

Citizen Participation and Public Petitions Committee

5th Meeting, 2023 (Session 6), Wednesday
22 March 2023

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

Lodged on	5 January 2023
Petitioner	William Hunter Watson
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to ensure the UN Convention on the Rights of Persons with Disabilities (UNCRPD) is fully implemented in Scotland.
Webpage	https://petitions.parliament.scot/petitions/PE1999

Introduction

1. This is a new petition that was lodged on 5 January 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner did not collect this information.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.
6. Two written submissions have been provided by the petitioner. The submissions are included at **Annexe D**.
7. The Committee has also received submissions from Maurice Frank and Barry Gale. The submissions are included at **Annexe E**.

8. Members may wish to note that the petitioner has lodged previous petitions on this issue ([PE867](#), [PE1494](#) and [PE1667](#)).

Action

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

Clerk to the Committee

Annexe A

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

Petitioner

William Hunter Watson

Date lodged

05/01/22

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ensure the UN Convention on the Rights of Persons with Disabilities (UNCRPD) is fully implemented in Scotland.

Previous action

I have been campaigning for over twenty years in an attempt to ensure that people in Scotland could not be treated for a mental disorder without their consent. In that time, I have submitted three petitions to the Public Petitions Committee: PE867 in 2005, PE01459 in 2013 and PE01667 in 2017. I also have had two meetings with my MSP, Audrey Nicoll and produced papers which have been sent to various people including a Policy Manager of the Scottish Government's Mental Health Unit.

Background information

Treatment for mental disorders without consent should not be permitted. The Code of Practice for the Adults With Incapacity (Scotland) Act 2000 states that "The use of covert medication is permissible..." Further, the "Health and Social Care Standards" refer to "chemical restraint", something that commonly involves the giving of antipsychotics to elderly people with dementia even though this involves a clear increased risk of stroke and a small increased risk of death.

Covert medication and chemical restraint are incompatible with the UNCRPD, something that the Scottish Ministers must observe and implement. Parliament should pay particular attention to Articles 4, 12, 14, 17 and 25 while debating proposals for change to mental health and incapacity law. It should not accept those recommendations in the Final Report of the Scottish Mental Health Law Review which are incompatible with the UNCRPD. It should not accept that it is acceptable to use force,

detention or covert medication in the treatment of patients with disabilities.

Annexe B

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'SPIC' in a larger font and 'e' in a smaller font. To the right of 'SPICe', the text 'The Information Centre' and 'An t-Ionad Fiosrachaidh' is written in white.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1999: [Fully implement the UN Convention on the Rights of Persons with Disabilities](#) lodged by William Hunter Watson

Brief overview of issues raised by the petition

The petitioner wishes to ensure that people in Scotland are not treated for a mental disorder without their consent. He believes that while restraint and medication of someone with a mental disorder in certain circumstances is permissible under current legislation, restraint and 'covert medication' are incompatible with the UN Convention on the Rights of Persons with Disabilities.

The term 'mental disorder' is the terminology used in the Mental Health (Care and Treatment) (Scotland) Act 2003 and is defined under the Act as covering any mental illness, personality disorder or learning disability (as per [s328 of the Act](#)).

What is the UN Convention on the Rights of Persons with Disabilities? (UNCRPD)

The [UNCRPD](#) was adopted by the UN in 2006 and was ratified by the UK in 2009 (agreed to follow it). The purpose of the UNCRPD is to protect and promote the human rights of disabled people, [including](#):

- eliminating disability discrimination
- enabling disabled people to live independently in the community
- ensuring disabled people are protected from all forms of exploitation, violence and abuse

However, like other UN treaties, the UNCRPD does not give individuals legal rights in the UK courts. While the UK Government has pledged to make sure domestic policies comply with UN treaties, people normally cannot take public bodies to court if their treaty rights have been breached in some way.

