

Barry Gale submission of 10 March 2023

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

I write in support of this Petition by Hunter Watson.

I am a bereaved former full time carer to my mother who had dementia. She was taken out of my care using the Mental Health Act in April 2014, despite me being her Welfare Guardian at that time. She died in hospital unnecessarily in February 2016. She had been refused physical exercise, physiotherapy and medical examinations when I raised concerns about her deteriorating health. The numerous judicial appeals which I made were ineffective, as were my appeals for help from many people and organisations.

My story is summarised in a Written Submission to an earlier Petition by Hunter Watson, PE1667 [1], which provoked the Scott Review. As with the stories of many others who are known to me, it shows that the “rigorous safeguards” in the Mental Health Act do not ensure that “patient centred” decisions are made that respect the “will and preference” of the person who is most affected by them, as required by the UNCRPD. Restrictive practices are not the last resort. Viable options are brushed aside or ignored. Statutory decision-making is firmly in the hands of the medical and social work professionals. They are “credible witnesses” whose evidence is “preferred.” The Tribunal and Courts defer to their opinions on all relevant matters and do not override their discretionary decisions.

In his response to this Petition, dated 8 February 2023, the Minister for Mental Wellbeing & Social Care describes how the Scottish Government expects that current legislation should operate. He does not describe how the legislation and its safeguards actually operate in practice. Neither he nor his advisers have any experience of that.

The Government promised that the voices of those who are or have been subject to this legislation, and those who care for them, should be “front and centre” of the Review which it commissioned in March 2019. It ought to remind itself of that promise and listen to those who have experience of how the legislation actually works.

There is a gap between policy and practice, of which the Minister is aware. If the legislation had been working as the Government expects then there would have been no need for the Scott Review, nor for the Rome Review before it, nor the McManus Review before that.

The Minister is aware from his involvement in the BBC investigation “Locked In The Hospital,” which was aired on 15 August 2022 [2], that patients are being detained and medicated unnecessarily in hospital under the Mental Health Act. Their parents have been fighting unsuccessfully for years to get them out, using the “safeguards” in the Mental Health Act. It is not simply a lack of resources to provide suitable accommodation and support in the community. There is also an extreme risk aversion among the professionals, and an unwillingness to work with, listen to and learn from patients and their families, both of whom are - in contentious cases - excluded from decision-making and have no say in any but the smallest details of care and treatment.

The Government's current initiative in Health is called Realistic Medicine. It requires Shared Decision Making between doctor and patient. The Mental Health and Adults with Incapacity Acts enable Shared Decision Making to be bypassed. It should apply in all situations, whether the patient has “capacity” or not.

The Scottish Government is working towards the incorporation of the UNCRPD into Scottish Law, along with other UN Conventions. This will not change the Mental Health Act overnight. It will take many years and many brave appeals to get judicial rulings about how these Conventions should apply to the current legislation, which aspects are incompatible with it, and what needs to change. Yet those who are “Locked In The Hospital,” as my mother was, require a workable solution sooner rather than later. They have waited long enough already.

The recommendations of the Scott Review will achieve little. They ask the Scottish Government to provide more resources, more training, more monitoring. With so many other calls on public finances, it is doubtful that funding will be available for all of this. In any case, the recommendations do not actually shift the balance of power in any way. The decision-makers and the safeguards remain exactly the same.

The requirements of the UNCRPD need to be built into the provisions of reformed legislation, to empower patients and their carers to make their own discretionary decisions about their own lives, and to put the onus on the professionals to appeal against them – instead of the other way around. The requirements of the UNCRPD should not remain as stand-alone Principles which, like those already in the Acts, provide no viable basis for any judicial appeal.

Links:

1. [PE1667 D BarryGale.pdf \(parliament.scot\)](#)

2. BBC One - Disclosure, Locked in the Hospital