

# Citizen Participation and Public Petitions Committee

1st Meeting, 2022 (Session 6), Wednesday 19  
January 2022

PE1878: Investigate prosecutions under the  
Mental Health (Care and Treatment)  
(Scotland) Act 2003

## Note by the Clerk

**Lodged:** 8 July 2021

**Petitioner:** Andrew Muir

**Petition  
summary:** Calling on the Scottish Parliament to urge the Scottish  
Government to investigate why there have been so few  
prosecutions under sections 315 and 318 of the Mental Health  
(Care and Treatment) (Scotland) Act 2003.

**Webpage:** <https://petitions.parliament.scot/petitions/PE1878>

## Introduction

1. The Committee last considered this petition at its meeting on [Wednesday 22 September 2021](#) where it decided to write to the petitioner and to seek an update from the Scottish Mental Health Law Review on its work in relation to compulsory detention and care and treatment under the Mental Health (Care and Treatment) (Scotland) Act 2003.
2. A summary of past consideration of the petition and responses to information requests are provided for the Committee's consideration.

## Background

3. During its consideration of this petition, the Committee received 4 written submissions.

## SPICe briefing

4. The petition asks about the low prosecution rate under sections 315 and 318 of the [Mental Health \(Care and Treatment\) Scotland\) Act 2003](#). The two offences deal with:
  - section 315 – the ill-treatment or wilful neglect of a mentally disordered patient by a person involved in providing care or treatment
  - section 318 – making false statements in relation to applications under the 2003 Act.
5. The petitioner also raised this issue in his petition [PE1786](#) of February 2020 and states that consideration of his earlier petition failed to address his concern that there are too many barriers to prosecutions. The petitioner outlined what he believes to be the barriers to prosecution in his [submission of October 2020](#):
  - “The legislation is very complicated;
  - There are not enough police resources or expertise;
  - The NHS have all the documentation and the release of this is time-consuming;
  - If someone is alleged to have broken the law, the NHS will move this person to another area to hamper the investigation;
  - If the police charge a person with an offence the details will be forwarded to the Procurator Fiscal who will then ask for expert advice. The people chosen as experts tend to be people who will defend the accused person;
  - Making a complaint may put the whistle-blower at risk due to the inherent power imbalance in the system; and
  - Several other complaints bodies have time-bar rules which mean the police have to start from scratch when investigating since no other body has examined the issues properly”
6. The PPC wrote to and subsequently received submissions from the [Mental Welfare Commission](#) and [Cabinet Secretary for Justice](#) before closing the petition in October 2020 on the basis that the Committee was satisfied with the reasoning provided by the Scottish Government and the Mental Welfare Commission as to why prosecutions under section 315 and 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003 are low or zero.

7. The briefing for this new petition highlights an independent review of mental health legislation: the [Scottish Mental Health Law Review](#) chaired by John Scott QC. The review included “Reviewing the developments in mental health law and practice on compulsory detention and care and treatment since the Mental Health (Care and Treatment) (Scotland) Act 2003 came into force.”
8. An [interim report](#) was published in December 2020 (along with an [executive summary](#)). The project timeline indicates that a final report with recommendations is planned for 2022.

## Scottish Government submission

9. In its submission, the Scottish Government notes that Court proceedings under s315 were taken in respect of 71 charges which were reported to Crown Office Procurator Fiscal Service (COPFS) from 2007-08 to 2019-20. Out of these, 38 charges led to a conviction.
10. In relation to s318 of the Act the submission notes that one case was reported to the COPFS in 2018 which resulted in ‘no action’ due to insufficient admissible evidence.
11. The petition highlights a s318 case and states that Police Scotland found “sufficient evidence”, however that the Mental Welfare Commission advised the COPFS to drop the case. The petitioner believes this issue should be investigated.
12. When considering raising criminal prosecutions under the Act, the Scottish Government highlights that a ‘careful assessment’ of factors such as the background, personal circumstances and the risk of further offending. It goes on to state that in order to prosecute, there must be corroborated evidence.
13. The submission concludes by stating that Scottish Ministers will continue to work with justice partners and other public services to ensure that, in every case, people are treated as equal citizens within all parts of Scotland’s justice system. This should include full access to the physical environment, advocacy and support, information and advice, and additional communication support where this is required.

## Petitioner Submission

14. In his submission of 27 November 2021, the petitioner states that this petition is substantively different to his previous petition which was closed in October 2020.

15. The petitioner suggests that there appears to be a 'reluctance on the part of Police Scotland to properly investigate complaints made about people who work in mental hospitals,' citing examples of incidents he is aware of where patients have been injured, where he believes a section 315 offence took place and where no-one was prosecuted.
16. He also comments on the Scottish Government's submission which states that there were 71 section 315 charges reported to the Crown Office Procurator Fiscal Service between 2007/8 and 2019/20, a number which he believes to be very low.
17. The petitioner also asks the Committee to investigate how common it is for Procurators Fiscal to consult the Mental Welfare Commission before making a decision about whether or not to prosecute offences under sections 315 and 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
18. Another submission (the link to which can be found in the annexe of this paper) was received from W Hunter Watson, which echoed the concerns of the petitioner in relation to the low numbers of people prosecuted under sections 315 and 318 of the 2003 Act, and highlighted obligations under the European Convention on Human Rights and the UN Convention on the Rights of Persons with Disabilities.

## Submission from Scottish Mental Health Law Review

19. The submission from the Scottish Mental Health Law Review sets out its principal aim which is to 'improve the rights and protections of persons who may be subject to the existing provisions of mental health, incapacity or adult support and protection legislation as a consequence of having a mental disorder and remove barriers to those caring for their health and welfare'.
20. In doing so, the Review is 'considering patients' experiences of care and treatment whilst subject to compulsion, why there has been an increase in compulsory detention and treatment and the reasons for variation in compulsory orders across Scotland.' The submission sets out a wide range of issues currently being considered by the Review.
21. This includes issues of concern around accountability, the need for an open and accessible complaints system that has the confidence of complainants, strengthening advocacy rights and 'ensuring regulatory and monitoring bodies have sufficient powers and capacity to ensure that Human Rights are protected, promoted and fulfilled.'
22. The submission concludes by highlighting the work being carried out to ensure rights holders know and can exercise their rights, alongside the need to

strengthen access to justice, noting that this include 'looking at ways to reduce the burden on the individual to take legal action, especially when the issue facing them is systemic or affects a number of people'.

## Action

The Committee is invited to consider what action it wishes to take on this petition.

### Clerk to the Committee

## Annexe

23. The following submissions are circulated in connection with consideration of the petition at this meeting:

- [PE1878/B: W. Hunter Watson submission of 1 October 2021](#)
- [PE1878/C: Scottish Mental Health Law Review submission of 19 October 2021](#)
- [PE1878/D: Petitioner submission of 27 November 2021](#)