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THE MENTAL HEALTH (CARE & TREATMENT) (SCOTLAND) ACT 2003

KNOW YOUR RIGHTS

**INFORMATION FOR USERS OF MENTAL HEALTH
SERVICES IN DUMFRIES AND GALLOWAY, AND
THEIR CARERS.**

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1. User And Carer Involvement

User and Carer Involvement (UCI) is a registered Scottish charity whose aims are to ensure that service users and carers of people with dementia, mental health problems or learning disabilities in Dumfries and Galloway have a say in how the services that they use are delivered and run.

UCI is managed by a project coordinator and this is overseen by a Board of Management. The Board is made up of volunteers from a range of relevant voluntary organisations and also importantly by members who use services and their carers.

We try wherever possible to create safe forums that allow people to express their concerns and take those concerns forward to the appropriate agencies. UCI will then monitor the response and outcome of the agency and ensure that this is fed back to our members. We also offer training and support to our members and give users and carers easy access to important information.

UCI is involved in either meeting or talking to over 400 members every month throughout our region. We are active in bringing the concerns of both users and carers to a wide range of professionals, resulting in improvements in the services and care provided to our members.

Under the new Mental Health (Care and Treatment) (Scotland) Act 2003, people are encouraged to write an Advance Statement and to have a Named Person. Our project worker at UCI helps people to complete the forms and then lodges them with Medical Records at Crichton Hall, Dumfries.

Membership of UCI is free and open to all service users and carers of those with mental health problems, dementia or learning disabilities in Dumfries and Galloway. Professionals can join as

associate members and will receive all relevant mailings and newsletters.

Throughout this booklet you will find details of websites which contain helpful information about some of the subjects covered. If you do not have access to the internet, contact us and we will send you the relevant information. Contact details for organisations mentioned in this booklet can be found on page 33. If you have any queries regarding any of the information in this booklet, please contact us:

UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ

Tel: 01387 255330 Email: info@userandcarer.co.uk

Website: www.userandcarer.co.uk

UCI is principally funded through a Mental Health Specific Grant (Local Authority/Scottish Executive funding). UCI also receives funding from NHS Dumfries and Galloway.

2. Voluntary and Compulsory Patients

Distinctions are made between what are described as “voluntary” and “compulsory” patients. For example, if a voluntary patient wishes to complain about their care or treatment, they will follow a different set of procedures to those used by compulsory patients.

Voluntary patients are those who accept treatment for their mental disorder without being subject to any compulsory powers under the Act. When you are a voluntary patient, you cannot be made to accept treatment against your will.

You can only be given treatment against your will if there is an order under the Act to say you must accept it. Compulsory powers given under an order can say that you should be given medical

treatment even if you do not agree that this is necessary. This is called compulsory treatment. This guide principally outlines the safeguards that exist to protect the rights and welfare of those subject to compulsory treatment, while covering much that is of interest to voluntary patients.

If you are unable to give consent, you may be treated for mental disorder under another law called the Adults with Incapacity (Scotland) Act 2000, which has a different set of rules and procedures than those covered in this guide. For information on the Adults with Incapacity Act, see the Scottish Executive leaflet: *It's your decision*.

There will be times when mental health professionals have no option but to introduce a course of care and treatment that they think will be best for the patient, irrespective of the fact that the patient has not consented to it. Later, when the patient is responding to treatment, they should again be able to make informed decisions and revert to being a voluntary patient. This is why Compulsory Treatment Orders (and similar) tend to be for comparatively short periods.

Compulsory patients have rights and a say in determining their treatment. However, this requires them to have set down their wishes and preferences in advance, in what is described as an Advance Statement. Also, they can appoint a Named Person to represent their interests if at any time they are not well enough to represent themselves and are subject to compulsory treatment.

Advance Statements and the role of the Named Person are briefly described later in this booklet. Other, more detailed booklets on Advance Statements and Named Persons are available from: **UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ Telephone: 01387255330**

3. Please explain my treatment

Occasionally, some health professionals may seem reluctant to explain to a patient why they have decided upon a particular treatment, care plan or whatever. However, there is nothing to be gained from worrying in silence and as a patient, you have a right to be heard and health professionals should respond sensitively to any questions or concerns you might raise at an appropriate time and place.

Carers can also ask questions and raise concerns. However, those providing professional care and treatment may be limited in the responses they can make to carers, as explained in the section regarding Confidentiality of Patient's Information (see page22).

4. Voluntary Patients' Complaints Procedures

If you are a voluntary patient and you are unhappy with the treatment you are receiving in hospital, you must first use the hospital's own complaints procedures to lodge a complaint.

All hospitals have a standard code of practice, and nursing staff and doctors are expected to comply at all times.

If you are unhappy with any aspect of the hospital's treatment or procedures during your stay, you should first speak to the Charge Nurse and explain what is upsetting you.

