

# Investigating deaths occurring during compulsory care and treatment under mental health legislation in Scotland

## Section 2: Summary of revised process proposed by the Commission

Q1. Q1: Do you agree that the Commission should be responsible for initiating, directing and quality assuring the process of investigating deaths during compulsory treatment in all cases?

Not sure

Q2. Q1a: Do you foresee any difficulties with this arrangement?

In my wide experience of campaigning on behalf of those mental health patients and their families who are opposed to non-consensual treatment, I have found that the Mental Welfare Commission (MWC) almost invariably is of no help to such people. It may make enquiries about the non-consensual treatment but does nothing to ensure that it ceases. Also, when that non-consensual treatment clearly is the cause of the premature death of a patient the MWC will not investigate even though prior complaints had been made to it about that treatment: see "The Tragic Case of the Treatment of an Elderly Woman in the 21st Century NHS". A copy of this report was sent to many parties, including the MWC.

Q3. Q1b: How could such difficulties be addressed?

Some body should be identified which can receive complaints about any alleged failure of the MWC to properly investigate complaints. The Scottish Public Services Ombudsman might be a suitable body: it upheld a complaint which I had made on behalf of a Mrs A about the failure of employees of Grampian NHS Health Board to respect her right to refuse treatment when she was being treated under neither the Adults with Incapacity Act nor the Mental Health Act. (Case 200902396: Grampian NHS Board)

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Q4. Q2: Do you agree that the Commission should be responsible for producing and disseminating an annual report on the results of the investigations as described in paragraph 30 of the consultation document?

Yes

Q5. Q2a: Do you foresee any difficulties with this arrangement?

No.

Q6. Q2b: How could such difficulties be addressed?

*No Response*

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Q7. Q3: Do you agree that the Commission should develop guidance and standards for use by local services when undertaking investigations into deaths during compulsory treatment?

Yes

Q8. Q3a: Do you foresee any difficulties with this arrangement?

There should be no difficulties provided there has been prior consultation with interested parties and due account has been taken of consultation responses.

Q9. Q3b: How could such difficulties be addressed?

See answer to question 3a.

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Q10. Q4: Do you have any comments on the revised process as set out in Section 2, paragraphs 34 to 43, of the consultation document?

No.

Q11. Q4a: Do you foresee any difficulties with this process?

*No Response*

Q12. Q4b: How could such difficulties be addressed?

*No Response*

## Section 3: Involving families and carers

Q13. Q5: Do you think that the role of the Commission Liaison Officer will help to improve the involvement of, and communication with, families and carers during investigations of deaths?

Yes

Q14. Q5a: Do you have any concerns about this type of arrangement?

On the contrary; I consider it essential that families and carers should be involved and their evidence put into the public domain. Only when this happens, in my opinion, will the Scottish Government be prepared to make the necessary changes to Scottish mental health law. Note that, in response to a Freedom of Information request I was informed that on January 2021 the number of people in Scotland subject to compulsory measures was 68.6 per 100,000 of the population on 2 January 2021. It should be noted that ECT treatment can cause permanent memory loss and other undesirable effects. Further, when given against the will of the patient it causes such distress that it constitutes inhuman or degrading treatment, something prohibited in all circumstances under the European Convention on Human Rights. In spite of this, the Mental Health Act at section 329 permits ECT to be given to a patient even though he or she resists or objects! A letter which I received from the Scottish Government dated 17 December 2021 (ref: 202100261801) responded to a paper of mine about this matter by listing the safeguards within the Mental Health Act. Evidence contained in the many papers which I have produced demonstrate that those safeguards are ineffective. Further, Article 25(d) of the Convention on the Rights of Persons with Disabilities (CRPD) requires health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent. I regret that most of my correspondence with the Scottish Government suggests that it has little interest in or knowledge of fundamental human rights. I am hopeful that the ongoing review of Scottish mental health law will lead to proposals to produce new law which is compliant with the CRPD but, if that happens then inevitably there will be strong representations made by the psychiatric lobby to permit it to retain its present untrammelled powers.

