

PE1667/D

Barry Gale submission

My experience as a Carer, Welfare Guardian and Named Person shows that the Mental Health Act is being implemented in ways which fail to respect the human rights of patients which it was intended to protect. The safeguards are ineffective. This situation has existed for many years and has not changed despite the incorporation of human rights principles into the 2003 Act and the issue of Codes of Practice by the Scottish Executive and of guidance by the Mental Welfare Commission. The situation will not change unless the law is changed to give people with mental disorders the same right as those with physical disorders to refuse treatment which they do not want.

The Scottish Government says that it wants to empower citizens to take control of their own mental health. The Mental Health Act does the opposite: it empowers health and social work professionals to override the reasonable choices of patients when they fail to agree what is in their best interests.

These professionals are not only empowered to detain patients without any trial of the evidence and to apply for orders to compel treatment, they also comprise the majority of the panel on the Tribunals which judge such applications and appeals against detention. They also form the majority of executive officers within the Mental Welfare Commission which oversees the implementation of the Act. **There is an inherent bias in Tribunals and the Commission toward fellow professionals.** The overwhelming majority of Tribunals decide in favour of the professionals. The Mental Welfare Commission professes to "protect and promote" the human rights of those with mental disorders, but it refuses to investigate any complaints that such rights are being abused.

I feel strongly about this issue because my mother died needlessly in hospital in February 2016 while detained for the last two years of her life under a Compulsory Treatment Order. She received no treatment for her dementia, but was deprived of exercise and outings and refused any option of rehabilitation. Between visits I appealed in vain for help from many people and organisations including the Court of Session. It broke my heart that she died in custody and that I had failed to get her released. Her final 2 years of life were a nightmare for us both.

What I would like to see is the replacement of compulsory powers with a statutory obligation to co-operate with patients' wishes, and a system of conciliation outside of the Tribunals and Courts when agreement cannot be reached. Health and social **services** are at their best when offering support and choice, and at their worst when acting as judges of their own and each others' need to impose care and treatment on those who don't want it.

In December 2013 my 82-year old mother fell at home in my care and broke her hip. She had dementia and osteoporosis. I had been caring for her since 2010. She had lived with me since 2005.

After a successful operation the hospital physiotherapist failed to get her to walk again because of difficulty communicating with her. He refused my offers of help, even after I got her to walk in the ward. Without consulting me or my mother, the

discharge planning team decided that she should remain in hospital or a nursing home, that she should not receive any further physiotherapy, and that for her own safety she should not regain mobility. They refused to discuss any options for rehabilitation.

The reason for this lack of co-operation was that West Lothian Social Services and its partner NHS Lothian had been trying to remove my mother from my care since January 2013. When its application for a Removal Order was rejected because of lack of any evidence of harm, abuse or ill-treatment, it applied for a Guardianship Order instead. This resulted in my appointment as interim Welfare Guardian in November 2013. My mother's injury and hospitalisation was seen as an opportunity to move her into institutional care.

Aware of the importance of my mother's mobility to her mental and physical health, and that it had to be restored soon before it became too late, I invoked my powers as guardian to take her home against the advice of the discharge planning team. This was on 3 April 2014. I got my mother walking and climbing stairs with minimal assistance. Her incontinence in hospital disappeared, and she had no further injuries. She resumed her former life in the community. Walking had been her hobby for many years, and one of the few she could still enjoy as her dementia progressed.

At the end of one week at home, the mental health officer (MHO) who was my adversary in Court brought a psychiatrist, a colleague in the Partnership, to issue a Short Term Detention Certificate. The examination consisted of nothing more than trying and failing to get my mother's attention as she dozed on the sofa. The psychiatrist certified that she was at significant risk of harm and "self neglect" if she remained at home, ignoring my role as her full time carer. I offered to return my mother to hospital voluntarily for physiotherapy but this was rejected by the MHO. That my mother was detained in order to override my decision as Welfare Guardian to take her home, is stated in the certificate.

I applied to the Mental Health Tribunal to challenge the detention. My solicitor instructed an independent psychiatrist. He examined my mother in hospital and accepted the views of the nurses about what care she required. He telephoned to find out my views but what I told him about the care I had provided at home did not get into his report. He did not contact my mother's Independent Advocate at all. He had a strong disincentive to contradict the opinion of a fellow professional, and no experience of care in the community. His opinion was that it was necessary to detain my mother in hospital. Because of this my solicitor withdrew from the case. I had no choice but to represent myself at the Tribunal.

At the request of the MHO the Tribunal appointed Curators ad Litem to represent my mother, despite me being her Welfare Guardian and Named Person - ie her Legal Representative according to the Act. The Curators did not consult me or my mother or her Independent Advocate. One commissioned his own psychiatric report, which was almost identical with my solicitor's report.

If the independent psychiatrist had examined my mother at home in my care, it would have been obvious that she was in no danger but was being well cared for. The Detention Certificate would never have been issued, and my mother would probably be alive today.