If you are dissatisfied with the response from the Charge Nurse then you should formalise your complaint by writing to the Chief Executive of the hospital with details of the problem and a request for him to investigate further.

Should you still feel that the hospital's response is unsatisfactory,

you can take your complaint to the Mental Welfare Commission (see page 35) whose job it is to protect service users' rights.

It can be very difficult and upsetting to involve yourself in the process of complaining about your care during hospitalisation, and many people would feel overwhelmed at the prospect of having to do so. If you need to make a complaint, but feel uncomfortable at the thought of doing it on your own, there are several agencies that can act on your behalf. With your permission, they can take your complaint to the hospital and help to ensure it is resolved to your satisfaction.

Your complaint can be dealt with whilst you are in hospital or after you have been discharged. If you are in hospital, the nursing staff will contact any agency on your behalf asking them to come in and see you if you require help.

How to complain about NHS services

Each of the NHS Boards in Scotland has a named Complaints Officer who is responsible for making sure patients' complaints are investigated both quickly and thoroughly. The current Complaints Officer for Dumfries and Galloway is Carol Reece. If you wish to complain about NHS services in Dumfries and Galloway, either you or someone acting on your behalf can write to:

Head of Clinical Governance – Quality
Logan West
Crichton Hall
DUMFRIES DG1 4TG

Within 3 days of the NHS receiving your complaint you can expect to be contacted, either in writing or over the phone, by the person who will be investigating it. You should then be told exactly what they are going to do to investigate your concerns and when.

Within 20 days of the NHS receiving your complaint, you should receive a full response to the concerns you have raised. If the NHS needs longer than this to investigate your complaint, they will write to you before the 20 days explaining why they need more time.

Many complaints are resolved at this stage. However, if for any reason you are not happy with how the NHS has handled your complaint, you can ask for it to go to the Scottish Public Services Ombudsman. If your complaint is about mental health services, you can also contact the Mental Welfare Commission for Scotland and ask them to investigate.

The Independent Advice and Support Service (IASS)

Dumfries and Galloway Citizens' Advice Bureau (DAGCAS) have a project called The Independent Advice and Support Service (IASS). Experienced volunteers and specialist advisors are on hand to provide you with information, advice and practical help in making a complaint about NHS services. To find out more, you can contact your local Citizens' Advice Bureau.

Useful sources of information:

- Health Rights Information Scotland provides clear, accurate and up to date information about patients' rights. Copies of their pamphlet 'Making a Complaint About the NHS' are available through your local GP, hospital or Citizens' Advice Bureau.
- Action Against Medical Accidents (AvMa) is an independent charity which promotes better patient safety and justice for people who have been affected by a medical accident. They have a team of medically and legally trained caseworkers who provide free and confidential advice following an accident. To find out more, you can call their Medical Accident Helpline on: 0845 123 2352

***For more information about the agencies that are able to support you in making a complaint, contact UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ
Tel: 01387 255330***

5. The Mental Health Act 2003

In March 2003, the Scottish Parliament passed The Mental Health (Care and Treatment) (Scotland) Act 2003. It came into effect in October 2005 and sets out how you can be treated if you have a mental illness, a learning disability or a personality disorder. It covers such issues as:

- What your rights are.
- What safeguards there are to ensure your rights are not abused.
- When you can be taken into hospital against your will.
- When you can be given treatment against your will.

This booklet provides some basic information on what the Act means for you, and provides signposts to other sources of useful information for compulsory and voluntary patients and their carers.

Note that the Act relates to carers as well as users of mental health services. For example, the Act states that those who provide care to a service user should receive respect for their role and their experience. They should also receive any appropriate information and advice - but subject to issues of patient confidentiality - and have their views and own needs taken into account.

More detailed information about the Act itself can be found on

the Scottish Executive website at www.scotland.gov.uk.

The free booklet: *The New Mental Health Act – What's It All About?* is available from UCI.

6. The Mental Health Act – Guiding Principles

The Mental Health Act is based on a set of ten guiding principles that act as a guide in interpreting the Act. They do not provide you with legal rights in the same way as other parts of the Act, but you can use the principles as a guide to what you should expect from the people and organisations who provide your care and treatment.

Although the principles are intended to apply to people who are receiving compulsory care and treatment under the Mental Health Act, they are also a useful guide for people receiving treatment on a voluntary basis.

As a general rule, any health professional who wishes to take action under the Act will be expected to take account of the following.

- **Non-discrimination** – People with any mental disorder should, wherever possible, have the same rights and entitlements as those with other health needs.
- **Equality** – Any powers exercised within the Act should never directly or indirectly discriminate on the grounds of physical disability, age, gender, sexual orientation, language, religion or national, ethnic or social origin.
- **Respect for Diversity** – All users should receive care and treatment and respect for their individual needs and abilities.

