

Petitioner Letter of 17 December 2013

PE01494: FURTHER EVIDENCE

W. Hunter Watson

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1 Electro-convulsive therapy

- 1.1 After a report appeared in the Press and Journal about what I had said about electro-convulsive therapy (ECT) to the Petitions Committee, an Aberdeen woman told me that she had been given “*six or seven*” courses of ECT, two against her will. She said that she had been screaming when she had been held down prior to being given ECT but did not say whether this had happened on each occasion. She claimed that she had lost her childhood memories and blamed that on the ECT. She said that each course of ECT had helped her depression for a time but that it had returned whenever she encountered a stressful situation. She still has mental health problems and sees a psychiatrist regularly, but her problems are now being managed with medication on a voluntary basis.
- 1.2 ECT seems to pose a significant risk to the elderly. In Scotland during the period 2005-2011 there were recorded 6 deaths among patients aged over 65 who were receiving ECT.
- 1.3 Almost certainly, involuntary ECT constitutes inhuman or degrading treatment, something prohibited under Article 3 of the European Convention on Human Rights (ECHR). The definition of such treatment was provided in 2002 by the European Court of Human Rights in the case of *Pretty v UK* in para 52. In para 49 of that judgment it is stated that “*Article 3 ... is cast in absolute terms, without exception or proviso*”. In para 51 of the same judgment it is stated that “*In particular, the Court has held that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment ...*”
- 1.4 As is clear from evidence that has been submitted to me, mental health patients have been subjected to treatment that fell within the prohibited category of being inhuman or degrading. This will continue to be the case if the Scottish Parliament does not suitably amend the 2003 Act.

1.5 Antipsychotic drugs in dementia

Antipsychotic drugs pose a particular risk to elderly patients with dementia. That can be verified by searching the internet for "*Risks of antipsychotics in dementia*". Yet those drugs are given to mental patients in this category.

2 Avoidable adverse drug reactions

2.1 Doctors, being human, make mistakes. Unfortunately their mistakes result in a large number of deaths. There seem to be more deaths from avoidable adverse drug reactions than from road accidents. For more information search the internet for "*Deaths due to avoidable drug reactions*".

2.2 I once represented a man whose mother died only 18 days after entering a care home. From her medical records it was clear that her death was due to an avoidable adverse drug reaction. The Procurator Fiscal sent a report to the Crown Counsel, but the Crown Counsel instructed that there be no Fatal Accident Inquiry so lessons were not learned.

2.3 The 51 page report given by a Ms A to the Minister for Public Health and others makes clear that her 82 year old mother, a woman with dementia, died as early as she did because of an adverse reaction to the antipsychotic drug which a psychiatrist insisted on having administered to her by depot injection even when it was obvious to the family that this was causing her great distress and her condition to deteriorate. The 2003 Act gives psychiatrists too much power since there was nothing that Ms A could do to stop the inhuman or degrading treatment to which her mother had been subjected in breach of Article 3 ECHR.

2.4 Only yesterday I received an email from another woman whose mother had died at age 68, "*before her time*", after being given a depot injection of an antipsychotic drug every three weeks. Regrettably, not all psychiatrists can be trusted to make prudent treatment decisions. It was wrong of Parliament to give psychiatrists the power it did in the 2003 Act. It did not give other medical professionals the same power.

3 Untrustworthy professionals

No group of professionals can be relied on to be totally truthful. As media coverage in recent months has made clear, even the police can at times be untruthful. It should come as no surprise, therefore, that I have proof that mental health officers and psychiatrists sometimes fabricate evidence in order to persuade tribunals that an individual should be subject to compulsory measures.

Unfortunately witnesses are not required evidence on oath at mental health tribunals.

4 Mental health tribunals

I have produced a paper based on an analysis of the transcripts of three tribunal hearings. In that paper I asserted that the performance of those tribunals was abysmal. A copy of my paper was sent to the head of the Mental Health Tribunal Service for Scotland. Unsurprisingly, he did not respond since with one possible exception my criticisms were irrefutable.

Other tribunals also have given cause for complaint. One woman who submitted written evidence to the Petitions Committee referred to *“the lack of any robust objectivity from the MHT”*. Also, in 2009 research commissioned by the Scottish Government reported some dissatisfaction with tribunal decisions and suggested that it might be beneficial to conduct *“An outcomes study of the Tribunal hearing decisions, investigating the extent to which service users’ and others’ views could be seen to have influenced the panel’s decision”*.

5 Treatment before appeal

The 2003 Act permits an individual to be subjected to involuntary treatment before he or she has had a fair hearing. This is a breach of Article 6 ECHR. It is also unsatisfactory for other reasons:

- The unwanted treatment might cause an individual to die before he or she has a chance to appeal: In a recent twelve month period there were 11 deaths among those detained on the basis of a short-term detention certificate and 2 deaths among those detained on the basis of an emergency detention certificate.
- Some of the mind-altering drugs given to mental health patients have side-effects which correspond to symptoms of mental illness. If an individual experiences such a side-effect then that can be and has been later cited as evidence that the individual in question had a mental illness.
- If it is found that after two or three weeks on drugs an individual displays no signs of a mental illness then it might be wrongly assumed that this was a consequence of the drug treatment. The individual, therefore, might be compelled to continue taking the drugs even although there had been no mental illness in the first place. This has happened.

- Finally, the drugs which an individual is obliged to take prior to a tribunal hearing are likely to adversely affect the individual's ability to think clearly and hence to be able to participate fully in that hearing.

6 Detention too easy

The 2003 Act makes it too easy for people to be detained in mental health hospitals. An individual can be sectioned if a psychiatrist considers that to be necessary and a mental health officer consents. If those two consider it impracticable they need not even make the necessary preliminary enquiries before having an individual detained and subjected to involuntary treatment. What makes this situation particularly disturbing is that, if comments made by two of those who signed my petition are to be believed, mental health legislation can be used to detain and hence effectively silence people who have been making serious allegations against others.

7 Mental Health Bill

A Mental Health Bill is expected to come before the Scottish Parliament in 2014. It is to be hoped that should it do so then MSPs will ensure that the 2003 Mental Health Act is amended in a way that is compatible with Convention rights. Any MSP who has not already done so should study the European Convention on Human Rights and also the Guide to the Human Rights Act. Given that the Scotland Act specifies that it is outwith the competence of the Scottish Parliament to pass any legislation that is not compatible with Convention rights it is obviously important that MSPs know what these rights are.

Parliament should seize this opportunity to suitably amend Scottish mental health legislation because it could be a decade or more before another opportunity will arise.