The Petitioner highlights specific articles in the UNCRPD as being incompatible with the recommendations in the [Final Report of the Scottish Mental Health Law Review](#):

- Article 4 – general obligations on State Parties - they must undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all disabled people without discrimination on the basis of disability. This includes, for example, in designing policy and adopting legislation, and training of professionals who work with disabled people.
- Article 12 – equal recognition before the law – requires state parties to recognise that disabled people enjoy legal capacity on an equal basis with others and take measures to support disabled people in exercising their legal capacity.
- Article 14 – liberty and security of the person – requires State Parties to ensure that disabled people have an equal right to liberty and security, on an equal basis with others.
- Article 17 – protecting the integrity of the person – every disabled person has a right to respect for his or her physical and mental integrity on an equal basis with others.
- Article 25 – health – State Parties recognise that disabled people have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

Further background is available in the Equality and Human Rights Commission's [The United Nations Convention on the Rights of Persons with Disabilities: What does it mean for you?](#)

New human rights framework

The Scottish Government has [proposals](#) to incorporate four United Nations Human Rights treaties into Scots law, including the UNCRPD.

The new Bill was first outlined in the [Programme for Government 2021-22](#). The Bill will take forward the [30 recommendations from the National Taskforce for Human Rights Leadership](#). The [Programme for Government 2022-23](#) said that the Scottish Government would continue work on this and consult on proposals for a Bill.

The intention is to introduce a Scottish Human Rights Bill in this parliamentary session to give effect to a range of internationally recognised human rights, making them enforceable in Scots law. In a [letter to the Equalities, Human Rights and Civil Justice Committee on Pre-Budget Scrutiny 2023-24](#) (22 December 2022), the Minister for Equalities and Older People, Christina McKelvie MSP, confirmed that the Scottish Government would be consulting on proposals in the first half of 2023.

Adults with Incapacity legislation

This legislation introduced a system for safeguarding the welfare, and managing the finances and property, of adults who lack capacity to make some or all decisions for themselves.

It is underpinned by principles which anyone taking action under the Act must apply when deciding which measure will be the most suitable for meeting the needs of the individual. The principles must also be used whenever decisions need to be made on behalf of the adult.

There are [five key principles](#):

Principle 1: benefit

Any action or decisions taken must benefit the adult and only be taken when that benefit cannot reasonably be achieved without it.

Principle 2: least restrictive option

Any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.

Principle 3: take account of the wishes of the adult

In deciding if an action or decision is to be made, and what that should be, account shall be taken of the present and past wishes and feelings

of the adult as far as they can be ascertained. The adult should be offered appropriate assistance to communicate his or her views.

Principle 4: consultation with relevant others

Account shall be taken of the views of the nearest relative and the primary carer of the adult, the adult's named person, any guardian or attorney with powers relating to the proposed intervention, and any person whom the Sheriff has directed should be consulted.

Principle 5 – encouraging the adult

encourage the adult to exercise whatever skills he or she has concerning property, financial affairs or personal welfare as the case may be and to develop new such skills.

Codes of Practice for Medical Practitioners

[Guidance](#) is available for a range of circumstances and people when they are acting in relation to the [Adults with Incapacity \(Scotland\) Act 2000](#). There is [specific guidance for health practitioners](#) authorised to carry out medical treatment or research under the Adults with Incapacity Act. There is also [specific guidance](#) relating to medical treatment under Part 5 of the Act.

The [Mental Welfare Commission published good practice guidance on covert medication in May 2022](#).

Mental Health legislation and the Mental Health Law Review

The petitioner does not make specific reference to other relevant mental health law, such as [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), which applies to people who have a "mental disorder". Mental disorder is defined under the Act and the definition includes any mental illness, personality disorder or learning disability. The [Mental Welfare Commission \(MWC\) for Scotland provides comprehensive information on Mental Health law](#). This Act allows for emergency and short-term detention, as well as Compulsory Treatment Orders when someone is diagnosed with a mental disorder.