Diverse backgrounds should be taken into account along with age, gender, sexual orientation, ethnic group and any social, religious and cultural beliefs.

- **Reciprocity** – If society imposes an obligation on individuals to comply with a programme of treatment and care, it should also impose a similar obligation on the health and social services to provide a safe and appropriate level of care that will continue following discharge from compulsion.
- **Informal Care** – Care treatment and support should be provided for people with a mental disorder without the use of compulsory powers whenever possible.
- **Participation** – The past and present wishes of service users should be taken into account, involving them as far as possible in all aspects of their assessment, care treatment and support. All information and support should be provided in such a way as to make it as understandable as possible.
- **Respect for Carers** – If you provide care to a service user on an informal basis you should receive respect for your role and your experience. You should also receive any appropriate information and advice, and have your views and own needs taken into account.
- **Least restrictive alternative** – Whenever possible service users should receive any care treatment and support in the least invasive and restrictive manner as possible. Their environment should be compatible with the delivery of safe and effective care and take into account where appropriate the safety of others.

- **Benefit** – An intervention under the Act for the service user should produce a benefit that would be unlikely to be achieved other than by the use of the Act.
- **Child Welfare** – The welfare of any child with a mental disorder should be paramount in any interventions placed on the child under the Act.

7. The Principles in Practice

Put into practice, the Mental Health Act guiding principles should work to promote respect for an individual's needs, and to support their recovery. The most important theme of the principles is the importance of your participation in all decision-making that affects you.

Anyone who carries out duties or gives you treatment under the Act (e.g. doctors, nurses and social workers) has to follow the principles set out in the Act. They must take into account the following:

- Any wishes you may have now, or wishes you may have had previously, about your care and treatment.
- They must give you information and help you as much as possible to participate in decisions about treatment.
- If you have a Named Person, carer, guardian or welfare attorney, their views must be listened to and taken into account.
- They must consider a range of options available to you for your care and treatment.

- They must consider what will ensure the maximum benefit to you.
- You must not be treated any less favourably if you are being treated under the Act.
- Your abilities and background and other factors such as age, gender, sexual orientation, religious and racial origin must also be taken into account.

8. Compulsory Treatment Orders

The Act allows for people to be placed on different kinds of compulsory orders according to their particular needs. Some are short-term powers to deal with emergency situations (see later). The longer term power contained in the Act is the Compulsory Treatment Order (CTO).

There are strict conditions in the Act about when a Compulsory Treatment Order can be granted.

- The person has a mental disorder.
- Medical treatment is available which could stop their condition getting worse, or help treat some of their symptoms.
- If that medical treatment was not provided, there would be a significant risk to the person or to others.
- Because of the person's mental disorder, his/her ability to make decisions about medical treatment is significantly impaired.
- The use of compulsory powers is necessary.

In order for a CTO to be granted, a Mental Health Officer must apply to the Mental Health Tribunal (see page 33). The application must include two medical recommendations and a care plan detailing the care and treatment proposed for the patient. The patient, the patient's Named Person and the patient's primary carer are entitled to have any objections heard by the Tribunal.

The MHO who is making the application should explain to you what rights you have. For example, to challenge the application and have your views heard by the Tribunal. He/she should also give you information about independent advocacy services which can help support you to ensure your views are heard. If you need help contacting independent advocacy services, your MHO should help you with this.

Once the Tribunal has received an application for a CTO, it will contact you and your named person to give you details about your hearing.

You may decide to seek legal advice from a solicitor who can advise you about your rights. You will be entitled to Legal Aid (not means tested) to cover the cost of the solicitor's advice and having them to act for you at any hearing. If you want to challenge the application, a solicitor might also be able to get an independent medical report to help you to do this.

The Tribunal has to give a range of people, including you and your Named Person, the chance to have your views heard, and to give evidence in support of your case (see page 18). You can get more information about the Tribunal and how it works, by contacting the Mental Health Tribunal for Scotland (see page 33).

The Tribunal will weigh up all of the information and evidence it has received before reaching a decision. If you have made an Advance Statement about care and medical treatment, then this

must be taken into account by the Tribunal when considering your proposed care plan.

A CTO lasts for 6 months initially, but can then be extended for a further 6 months, and after that can be extended for 12 months at a time. It can be based in the hospital or in the community. If it is based in the community, then it can include various requirements. For example, that the patient lives at a certain address, attends certain services at particular times, or attends a particular place for treatment.

Interim Compulsory Treatment Order

In some circumstances – for example, if the Tribunal has been asked to approve a CTO but decides it needs further information before it can make a final decision and it will take some time to get that information - they may decide to make an Interim (temporary) CTO. This can last for up to 28 days. When it expires, the Tribunal can make another Interim CTO, but the maximum time anybody can be held on Interim CTO is 56 days.

