

Citizen Participation and Public Petitions Committee
Wednesday 29 October 2025
16th Meeting, 2025 (Session 6)

PE2176: Introduce penalties for failing to comply with Mental Welfare Commission recommendations related to duty of candour

Introduction

Petitioner Warren Mitchell

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to introduce penalties for organisations that fail to comply with recommendations made by the Mental Welfare Commission in relation to duty of candour.

Webpage <https://petitions.parliament.scot/petitions/PE2176>

1. This is a new petition that was lodged on 24 July 2025.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 142 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received a submission from the Scottish Government which is set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
October 2025

Annexe A: Summary of petition

PE2176: Introduce penalties for failing to comply with Mental Welfare Commission recommendations related to duty of candour

Petitioner

Warren Mitchell

Date Lodged

24 July 2025

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to introduce penalties for organisations that fail to comply with recommendations made by the Mental Welfare Commission in relation to duty of candour.

Background information

It seems there are little or no repercussions for organisations who do not comply with the Commission's recommendations for improvement. In our case, this relates to the duty of candour. The Commission lacks the powers to take organisations to task. My late wife entered the mental health service after suffering a psychotic episode she was referred by a doctor to the Health and Social Care Partnership for an urgent assessment by two nurses which took 14 minutes before she was sent home. Two days later she took her own life after receiving no treatment. Even though documents proving how long she was there were provided.

The NHS Trust spent the next four years lying to not only our family but also to the Mental Welfare Commission, the nurses And Midwifery Council. This is why the Commission needs more powers.

Annexe B: SPICe briefing on PE2176



Duty of Candour and the Mental Welfare Commission

PE2176: Calling on the Scottish Parliament to urge the Scottish Government to introduce penalties for organisations that fail to comply with recommendations made by the Mental Welfare Commission in relation to duty of candour.

Duty of Candour

The term 'duty of candour' refers to a legal duty on health and social care organisations to inform those affected by unintended or unexpected incidents which appear to have caused harm or death.

The duty was legislated for in Scotland in the [Health \(Tobacco, Nicotine etc. and Care\)\(Scotland\) Act 2016](#) in response to the recommendations of several reviews and inquiries into service failings and patient safety in the UK. This included the [Francis Inquiry](#), the [Dalton Williams](#) review and the [Berwick report](#), all of which recognised the need for greater openness and transparency when things go wrong.

The duty in the 2016 Act [applies to a wide range of health and social care organisations](#) in Scotland, including NHS boards, independent hospitals and clinics, NHS independent contractors, social work services, social care providers and agencies.

The types of harm which should trigger the duty of candour procedure are set out in s21(4) of the act as:

- (a) the death of the person,
- (b) a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions (including removal of the wrong limb or organ or brain damage) ("severe harm"),
- (c) harm which is not severe harm but which results in—
 - (i) an increase in the person's treatment,
 - (ii) changes to the structure of the person's body,
 - (iii) the shortening of the life expectancy of the person,
 - (iv) an impairment of the sensory, motor or intellectual functions of the person which has lasted, or is likely to last, for a continuous period of at least 28 days,

- (v) the person experiencing pain or psychological harm which has been, or is likely to be, experienced by the person for a continuous period of at least 28 days,
- (d) the person requiring treatment by a registered health professional in order to prevent—
 - (i) the death of the person, or
 - (ii) any injury to the person which, if left untreated, would lead to one or more of the outcomes mentioned in paragraph (b) or (c).

When potential incidents are identified or come to the attention of the organisation, it should appoint a registered health professional not involved in the incident to decide whether the duty of candour procedure should be followed.

When the procedure is activated, the organisation must notify the affected individual, invite them to a meeting to explain what happened, offer them a written apology and conduct a review of the circumstances which led or contributed to any incidents.

The 2016 Act requires organisations to follow the procedure as soon as practicably possible after becoming aware of eligible incidents, but there are no sanctions or penalties within the legislation for not meeting the duty.

The Mental Welfare Commission

The Mental Welfare Commission (MWC) safeguards the rights and welfare of people in Scotland who have a mental illness, learning disability, or other related conditions. It is an independent body with its powers set out in the Mental Health (Care and Treatment)(Scotland) Act 2003.