The Final Report of the Mental Health Law Review is a long document, with many recommendations. Throughout, the approach taken makes reference to human rights being acknowledged and respected:

“Recommendation 1.5: The Scottish Government should ensure that all recommendations in this report be implemented in such a way as to protect, respect and fulfil the rights of those with protected characteristics equitably.”

Further, the UNCRPD underpinned the terms of reference, as explained in the Report’s introduction.

There is also a [shorter summary report and recommendations](#) from the Review:

- Chapter 8 covers Human rights enablement, deprivation of liberty and autonomous decision making.
- Chapter 9 covers reduction of coercion.
- Chapter 13 – Adults with incapacity legislation and
- Chapter 14 – Adult Support and Protection legislation.

The Review recommends further safeguards for the use of covert medication, as well as legal process. The [MWC guidance](#), while widely used, has no statutory force.

Other relevant petitions and reports

As highlighted by the petitioner:

[PE867](#)

PE01459

[PE01667](#)

Anne Jepson and Nicki Georghiou

SPICe Researcher

28 January 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Minister for Mental Wellbeing and Social Care submission of 8 February 2023

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

Thank you for your letter seeking views on the content of Mr Watson's petition which calls on the Scottish Parliament to urge the Scottish Government to ensure the UN Convention on the Rights of Persons with Disabilities (UNCRPD) is fully implemented in Scotland. Mr Watson goes on to say that "it should not accept those recommendations in the Final Report of the Scottish Mental Health Law Review which are incompatible with the UNCRPD. It should not accept that it is acceptable to use force, detention or covert medication in the treatment of patients with disabilities."

It may be helpful, in the first instance if I explained how our current legislation operates, including the various safeguards in place. Mental health is a priority for the Scottish Government, and we are looking at various legislative reforms which help reaffirm our commitment to ensuring that everyone who needs support can access services appropriate to their needs.

Mental Health Law

Scottish mental health and incapacity legislation is based on rights and principles which provides for rigorous safeguards in respect of an individual's human rights. Most people who use mental health services receive treatment without being subject to an order or certificate under current legislation. For some individuals however, compulsory treatment is used to provide the person with medical treatment to alleviate suffering and for the protection of both the person and others. Compulsory treatment is only allowed under mental health legislation in Scotland in very strict circumstances.

While detained in hospital, patients may have capacity to consent to treatment and the 2003 Act sets out safeguards around obtaining consent and the strict procedures around giving treatment where consent is not given or is refused. Treatment authorised by the Mental Health (Care and Treatment) (Scotland) Act 2003, or the Criminal

Procedure (Scotland) Act 1995 may only be given in accordance with the range of safeguards set out in part 16 of the 2003 Act. Safeguards include a right to independent advocacy and an efficient and independent Mental Health Tribunal which grants and reviews orders for compulsory treatment. The Mental Welfare Commission (the Commission) monitors the use of Scottish mental health law, including compulsory treatment. The Commission also has the power to intervene in particular cases if there is evidence of improper care, treatment or practices.

Restrictive Practices

Compulsory measures can be used where a person's mental disorder makes them a risk to themselves or to others and where the person's ability to make decisions about treatment is significantly impaired. This means that sometimes rights need to be removed or restricted but where this is necessary then safeguards apply. Medication can be prescribed to treat an illness only if there is a clear underlying cause which would allow this treatment.

Before any restrictive practice is considered, we expect that other interventions are considered. These include enhanced nursing interventions and engagement, psychological or other behavioural treatments, care regimes, the person's activities, or even buildings or settings. The approach has to be dynamic and flexible and applied to the individual patient in a way that best manages their care and treatment, keeping them and others safe. This is in line with good practice.

The use of restrictive practices should only ever be as a last resort and there may be times where for example rapid tranquilisation is administered as an emergency, for the purpose of controlling or subduing disturbed/violent behaviour. It is essential, therefore, that the individual, and as far as possible, informal, and formal carers, know the reason for the prescription and be involved in discussion about progress, next stages of treatment and alternative strategies for managing any future similar situations.