Before the Tribunal can make an Interim CTO, it has to give a range of people, including you and your Named Person, the chance to have your views heard and to give evidence. It also has to be sure that certain criteria are met - these are similar to the criteria for making a CTO.

If you are put on an interim CTO, you can be subject to the same range of requirements as if you were on an actual CTO.

9. Shorter Term Powers

In addition to the Compulsory Treatment Order, the Act introduced a number of shorter term powers in regard to compulsory treatment and holding powers.

Removal to Place of Safety

If someone in a public place appears to have a mental disorder and be in need of care and treatment, the police can take that person to a place of safety – preferably a hospital, but it may be a police station. The person can be kept there for up to 24 hours to allow an assessment to be carried out by a doctor about whether arrangements need to be made for the person's care and treatment.

Nurse's Holding Power

If a patient in hospital, receiving treatment on a voluntary basis, decides to leave the hospital, an appropriately qualified nurse can hold the patient for up to 2 hours to allow a doctor to come and assess the patient and decide whether detention in hospital is appropriate. The period can be extended by another hour once the doctor arrives.

Emergency Detention

Emergency Detention allows someone to be detained in hospital for up to 72 hours where hospital admission is required urgently to allow the person's condition to be assessed. It must be recommended by a doctor. If possible, the agreement of a Mental Health Officer (a social worker specially trained in mental health) will also be obtained.

Short-term detention

This allows someone to be detained in hospital for up to 28 days. It must be recommended by a specially trained doctor (a psychiatrist) and agreed by a Mental Health Officer (MHO).

10. When can treatment be given without consent?

If someone is subject to an emergency detention, then they cannot be treated without their consent unless the treatment is required urgently, or they are being treated under another law called the Adults with Incapacity Act.

Someone who is subject to Short-term detention or a CTO can be given treatment in accordance with rules set out in the Act. The definition of 'medical treatment' under the Act is quite wide. It means treatment for mental disorder as well as medical treatments like drug treatments and electro-convulsive therapy (ECT). It also covers nursing, care, psychological interventions, and rehabilitation. There are special safeguards for some of the more controversial treatments - for example neurosurgery for mental disorder, ECT and drug treatments given for more than 2 months.

Can physical force be used when giving treatment?

If you are in hospital and are subject to compulsory powers, the Act only allows the use of force where this is necessary, and only for as long as is necessary.

Force cannot be used to give you treatment in your own home.

However, if you are subject to a Compulsory Treatment Order that authorises compulsory treatment in the community then, under certain circumstances, you can be taken to hospital and treatment can be given there - forcibly, if necessary.

If you have been given treatment against your will and feel that unnecessary force was used, then you should consider making a complaint about this, perhaps with the support of your Named Person, or independent advocate.

11. Protecting the rights of service users

The Act includes a number of safeguards intended to protect the rights of mental health service users. Most will be discussed in greater detail later in this booklet.

Mental Health Tribunals

Mental health tribunals have replaced the Sheriff Court as the forum for hearing cases under the new Act. Tribunals are involved in considering care plans, deciding on Compulsory Treatment Orders and carrying out reviews. (see page 32)

Advance Statements

Service users can make an Advance Statement, setting out how they would wish to be treated if they become unwell and unable to express their views at some point in the future. Any person responsible for giving treatment under the new Act must take the patient's Advance Statement into account.

For a comprehensive guide to Advance Statements, or for assistance in getting them completed, contact UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ Tel: 01387 255330.

Named Person

Service users are able to choose a Named Person to represent and protect their interests in any proceedings under the Act. In regard to tribunals, the Named Person has the same rights as the service user to be notified of, attend and be represented.

For more information about choosing a named person, or for help completing the forms, contact UCI.

Independent Advocacy

The Act gives every person with a mental disorder a right of access to independent advocacy and puts duties on Health Boards and local authorities to ensure that independent advocacy services are available. This right to access advocacy applies to all mental health service users, not just to people who are subject to powers under the new Act. You do not have to be in hospital or on any kind of order.

Independent advocates do not work for hospitals or social services and their services are absolutely free. Their job is to help make your views heard and help you have as much control as possible over your own life and as much input as possible in your care and treatment.

They should not make decisions on your behalf, or tell you what to say. Instead they should give you all the information you need to make your choices, and then give you help to put them across. In other words, they should help you decide what you want to say and then help you say it.

An independent advocate can help you in many different ways. He or she can come with you to a meeting with a doctor, or can

help you with a housing problem, or to get a service you need.

An independent advocate is able to give support and help you to express your own views about your care and treatment. But an independent advocate cannot make decisions on your behalf in the way that your Named Person can. An independent advocate can come with you to a tribunal hearing to support you - but does not have the same rights as a Named Person to be consulted, informed or to make applications and representations to the tribunal.