Key functions of the Commission include:

- **Visiting and Monitoring:** the Commission visits individuals receiving care to ensure their treatment is appropriate and respects their rights.
- **Investigations:** The Commission looks into complaints or concerns about care and treatment, especially where rights may have been breached.
- **Advice and Guidance:** The Commission offers advice to professionals, carers, and individuals about mental health law and best practices.

If the Commission finds that people's rights are not being respected it has a duty to provide advice to the relevant health board and to alert relevant bodies, including Scottish Ministers and Healthcare Improvement Scotland.

There is an expectation that NHS boards will respond to any recommendations but the MWC does not have statutory powers to enforce its recommendations, although it can escalate matters to Scottish Ministers.

Scottish Government Action

The [Scottish Mental Health Review](#) was commissioned by the Scottish Government and reported in 2022. It made several recommendations regarding strengthening the powers of the MWC, including:

- Legislate to give the MWC the power to make a report to Parliament if there is a serious failure by a public body, including the Scottish Government, to follow a recommendation.

The Scottish Government committed to a wider, longer-term reform of mental health law and work on this is underway.

There are no planned changes to the duty of candour legislation.

Kathleen Robson

SPICe Research

3 September 2025

Annexe C: Written submission

Scottish Government written submission, 14 August 2025

PE2176/A: Introduce penalties for failing to comply with Mental Welfare Commission recommendations related to duty of candour

Does the Scottish Government consider the specific ask of the petition to be practical or achievable?

The Scottish Mental Health Law Review (SMHLR), published in 2022, made several recommendations regarding strengthening the powers and responsibilities of the Mental Welfare Commission (MWC) in legislation, including the following recommendations:

- The legislation should include a level of accountability directly to the Scottish Parliament. This would include the power to make a report to Parliament if there is a serious failure by a public body, including the Scottish Government, to follow a recommendation.
- The MWC should have the power to initiate legal proceedings to protect the human rights of any person or group covered by mental health and capacity law.

In our response to the SMHLR, we acknowledged that we should aim to strengthen accountability and scrutiny in the mental health system. This should take place in the context of a wider reform to mental health law and will be in the long-term.

With regards to legislative change, we are taking a staged approach to mental health law reform, beginning with the modernisation of adults with incapacity legislation.

With regards to duty of candour, provisions within the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 set out how Health Boards and health professionals should respond to an unintended or unexpected incident. These provisions do not impose sanctions or penalties for failing to carry out duties under the legislation.

The Scottish Government previously considered whether the legislation should be amended to include sanctions or penalties against organisations who fail to comply with the law and came to the conclusion that there are a number of pieces of legislation that are already in place which would hold organisations to account, if it was deemed necessary. We are therefore not minded to amend the Regulations or the overarching legislation to include sanctions or penalties.

Health professionals will also be subject to professional standards relating to their own profession, and can be subjected to an investigation and disciplinary action from their own regulatory body should they be found to be in breach of their obligations.

What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the ask of this petition?

The Mental Welfare Commission (MWC) plays an important role in external assurance of Mental Health inpatient settings through its visits which focus on compliance with the Mental Health (Care and Treatment) (Scotland) Act 2003.

The MWC has a duty to visit people who are receiving care under mental health and incapacity legislation. The purpose of these visits is to hear directly from the person receiving care and treatment whether they feel their rights are being respected.

If they find that people's rights are not being respected the MWC currently have a duty to provide advice to the relevant health board and to alert relevant bodies, including Scottish Ministers and Healthcare Improvement Scotland.

Where issues are identified by the MWC, NHS Boards should prioritise these, reporting feedback and recommendations through their existing escalation and clinical governance structures. Clear actions and timelines should be agreed for all recommendations and delivery should be monitored by the leadership of the Board.

However, there are limits to the MWC's scope and powers. While they visit individuals and provide recommendations to boards, they do not carry out inspections or audits of services and they do not have powers to enforce their recommendations. That is why the Scottish Government will consider strengthening powers and responsibilities of the MWC in the context of a wider long-term reform to mental health law.

In respect of the health professionals, there is already a rigorous process in place to ensure staff are transparent and can be subjected to an investigation and disciplinary action from their own regulatory body should they be found to be in breach of their duties and obligations.

Mental Health and Incapacity Law Unit