Scottish Mental Health Law Review

The independent Scottish Mental Health Law Review, chaired by Lord John Scott KC, was tasked with reviewing our mental health and incapacity legislation in light of developments in international human rights, including the UN Convention on the Rights of Persons with Disabilities, and to consider where improvements could be made. The

Review published its final report on 30 September 2022 and set out over 200 proposals for reform, separated into short, medium and long-term recommendations for changes to law, policy, and practice.

The Review recommends a human rights-based approach to the law with a greater focus on economic, social, and cultural rights. While acknowledging the tensions between UNCRPD and current mental health and incapacity law, the Review was not of the view that mental health and capacity law requires to be abolished entirely in order to comply with UNCRPD. The Review argues that the law should ensure that all the human rights of people with mental or intellectual disabilities are protected and fulfilled but recognises that there may still be times where there is a need for non-consensual intervention in a person's life. For those times they make recommendations, based on consideration of the person's ability to make an autonomous decision and, after this, a diagnosis and the impact and risks associated with that. The Review propose that there should be reforms to help drive reductions in the use of coercion, including restrictive practices, however, they recognise the need for it may remain in certain circumstances.

Given the range and complexity of the Review, we are taking time to carefully consider the recommendations within the report to ascertain how to better fulfil our obligation to promote and protect human rights within mental health settings and to ensure that rights and protections for those that need it most are upheld.

Cross-government work is now underway to assess their implications and we will set out our response to the Review, including priority actions that will be taken forward, in due course. As part of this work, we are considering the associated timescales for implementation and any recommendations that can be progressed in the short-term as part of our existing work to strengthen mental health and incapacity policy and law.

Human Rights Bill

In addition to the various workstreams which focus on improving human rights, the Scottish Government is taking forward a new Human Rights Bill, that will be introduced to Parliament in the 2021-26 Parliamentary session. The Bill will give effect to a wide range of internationally recognised human rights belonging to everyone in Scotland, as far as possible within devolved competence, and strengthen domestic legal protections by making them enforceable in Scots law.

This will include incorporation, as far as possible within devolved competence, of the UN Convention on the Rights of Persons with Disabilities. This will place greater impetus on public bodies to remove barriers and support disabled people to fully participate in society, such as accessing information and services and living independently with dignity. This will support the necessary culture change and secure real transformational change for disabled people across Scotland.

Summary

The Scottish Government is making significant investment in the range of mental health supports available, which will see issues tackled earlier and where possible in the community, while ensuring speedier access to specialist care for those who need it. Huge advances have taken place in relation to mental health. Treatment has advanced and social attitudes have changed which is why effective and up-to-date mental health legislation plays a vital role in ensuring that the rights of everyone are respected, protected, and fulfilled.

We continue to keep the changing context under review to ensure legislation is fit for purpose and the work set out in this letter are key pieces of work which will therefore play a key role in helping shape the future of mental health and incapacity legislation.

The Scottish Mental Health Law Review recommends that the future strategic direction of mental health and incapacity legislation should take a human rights-based approach with a specific focus on economic, social, and cultural rights. However, they are not of the view that mental health and incapacity law requires to be abolished in order to comply with UNCRPD. They also recognise that there may still be times that there is a need for non-consensual intervention in a person's life.

Annexe D

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) UNCRD.

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.

Petitioner submission of 3 March 2023

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

Section 44 of the Mental Health Act is not compliant with the UNCRPD because it permits non-consensual treatment to begin before the person detained has had an opportunity to appeal.

Section 50 of the Mental Health Act permits the Tribunal to revoke a detention certificate if it is not satisfied that the necessary conditions for the detention of the patient “continue to be met”. There should be no assumption that the necessary conditions had been met when the patient was detained. Any such assumption would mitigate against the person receiving a fair hearing and so would not be compliant with the UNCRPD.