You can have both an independent advocate and a Named Person, but because their roles are different they cannot be the same person.

If you are in hospital or under any compulsory order, your doctor, nurse, social worker or mental health officer will get in touch with an independent advocacy service on your behalf.

If you are not under any order, you can find out about agencies that provide this free service and also obtain a free booklet with more detailed information regarding the use of independent advocates, by checking the Scottish Independent Advocacy website at www.siaa.org.uk, or by contacting UCI.

Mental Welfare Commission

The Mental Welfare Commission is an independent organisation whose job is to protect the rights and welfare of everyone with a mental illness or learning disability. It was given new powers under the Act to enable it to maintain and develop its vital role in protecting the rights of service users and promoting the effective operation of the Act. These include monitoring how the Act is working; encouraging best practice; publishing information

and guidance and carrying out visits to patients, investigations, interviews and medical examinations, and to inspect patient records.

The Commission is a group of people with experience of mental health and learning disabilities services, medicine, and social care and law. Some of the Commissioners have been appointed because they already have experience either in using mental health and learning disability services or in caring for a service user.

The Commission's main job is to make sure that people's rights under the Act are being protected - they aim to ensure that the care and treatment of people with a mental disorder is in line with the Principles of the Act (see page 9).

The Commissioners are available to anyone within the mental health service who feels they may need help or guidance. Carers, users, people who work in the care services, independent advocates or Named Persons are just some of those involved in the service that could contact the Commission if they are unsure or unhappy about any aspect of someone's care or treatment.

The Mental Welfare Commission has a free phone advice line for people who are concerned about their rights or the rights of others - you can call 0800 389 6809 during office hours to access this.

Incidentally, professionals who provide services and who require advice and information relating to their responsibilities can call 0131 222 6111 during office hours.

The Mental Welfare Commission web site can be found at www.mwscot.org.uk.

If you would like a detailed guide to the role of the Mental

Welfare Commission, a free booklet is available from UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ Tel: 01387 255330

Other safeguards

There are other safeguards in the Act. Some benefit all service users - not just those who are treated under the Act. These include:

- Service users and carers can request an assessment of the service user's needs. Health Boards and local authorities have a duty to respond to a request for assessment within 14 days. If they refuse a request for assessment, they have to give reasons for their decision.
- Health Boards have to provide services for children and young people (aged under 18) that are appropriate for their particular needs.
- Health Boards also have to ensure the provision of mother and baby units to allow a mother admitted to hospital for the treatment of post-natal depression to care for her child in hospital.
- Patients who are kept in higher levels of security than they require have a new right of review. This is particularly important for patients who are 'entrapped' at the State Hospital because of the lack of local medium secure units.

Information and Support

Notice that you should be supplied with all the information, and given the support you need, to participate as fully as possible in decisions regarding your care and treatment. Information should be presented in a form you can clearly understand.

If you have communication difficulties and need help (for example, translation services or signing) this should be provided. Services have certain legal duties to provide you with the support you need to access services under both the Race Relations Act and the Disability Discrimination Act.

12. Confidentiality of Patient's Information

The Data Protection Act (1998) ensures that information given by individuals to organisations is protected. This is an important issue and there are clear reasons for ensuring that a patient's personal information and medical details aren't divulged to third parties.

The basic principle is that unless a patient has given permission, hospital and other staff are obliged by law not to give out any information other than the most basic. Unfortunately this means they are unable to release information to people who may be desperate to understand what is happening to their friend or family member. But the law is very clear regarding this issue. They cannot talk to anyone unless the patient gives permission.

The patient can give a full or limited consent to the sharing of information with their carers. That is, they can give permission for all and any aspects of their care and treatment to be discussed, or they can say if there is some particular information about their illness or treatment that they don't want to be shared, while allowing other information to be passed on.

The best way to ensure that information can be given to a member of your family or to your carer, should you become too unwell to give nursing staff permission at the time, is to have your consent included in an Advance Statement lodged with your records at the hospital. This allows you to choose who the nursing staff should contact and can talk to if you are unwell in the future.

A comprehensive guide to all aspects of patient confidentiality can be found on the NHS Scotland website at: www.confidentiality.scot.nhs.uk/publications/6074NHSCode.pdf

13. Carers and their role

The Scottish Executive has recognised that the shift to providing more mental health care and treatment in community settings has increased the already important role of carers - and highlights the need for such carers to be given timely and effective support, and to have their voices heard.

There may be some confusion as to who qualifies for the title of "carer". However, the law in Scotland is very clear on this point.

The Mental Health Act 2003 states that any person whose paid job it is to provide care to a service user cannot be defined as a carer. The Act also states that a paid or unpaid employee of voluntary organisations is not a carer. A carer is not, for example, a Community Psychiatric Nurse (CPN), a home help or a supporter if they are providing care as part of their job.