On 7 May 2014 the Tribunal rejected my appeal against the Detention Certificate. The MHO applied to extend the detention with a Compulsory Treatment Order, which was granted interim on 14 May and in final on 4 June. I appealed to the Sheriff Principal and from her to the Court of Session. Unable to find a solicitor willing to act without a favourable psychiatric opinion, I continued to represent myself in Court, while West Lothian Council and the Mental Health Tribunal had no difficulty instructing experienced Solicitors and Advocates.

All three Tribunals were manifestly biased towards their fellow professionals. They accepted without question the opinions of the detaining psychiatrist (RMO), the MHO, independent psychiatrists and Curators ad Litem, despite legal guidance in the MHTS Handbook that they must establish the facts and form their own opinions. They ignored the fact that my mother's injuries had occurred 6 months previously. They accepted allegations that I had ill-treated my mother and put her life at risk by removing her from hospital, without examining any evidence and despite such allegations being outside of their jurisdiction. In their decision they wrote that they were so concerned by the allegations of the RMO and MHO about my treatment of my mother that they were recommending that the Mental Welfare Commission investigate the matter. The allegations were already pending a proof hearing in the Sheriff Court, where no evidence had been offered.

The Tribunals ignored admissions by the RMO and MHO that their opinions were unfounded. When I asked the MHO why no risk assessment had been made, the Convener interrupted to tell him that he need not answer that question. When the RMO admitted that my mother's agitation in hospital, which she claimed to be the reason for the detention, was a reasonable response by a person with dementia to being removed from her home and cared for by strangers, the panel ignored the answer. When the RMO admitted that falls and fractures occurred on her wards, and when I provided evidence that they were three times more common in hospitals and nursing homes than in the community, the panel ignored this evidence. Most notably the panels accepted without any evidence from a physiotherapist the RMO's claim as a psychiatrist that my mother would be at serious risk of injury if mobilised other than by two nurses trained in manual handling, and ignored my evidence of having mobilised her alone for a week, up and down stairs, without any falls.

The Tribunals acknowledged my mother's wish "at some time in the past" to live at home in my care, but this had no influence whatsoever on their decisions. They made no effort to explore care at home, and accepted without explanation the MHO's claim that "no suitable support was available." The only right the Tribunals acknowledged my mother's "right" of access to treatment which she was vehemently opposed to. Because I supported her wishes I was labelled as "obstructive." Like the RMO, the Tribunals viewed my mother's lack of legal capacity as their licence to make their own decisions about what they considered was in her best interests.

Solicitors whom I approached for help told me that no appeal from the Tribunal is ever won on substantive grounds. Nevertheless it seemed to me that a Court decision was the only way I could get my mother out of hospital. The MHO and RMO were determined that she should not return home.

The Sheriff Principal heard my appeal in July 2014 and Court of Session in January 2015. Both refused to examine the documentary evidence presented to the

Tribunals. I asked the Court of Session to order that audio recordings of the Tribunal hearings be made available, which the MHTS had refused to release, but it also refused.

I argued that the Act states that "medical treatment means treatment for the mental disorder" whereas my mother's "treatment" consisted solely of personal care and support during mobilisation, both of which I had provided at home without any medical qualification, and neither of which had any therapeutic effect on her dementia. The Courts declined to examine the intention of Parliament on this issue. Contrary to the MHTS Handbook and academic authorities, they implied that medical opinions did not require evidence and were exempt from the law of evidence relating to expert witnesses. Both Courts highlighted the unanimity of professional opinion, ignoring the fact that none of them were based on an examination of the evidence. They stressed the Tribunal's professional status and competence ("they probably got it right"), and its statutory discretion to make any decision within its powers. No consideration was given to my mother's discretion to make her own decisions about her life. The Courts picked out the Tribunals' own findings of fact which supported its decisions, and like the Tribunal ignored evidence to the contrary.

I considered appealing to the Supreme Court or the European Court of Human Rights, but I was at the limit of what I could do without professional representation, and the judgements might come too late for my mother, whose health was deteriorating through lack of exercise.

As a remedy the Court of Session suggested that I could make another appeal to the MHTS. I asked the Honorary Doctors' Association to provide an independent second opinion. They refused, paradoxically stating that they "cannot not go against the recommendations of your doctor" - which contradicted their stated purpose. If a professional charity with no links to the RMO refused to question her opinion, what prospect was there of getting anyone else to do so?

In October 2015 I asked the RMO for an appointment with the visiting GP to discuss my concerns about my mother's health. This was refused. In December I persuaded an independent specialist to examine her. Consent for this was refused by the RMO and MHO in January 2016. As a last resort I considered absconding with my mother, to ensure that she got the exercise and quality of life which the RMO was preventing her from getting. I was in the process making such plans when she died during the night.

My mother's final years of life were precious to her and to me. Detention under the Mental Health Act deprived us both of the ability to enjoy that time and to find whatever happiness we could before her inevitable death. For my mother it resulted in torment and frustration for my mother, locked up in a noisy hospital ward, unable to escape the monotonous shouting and routine, unable to get outside for fresh air and change of scenery, and prevented from walking. A few hours before her death she had grabbed and twisted my nose, to express her frustration with me for not getting her out of there. For me the detention resulted in a tiring and stressful two-year search for help and justice.

Did anyone benefit from what happened?