

PE1667/M

Petitioner submission of 6 September 2018

On 1 April 2018 new Health and Social Care Standards replaced the National Care Standards which had been published in 2002 under section 5 of the Regulation of Care (Scotland) Act 2001. Although in the introduction to those new standards it is claimed that they will ensure that basic human rights are upheld, they authorise the use of chemical restraint: see the section on page 18 entitled "restrictions to my independence, control and choice". This obviously gives the green light to those care homes which wish to continue to use antipsychotic drugs to sedate residents perceived to require restraint, something permitted under the original National Care Standards. That should be of concern since most residents in care homes for older people have dementia and antipsychotic drugs pose considerable risks to such people, including the risks of having a stroke or dying prematurely. Such risks are particularly great when people with dementia are left on an antipsychotic drug indefinitely as my late mother would have been had I not intervened. Regrettably there are no effective safeguards to ensure that people with dementia are only given those or other psychiatric drugs in line with the advice in the British National Formulary: this was demonstrated by research published by the Mental Welfare Commission in 2014. (See the petition background information.) Arguably, the only certain way to ensure that the lives of elderly care home residents with dementia are not shortened by the use of chemical restraint is to prohibit such use of medication. It is perhaps worth noting that the use of involuntary chemical restraint is not authorised in any of HM prisons. It is also perhaps worth noting that, under Article 3 of the European Convention on Human Rights, inhuman or degrading treatment is prohibited in all circumstances. The possibility that chemical restraint falls within this prohibited category should be carefully examined, especially when it is liable to cause a serious deterioration in the health of the person so restrained. (As noted in PE1667/L, the European Court of Human Rights has provided a definition of inhuman and degrading treatment.)

In the Press & Journal of 13 August 2018 [11 August] it was reported that a sheriff had ordered that a care home in Alford closed at the end of the month because of its unacceptable use of physical restraint: residents had been tied to their chairs with belts, an action which clearly fell into the prohibited inhuman or degrading category. As evidenced by research conducted by the Mental Welfare Commission (see above), the production in 2011 of the document entitled "Standards of Care for Dementia in Scotland" failed to ensure that the prescription of antipsychotics and other psychiatric drugs to people with dementia is carried out in a manner that minimises risk. It may be that the only way to persuade care homes that they must avoid an inappropriate use of chemical restraint is to warn them if they do not avoid this then they will face the risk of closure.

It should be noted that the use of corporal punishment, another form of restraint, has been banned in schools, presumably because it had been judged to be inhuman or degrading. Scotland should be prepared to ban the use of chemical restraint if it can be established that this form of restraint is also inhuman or degrading, especially when applied to persons which it is liable to harm.

Footnote

In an email to me dated 23 August 2018, a spokesman for the Scottish Government attempted to defend the new Health and Social Care Standards. I consider his defence to be totally inadequate since it relied in large part on the assertion that the new Standards are underpinned by five principles: Dignity and Respect; Compassion; Be included; Responsive care and support; and Wellbeing. It would be far-fetched to claim that the use of chemical restraint is compatible with those principles. It should also be recognised that it is highly likely that these principles will be largely ignored as have been the principles supposedly underpinning the Adults with Incapacity Act: the analysis of responses to the consultation about the reform of the Adults with Incapacity Act revealed that this was the case.

It is also noteworthy that, as stated in my petition, among the issues raised in the UK submission to the Committee which monitors compliance with the Convention on the Rights of Persons with Disabilities was the use of chemical restraint. The fact that the Scottish Government has nevertheless authorised the continued use of this is evidence that it has been taking insufficient account of recent developments in international human rights law.