According to the BNF, “Side-effects caused by antipsychotic drugs are common” and “*Tardive dyskinesia* ... is of particular concern because it may be irreversible”. Further, some young people in good health have died as a consequence of being given antipsychotic drugs. In spite of this, the Scottish Government is implying that there is no need to fully implement the UNCRPD because of the safeguards in Scottish mental health law. The reality is that these safeguards are ineffective. The Scottish Government should legislate to make it an offence to give people antipsychotic or other drugs without their consent: all drugs have undesirable side-effects.

Annexe E

Maurice Frank submission of 17 January 2023 PE1999/B: Fully implement the UN Convention on the Rights of Persons with Disabilities

I cite a piece of published research that supports the need for this petition's and UNCRPD's implementation. Case appendix John's Story, and all reference to it in the main thesis, in *Destination Unknown*, by Ewelina Rydzewska, University of the West of Scotland 2012.

Anonymised in the thesis, this is in fact my case: also summarised online in the Ragged University's case collection at raggeduniversity.co.uk/2015/04/28/eighties-teenage-psychiatry-for-school-pressure-one-writer-squashed-another-by-maurice-frank/ . It was a case of a teenage intervention in a crisis over schoolwork pressure abuse.

I am not a person who has ever had any mental health labels. Yet just in its role of teenage crisis interventions, the mental health system was able to use controllingly the threat of forced treatment, that would be applied to the intervening team's child development theories, unilaterally and simply in arrogant disregard of my or my parent's views.

For a libertarian character, it was utter trauma to have that team's hard man rant about "to get you in here and change you." This was the same wrong as is now condemned in gay conversion therapy: a decree of total removal of personal liberty and to have my character dictated for me, in a Western democracy because I had suffered another abuse that was not my fault. By definition, any power for a medical opinion on the best interests ever to force treatment makes this scenario possible. It did not serve best interests, as it left me with a molestation experience and it carried a constant traumatic anxiety around having all my personal boundaries pushed, including around swimming safety fears, and by swamping bear hugs from one of the psychiatrists. It made me completely unable to confide honestly and receive any honest support at all, instead I had to assess tactically everything I said to them and withhold anything that could strengthen their hand.

This adolescent unit was the state agency supposed to protect me from the school harm that had brought me to it. But the unit's own coercive

conduct had the effect that to escape it, I had to pretend to want to return to the problematic school and to still believe in its agenda. The conduct of a service with treatment powers to back up its arrogant convenient belief in a coercive approach, drove me back to an abuser. It caused me not to achieve final escape from that school until 3 years after I had first wanted to. It deprived me of any sensible post-school outcome, transition support, or career advice, because these carried further threat from this unit's potential powers, from having its treatment in my education history.

Thus it was a disaster that those powers' existence caused an authoritarian intervention and purported help, including still further traumatic pressuring, to be done to a child who had just survived an authoritarian abuse that had included traumatic pressuring.

Though this story happened 40 years ago and in Wales, continued existence of the powers that made it possible keeps it current as evidence to the question of ending those powers by implementing UNCRPD. It evidences the wrongheadedness of the scandal of holding open-endedly in Carstairs autistic young people who have no criminal convictions, where all family evidence shows, the confinement itself causes the worsening of condition from its distress.

A local campaign against a similar and heavily drugged mandatory placement in Forth Valley hospital was recently successful after several years of system inertia against the responsibility of changing a mandated confinement once put in place, even when seen to have adverse physical effects. There was a time during that case, as described at a public protest on 1 Feb 2022, when the hospital had no declared reasons to keep the patient but was doing so anyway and refusing to discuss reasons, or to allow any contact with family. This included confiscating the patient's means of online communication. Other patients and anonymously sympathetic staff provided some communication illicitly. This comes from the protesters' description. It shows treatment powers create stories like of life in repressive countries and quite outside the free world's self-image.

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](#)