The Act states that a carer for a service user is a person who provides, on a regular basis, a substantial amount of care for, and support to, the service user. They can, but don't have to be a relative. Nor do they have to live with the person they support.

Carers can be spouses, relatives, friends or neighbours. In some cases, they may not even recognise themselves as carers, as such, though the care they provide is often an essential part of the overall care received by a person with a mental illness, learning disability or other mental disorder.

A carer is not the same as the Named Person, who has other rights to receive specific information and take part in mental health tribunals. However, a carer can become a Named Person if the service user nominates them to take on this role, and they agree.

Carers do not have the same role as an independent advocate. The Act gives the service user the right of access to independent advocacy. An independent advocate is there to express the views of the service user and should not express their own views and opinions about a person's treatment. A carer may well express their own views and opinions and can add another perspective to discussions about the care and treatment of the service user.

Who is the primary carer?

The primary carer is the person who provides all or most of the care and support for the service user. If there are two or more such carers providing roughly equal amounts of care and support, they must decide between themselves who is the primary carer. This is because, under the Act, the primary carer has specific rights that cannot be shared.

14. Carer's Rights under the Act

The views of carers must be taken into consideration as much as possible when decisions about the service user's care and

treatment are made. Anyone involved in the care and treatment of the service user must provide carers with the information they need to provide effective care. However, as already discussed in Confidentiality of Personal Information (see page 22), the carer will not receive any information that the service user does not want to be given to them.

Carers have the right to attend a Mental Health Tribunal and present relevant information, but only if the Tribunal considers the carer to have an interest in the application being considered.

A carer has a right to ask their local authority to carry out an assessment of the service user's needs. The local authority has a duty to carry out the assessment within fourteen days of the request. If it does not it must let the carer know within this time whether they or the Health Board will carry out an assessment. If the local authority decides not to carry out an assessment they must give their reasons for this.

A carer may be notified by a police constable that the person they care for has been removed to a place of safety because they have a mental disorder and are in immediate need of care and treatment.

The Act requires that the primary carer has the right to be notified by hospital management when the service user they support is going to be transferred to another hospital in Scotland under the Act. Unless this transfer is urgent (in which case they should be notified as soon as possible after the transfer) they have the right to be informed at least seven days beforehand.

15. If things go wrong...

Best intentions are all very well, but inevitably there will be times when care and treatment fails to meet the required standards as set down in the guiding principles. Equally, a few health professionals still do not seem to be fully aware of the guiding principles of the Act.

As the Scottish Executive stated in their introduction to the Act, making sure people with mental disorder can receive effective care and treatment “depends on more than what the Acts says. It also depends on the policies, practices and actions of a wide range of organisations and individuals, and on how well they work together.”

If you are a compulsory patient and don't think the principles set down in the Act are being applied to your care and treatment, whether by an individual or organisation, then you should discuss your concerns with your Mental Health Officer (MHO), or Responsible Medical Officer (RMO).

You may want some help from an Independent Advocacy Service, who can provide support and help you get your views across.

You might also wish to discuss your concerns with UCI. We can offer further information and advice on an individual basis.

You can also contact the Mental Welfare Commission for Scotland who can provide you with free information and advice. If they agree that the principles are not being applied in your case, they can take this up with the health professionals providing your care.

If you are still unhappy with your care and treatment as a compulsory patient, you can appeal to the Mental Health Tribunal

for Scotland. Notice that the Tribunal only considers matters relating to compulsory patients.

16. Mental Health Tribunals

The Mental Health Tribunal for Scotland is an independent organisation introduced by the Mental Health Act 2003. Its creation marked a fundamental change in the way decisions are made about long term compulsory care and treatment of people in Scotland who have a mental health disorder. It aims to provide a responsive, accessible, independent and impartial service. Its role is to make decisions about your care and treatment – but only if you are subject to compulsory powers under the Act.

We would stress that all patients (and their named persons) are eligible for non-means tested legal aid for proceeding before the Tribunal. Your solicitor, advocacy worker or Citizen’s Advice Bureau can advise you further.

The Mental Health Tribunal hears cases by means of numerous mental health tribunals held in venues across Scotland. Each of the tribunals has a panel of three members – legal, medical and general. The legally qualified member will chair the hearing. Medical members are psychiatrists. General members are people with some special interest in mental health including nurses, social workers, psychologists and service users and carers. All have relevant qualifications and experience in dealing with people with mental health disorders.

None of the panel should have had any previous connection with the service user.

Tribunals should be as informal and comfortable as possible for all those concerned, in order to encourage them to participate

in the proceedings. They will listen to all those they believe are involved in the welfare of the individual concerned. They look at all the relevant information in order to decide what care and treatment is in the best interest of the service user.

