

PE1494/E

Scottish Public Services Ombudsman Email of 13 January 2014

Dear Convener,

Petition PE1494

I read the transcript of the Committee's recent discussion of this petition with interest. In particular, I noted a brief mention of this office and our remit in connection with complaints in this area.

Given that our remit in this area is not straightforward, I thought it would be helpful to set out the current position. While I do not intend to comment on the petition itself and note the organisations the Committee is writing to with questions, I did want to provide what assistance I can.

The Mental Welfare Commission, the NHS and the Mental Health Tribunal are all bodies under our jurisdiction and I can take complaints about all of them. However, the matters I can consider does vary. Any matter which can be appealed to a Tribunal is ordinarily out of my jurisdiction. And while the Tribunal itself is under jurisdiction, it is so only in relation to issues not directly related to the judgement that it is making.

In terms of complaints about the NHS, we have a broader jurisdiction than normal and this means we can look directly at clinical judgement. The expertise of this office was queried before the Committee and I would like to assure you and the public that we do have access to appropriate clinical advice in all the many areas provided by the NHS. Specifically in relation to mental health, I have appointed a Mental Health Nurse and Psychiatrist with specific Scottish experience to provide me with advice.

There are limitations in what we can and cannot look at in relation to detention and other matters. These are clearly set out in a memorandum of understanding we have with the Mental Welfare Commission and this can be found here: http://www.spsso.org.uk/sites/spsso/files/communications_material/foi/MOU%20with%20MWC.pdf The details are in paragraph 6.

The Committee may also find the following SPSO public investigation reports of interest, both of which look at our role in relation to dealing with complaints about the NHS in relation to mental health matters.

- A report dealing with issues around a short-term detention. The full report details the involvement of the Mental Welfare Commission when concerns were also raised with them.
- <http://www.spsso.org.uk/investigation-reports/2013/august/lothian-nhs-board>
- A report which I completed *after* a MWC report and which looked at aspects of care not considered by the MWC: <http://www.spsso.org.uk/investigation-reports/2013/april/tayside-nhs-board>

For completeness, the MWC report is here:

http://www.mwcscot.org.uk/media/62794/hard_to_help.pdf.

I hope this is helpful and would be happy to provide more detail if that would assist the Committee.

Sincerely,

Jim Martin
Ombudsman