PE1849/B
Petitioner submission of 7 January 2021

Responding to submission PE1849/A by the Minister for Mental Health:

I would like to clarify that our petition relates to patients detained under civil **or criminal** orders who either (a) were admitted in **"exceptional circumstances"** to a higher level of security than was strictly necessary, or (b) have won appeals against **excessive security** yet have not been transferred within a reasonable time.

As the Minister notes, there is a clear expectation that patients admitted unnecessarily to a higher level of security would be transferred to a lower level **at the very earliest opportunity**. This is not happening. Two such patients have been detained at the highest security level for almost 4 and 11 years. Contrary to the assessment by an independent psychiatrist, the detaining psychiatrist has decided that these patients now "require" high security care – a case of the gaolers deciding who "requires" to be in their gaol.

An increase in a patient's "requirements" could be due to stricter criteria set by the higher security hospital or to a deterioration in health or behaviour caused by the care and treatment itself. If these 2 patients had been admitted to the lower level of security, as originally assessed, they may not now be "entrapped" and deteriorating in an unsuitable hospital. This is unjust.

The existence of a right of appeal to the Mental Health Tribunal does not guarantee that the process is efficient or fair. We have evidence that it is biased towards medical opinion, especially that of the detaining clinician, and that it was laborious even before lockdown.

In relation to its August 2017 report on medium and low secure forensic units, the Mental Welfare Commission states that although many of its findings were good, it was:

"concerned about the human rights of patients who are being held in conditions of excessive security due to a lack of suitable places to move on to. … Even after they have successfully won appeals at a Mental Health Tribunal, some medium secure patients were waiting to move on for longer than need be…This backlog in moving people to the least restrictive situation must be addressed."

The Forensic Network guidance referenced by the Minister describes risk criteria in Tables 1& 2. High Security admission requires evidence of homicide, stabbing, poisoning, etc. The 2 patients we refer to have at worst defended themselves by kicking or punching when restrained unnecessarily by State Hospital staff using overwhelming force. I doubt that such behaviour even meets the criteria for Low Security. Yet it has been deemed by the clinician – a Network member – to justify detention at the highest level of security.

It therefore appears that the Forensic Network does not always follow its own guidance. Consequently, the clinician's key role in determining where patients are best cared for, and their duty to review the orders under which patients are detained, are no safeguard at all. Since this failure to follow guidance is not being challenged by the Mental Welfare Commission, the Mental Health Tribunal or the courts, they are not effective safeguards either.

The Minister says the Government is committed to ensuring that people with learning disabilities or autism get the support and care they "require." However there is no

objective, unambiguous method for deciding what support and care any patient “requires.” I suggest that, without specifying who will make such decisions, this is a meaningless commitment, albeit well-intentioned. The UN Convention on the Rights of Persons with Disabilities (UNCRPD) expects that people with disabilities will be supported to make their own decisions about medical treatment.

It seems to be that the Minister assumes it is appropriate for professionals, tribunals and courts to over-ride the wishes of people with mental disabilities as they think best. I think this is in conflict with her pledge to make Scottish mental health law compatible with the UNCRPD, and to put the views of people with lived experience “front and centre” of law reform.

Announcing the Scottish Mental Health Law Review in March 2019, the Minister stated:

“the principal aim of the review is to improve the rights and protections of persons who may be subject to the existing provisions of mental health ... legislation as a consequence of having a mental disorder, and remove barriers to those caring for their health and welfare.”

It is these rights and protections which are in dispute in this petition, and we believe that secure psychiatric hospitals can be barriers which prevent family members from caring for their relatives.

In December 2019 the Independent Review chaired by Andrew Rome recommended that learning disability and autism be removed from the Mental Health Act. This might resolve the problem which this petition complains about. The Scottish Government has yet to announce whether and when it will implement this recommendation.

The Scottish Mental Health Law Review is not due to issue its final recommendations until September 2022. It is unlikely that revised legislation will come into force within 5 years of that date. We think it is unreasonable to expect patients who have been suffering in unsuitable hospitals for several years already to wait so long for relief.

The Minister is describing Government **policy** but might not be aware of what is actually happening in **practice**. If there was no gap between policy and practice then the reviews which the Minister mentions would not have been launched.

Our petition does not ask for yet another review of policy, law or services, but **individual reviews** for qualifying patients, similar in purpose to Care and Treatment Reviews in England & Wales, bringing together the stakeholders in each case, along with a mediator, to try to agree on a risk-enabling plan to accelerate rehabilitation.