Tribunals consider the following types of proceedings:

- appeals to the Tribunal from patients or Named Persons, e.g. appeal against a short-term detention certificate,
- applications to the Tribunal, e.g. compulsory treatment orders (CTO),
- references to the Tribunal, e.g. from the Mental Welfare Commission,
- reviews by the Tribunal, and
- cases remitted to the Tribunal by the Sheriff Principal or the Court of Session.

Appeals, applications and reviews

If you are unhappy with your Compulsory Treatment Order, you have the right to ask the Mental Health Tribunal to review it. Your Named Person can apply independently to the Mental Health Tribunal for a review of your case, on your behalf.

Remember that both you and your Named Person are entitled to free legal advice and assistance to help with this. A solicitor can help organise your appeal for you.

If you don't have a solicitor, then you can telephone or write to the Tribunal Administration. Contact details are on page 33. Tell

them you would like to make an appeal against your order. They will advise you if this is possible, and how you should go about it.

You will need to provide the Tribunal Administration with details of your name, the name of your doctor and the hospital in your order. You may find it helpful to have your Named Person, independent advocate or legal representative help you with this.

If a Mental Health Officer thinks that you need compulsory treatment for more than 28 days, he or she will make an application to the Tribunal.

If you are already subject to a Compulsory Treatment Order, your Responsible Medical Officer might apply to the Tribunal for changes to your care and treatment plan. The Tribunal is required to review your case at least once every two years.

The Tribunal will also consider your case if you are in hospital as a result of criminal proceedings. Your Responsible Medical Officer might apply to the Tribunal for changes to your care and treatment plan and you and/or your named person can ask the Tribunal to review your case.

You can also ask the Tribunal to review your case if you think you are being held in conditions of greater security than you think are necessary. This right to review will only apply to people in the State Hospital in Carstairs.

If the Mental Welfare Commission has concerns about your care or your Order, it can refer your case to the Tribunal for consideration.

Before the hearing

You and everyone else may agree with the changes or extensions to your care and treatment that are being asked for. In these circumstances, the Tribunal can consider your case without asking everyone to be present and give their views. However, if there is disagreement a hearing must be held.

Before you attend a hearing, the Tribunal Administration team will send you information about the time and place of the hearing, and will send you copies of any relevant reports or papers. If you have any questions about the hearing, you can contact the Tribunal Administration.

The hearing will usually be held in a place near you. Your local authority and Health Board will have made suitable accommodation available for hearings. This could be in a local hospital or other facilities. However, in some cases all or part of a hearing may be held via a video or telephone link.

You may be able to claim your travel and other expenses. The Tribunal Administration will give you information about this and you can speak to the clerk on the day about getting these paid.

If you have a Named Person, welfare guardian or welfare attorney they will also be invited to attend. Any other person with an interest, who the Tribunal thinks should be allowed to speak, will be invited to attend the hearing. This might include your carer, independent advocacy worker or community psychiatric nurse.

Your Responsible Medical Officer, Mental Health Officer, and possibly your General Practitioner may also be invited to the hearing. If your RMO or MHO is making an application, it is expected that he/she will be present at the hearing.

Curator ad litem

In some circumstances, the Tribunal may appoint a solicitor to act as your curator ad litem - to represent your interests in the proceedings. This might be where you don't have anyone else who can represent your interests, or don't have the capacity to instruct your own solicitor. This differs from the usual solicitor's role, which is to act only on the client's instructions.

How a hearing is conducted

When you arrive, the tribunal clerk should show you where the waiting room, hearing room and other facilities are situated.

The convenor of the tribunal will explain the rules about the hearing, why it is taking place and what will happen.

During the course of the hearing, people involved in your care and treatment will make their views known, and present information relevant to your case. The three members of the tribunal will read, listen to and discuss the information as it is presented.

If the hearing is about an application for a Compulsory Treatment Order, the papers will include reports from two doctors and from your Mental Health Officer. For other hearings the papers will usually include a report from your Responsible Medical Officer and sometimes a report from your MHO.

The tribunal's decision

The tribunal will try to reach a decision on the day of your hearing. If a decision cannot be made, the hearing will carry on at a later date. In some circumstances an interim order can be made to

ensure that you get the care and treatment you need until a final order is put in place.

The tribunal may let you know its decision at the end of your hearing, or may send its decision to you in writing after the hearing. The tribunal will also let the parties and any relevant people identified by the panel know about their decision. A copy of the decision will also be sent to the Mental Welfare Commission. If your case came to the tribunal through the court system, a copy of the decision will also be sent to the court.

If you're unhappy with the decision.

If you are unhappy with the tribunal's decision, you may be able to appeal to the Sheriff Principal and then to the Court of Session for a review of their decision. The tribunal will tell you about this when they give you their decision.

Contact details

The Tribunal Administration is based in Hamilton, Lanarkshire. All communication and papers should go through that office.

