

Briefing for the Citizen Participation and Public Petitions Committee

Petition [PE1878](#): Investigate prosecutions under the Mental Health (Care and Treatment) (Scotland) Act 2003, lodged by Andrew Muir

Background

The petition questions “why there have been so few prosecutions” under sections 315 and 318 of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (the ‘2003 Act’). The two offences deal with:

- [section 315](#) – the ill-treatment or wilful neglect of a mentally disordered patient by a person involved in providing care or treatment
- [section 318](#) – making false statements in relation to applications under the 2003 Act.

The petitioner also raised the issue of prosecutions under these two sections in petition [PE1786](#), lodged February 2020. The Public Petitions Committee agreed to close that petition in October 2020. More information on the earlier petition is set out below.

In the current petition, the petitioner states that consideration of his earlier petition failed to address his concern that there are too many barriers to prosecutions under the 2003 Act. The current petition highlights the role of the Mental Welfare Commission. The petitioner outlined what he saw as other potential barriers during scrutiny of his earlier petition (see below).

Mental Welfare Commission

With reference to the role of the [Mental Welfare Commission](#) (‘the Commission’), the current petition states that recent research “showed they heavily favoured professionals”.

The role of the Commission includes:

- monitoring how the provisions of the 2003 Act are applied
- investigating cases where someone with a mental illness or learning disability may not be getting the right care and treatment.

The research referred to by the petitioner would seem to be the [results of stakeholder research on the Commission](#) (Wellside Research 2020). It noted that:

“Whilst overall the survey results are encouraging, it would appear that service users with lived experience, families and carers, however, are both less aware and less satisfied with the Commission, its work, role and responsibilities compared to professionals working in the area. Across almost all questions they provided less satisfied and more negative results than professionals.” (p iv)

On publishing the results of the research, the [Commission’s Chief Executive commented](#) (13 August 2020):

“One priority is for us to raise awareness of our role amongst people who have lived experience, and their families or carers. We are a small organisation, but we recognise we need to find new ways of continually ensuring that people who might benefit from contacting us are aware of who we are and what we do.”

Scottish Parliament consideration of petition PE1786

Information obtained during consideration of petition [PE1786](#) (lodged February 2020) indicated that there had been a number of prosecutions under section 315 of the 2003 Act, but did not show any under section 318.

Figures for prosecutions under section 315 are provided in a [Scottish Government freedom of information release](#) (2 September 2020).

In a [written submission to the Public Petitions Committee](#) (19 October 2020), the petitioner outlined what he saw as barriers to prosecutions under the 2003 Act:

“The legislation is very complicated.

There are not enough police resources.

There is not enough police expertise.

The NHS have all the documentation and the release of this is time consuming.

If someone is alleged to have broken the law, the NHS will move this person to another area to hamper the investigation.

If the police charge a person with an offence the details will be forwarded to the Procurator Fiscal who will then ask expert advice. The people chosen as experts tend to be people who will defend the accused person.

Making a complaint may put the whistle-blower at risk due to the inherent power imbalance in the system.

Several other complaints bodies have time-bar rules which mean the police have to start from scratch when investigating since no other body has examined the issues properly.”

In deciding to close the petition at its [meeting on 29 October 2020](#), the Public Petitions Committee indicated that it was satisfied with the reasoning provided by the Scottish Government and Commission as to why there are few prosecutions under sections 315 and 318 of the 2003 Act. However, the Convener noted that:

“We agree to close the position. If we were in a different part of the parliamentary cycle, we might have referred it to the Justice Committee. We agree to flag up to the Cabinet Secretary for Justice the issues that we have identified. We reassure the petitioner that if they do not consider that there has been sufficient progress, they can, of course, bring back the matter to the Public Petitions Committee in a year’s time.” (cols 23-24)

Independent review of mental health legislation

In 2019, the Scottish Government announced that there would be an independent review of mental health legislation: the [Scottish Mental Health Law Review](#) chaired by John Scott QC.

Information about the review is set out on its website. It notes that:

“The principal aim of the review is to improve the rights and protections of persons with a mental disorder and remove barriers to those caring for their health and welfare.”

And that this will involve:

“Reviewing the developments in mental health law and practice on compulsory detention and care and treatment since the Mental Health (Care and Treatment) (Scotland) Act 2003 came into force.”

An [interim report](#) was published in December 2020 (along with an [executive summary](#)).

A [project timeline provides](#) an indication of how the work of the Review may proceed during 2021 and 2022. It notes that a final report with recommendations is planned for 2022.

A SPICe blog provides more information on developments in relation to mental health law – [Mental health and adults with incapacity law in Scotland – what next?](#) (June 2021).

Key organisations

- [Equality and Human Rights Commission](#)
- [Crown Office and Procurator Fiscal Service](#)
- [Mental Welfare Commission](#)
- [Police Scotland](#)
- [Scottish Government](#)
- [Scottish Mental Health Law Review](#) (John Scott QC)

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