unwilling to comply with the treatment prescribed. Being sectioned, of course, can lead to a deprivation of liberty which could last for many years even though no offence had been committed which would warrant such a deprivation of liberty. Scottish mental health law should be reformed in such a way that this can no longer happen.