Q15. Q5b: How could your concerns be addressed?

By ensuring that the legislators become familiar with the evidence in the many papers which I have written on this topic. Twelve can be accessed by googling SMHLR and following the links. However, I have written another eleven since the completion of the consultation about the Scottish Mental Health Law Review and, although copies have been sent to the Scottish Ministers as attachments to emails, but these papers are not in the public domain.

## Section 4: Other matters for consideration

Q16. Q6: Do you agree that the revised process, described in Section 2 of the consultation document, will meet the values and principles set out in paragraph 50?

Not sure

Q17. Q6a: Please explain your answer.

*No Response*

## Section 4: Other matters for consideration

Q18. Q7: Do you have any comments on the potential impacts of the revised process on those with protected characteristics?

It depends on how seriously the revised process is implemented. If implemented as they should be then the impacts should benefit those people.

Q19. Q7a: Please explain what you think could be done to minimise any negative impacts on people with protected characteristics.

*No Response*

Q20. Q8: Do you have any comments on the potential impacts of the revised process on children and young people?

See answer to Q7.

Q21. Q8a: Please explain what you think could be done to minimise any negative impacts on children and young people.

*No Response*

## Section 4: Other matters for consideration

Q22. Q9: Do you agree that the revised process for investigating deaths during compulsory treatment (as described in Section 2 of the consultation document) is human rights compliant?

Yes

Q23. Q9a: Please explain what you think could be done to ensure that the new process fully complies with human rights standards.

Ensure that full account is taken of the views of family. Note what is stated in sections 3.18 and 3.19 of the Human Rights Act:  
There is an obligation to investigate if it is alleged that someone has died through the negligence of a state body such as a hospital.  
There should be a public scrutiny of the investigation and the family of the deceased should be involved.

## Section 4: Other matters for consideration

Q24. Q10: Do you have concerns in relation to any financial or administrative impacts the revised process may have, especially for local services?

The right to life guaranteed by Article 2 ECHR is of such importance that the financial and administrative aspects should not be used as excuses for not carrying out effective investigations into deaths and

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learning lessons. It should be noted that in Article 2 it is stated that "Everyone's right to life shall be protected by law". The Scottish Government is failing to comply with this requirement. I have been campaigning without success for over twenty years in an attempt to persuade the Scottish Government to act to end the sedation of elderly care home residents with dementia with antipsychotic drugs. The Health and Social Care Standards make an uncritical reference to "chemical restraint" and hence condone this practice which I suspect is used to permit care homes to operate more cheaply than would be the case if they provided proper care for elderly dementia sufferers.

It may be relevant to note that I wrote to the Scottish Ministers asking whether legal advice had been sought regarding the use of chemical restraint in care settings. I have yet to receive a reply, but in the letter from the Scottish Government referred to above it was stated that "the use of psychoactive medications to help manage stress and distress for people with dementia must of course comply with the law and align with the Standards of Care for Dementia in Scotland". That answer I regard as disingenuous in part because there is no guarantee that the Care Inspectorate will enforce those Standards and compliance with the Adults with Incapacity Act, but mainly because of the failure that by virtue of the Human Rights Act and the Scotland Act the ECHR is now part of Scottish law. In addition, Scotland is expected to observe and implement the CRPD since it has been ratified by the UK.

Q25. Q10a: Please explain what you think could be done to minimise any negative financial or administrative impacts.

Ensure that the necessary resources are made available.

## Section 4: Other matters for consideration

Q26. Q11: Do you have any other comments or concerns in relation to the revised process?

Only that care be taken to ensure that the human rights of people with disabilities are properly respected.

## Respondent Information Form

Q27. Name of person submitting the response

William Hunter Watson

Q28. Email address of person submitting the response

hiw@btinternet.com

Q29. Are you responding as an individual, or on behalf of an organisation?

I am responding as an individual

## Respondent Information Form - individual responses

Q30. Are you a family member or carer of a person who has died whilst being treated under mental health legislation in Scotland?

*No Response*

Q31. Do you wish your response to be published?

Yes, publish response with name