Mental Health Tribunal for Scotland

1st Floor, Bothwell House, Hamilton Business Park, Caird Park

HAMILTON ML3 0QA

Telephone: 01698 390 000

Service user and carer freephone: 0800 345 70 60

website: www.mhtscot.gov.uk

User And Carer Involvement

Kindar House, The Crichton, Bankend

Road, Dumfries, DG1 4ZZ

Tel: 01387 255330

Email: info@userandcarer.co.uk

Web: www.userandcarer.co.uk

NSF (Scotland)

2 Gordon Street, Dumfries

DG1 1EG

Tel: 01387 255072

Email: nsfdgclo@aol.com

Web: www.nsfscot.org.uk

Alzheimer Scotland

1 Gordon Street, Dumfries

DG1 1EG

Tel: 01387 261303

Email: DumfriesServices@alzscot.org

Web: www.alzscot.org

SAMH**(Scottish Association for Mental Health)**

Cumrae House

15 Carlton Court, Glasgow

G5 9JP

Tel: 0141 568 7000

Email: enquire@samh.org.uk

Web: www.samh.org.uk

Princess Royal Trust for Carers

2-6 Nith Street, Dumfries

DG1 2PW

Tel: 01387 248600

Email: dgalcarers@btopenworld.com

Web: www.carers.org

Dumfries & Galloway Council

Council Offices

English Street, Dumfries

DG1 2DD

Tel: 01387 260000

Email: CIS@dumgal.gov.uk

Web: www.dumgal.gov.uk

D&G Citizens' Advice Bureau

81-85 Irish St., Dumfries

DG1 2PQ

Tel: 01387 252456

Web: www.cas.org.uk

People's Advocacy And Support Service

Buccleuch Street, Dumfries

DG1 2AT

Tel: 01387 247237

Email: passdirect@advocates.fsnet.co.uk

Disability Alliance

88-94 Wentworth St., London

E1 7SA

Tel: 0207 2478776

Email: office.da@dial.pipex.com

Web: www.disabilityalliance.org

Scottish Executive

St Andrew's House

Edinburgh

EH1 3DG

Tel: 0131 556 8400

Web: scotland.gov.uk (Mental Health)

Mental Welfare Commission for Scotland

Floor K Argyle House

3 Lady Lawson St

Edinburgh

EH3 9SH

Tel: 0800 389 6809

Web: mwcscot.org.uk

Email: enquiries@mwcscot.org.uk

GLOSSARY

This section provides a brief introduction to some of the people, organisations, orders and other matters described in greater detail in this booklet.

Act (the): The Mental Health (Care and Treatment) (Scotland) Act 2003.

Advance Statement: sets out how a person would wish to be treated if they become unwell and unable to express their views at some point in the future.

Carer: any person who provides, on a regular basis, a substantial amount of care for and support to a service user – but not as part of their job.

Compulsory Treatment Order: lasts for 6 months initially, but can then be extended. It can be based in a hospital or in the community.

Curator ad litem: a solicitor appointed to represent a person who, in the opinion of the Mental Health Tribunal, is unable to make decisions for themselves.

Emergency detention: when a person is detained in hospital for up to 72 hours while their condition is assessed.

Independent Advocacy: a free service open to every person with a mental disorder. Can help in many ways from supporting a service user at a mental health tribunal to helping with housing problems.

Mental Disorder: a term used in the Mental Health Act to cover mental illness including dementia, learning disability or personality disorder.

Mental Health Tribunal: makes decisions about the care and treatment of those who are subject to compulsory powers under the Mental Health Act.

Mental Health Officer (MHO): a social worker who deals specially with people with mental disorder, and has particular duties under the Act.

Mental Welfare Commission: protects the rights and welfare of everyone with a mental illness or learning disability – activities include monitoring how the Mental Health Act is working, encouraging best practice, publishing information and guidance, and carrying out visits to patients.

Named Person: chosen to represent a service user's interests should they be subject to compulsory treatment under the Mental Health Act.

Nurse's Holding Power: a patient receiving treatment on a voluntary basis who decides to leave hospital can be held for up to 2 hours to allow a doctor to come and assess them.

Personal Statement: explains what a person would like done (other than treatment – which is covered in an Advance Statement) if they become unwell in the future. For example, if they are taken into hospital, who will look after their pets?

Primary Carer: the person who provides all or most of the care and support for a service user.

Removal to place of safety: if someone in a public place appears to have a mental disorder and be in need of care and treatment, they can be taken by the police to a place of safety – preferably a hospital – for up to 24 hours for assessment.

Responsible Medical Officer (RMO): is a medical practitioner, usually a consultant psychiatrist, who is responsible for the service user's care and treatment.

Short-term detention: when someone is detained in hospital for up to 28 days.

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