

# **PE2108/B: Obtain a second medical opinion before detainment under the Mental Health (Care and Treatment) (Scotland) Act 2003**

## **Petitioner written submission, 25 July 2024**

The Short-Term Detention Certificate does not contain sufficient safeguards as the mental health officer is not independent of the Approved Medical Practitioner (AMP) and may too easily acquiesce. The AMP can easily ignore the named person's views too.

Once the certificate is in place, a determined Responsible Medical Officer (RMO) will not revoke it.

There needs to be safeguards against the opinions of someone like Zholia Alemi, a woman who faked a medical degree certificate to work as a psychiatrist.

<https://www.dailyrecord.co.uk/news/scottish-news/bogus-nhs-shrink-convicted-after-29226019>

A Mental Health Tribunal is not a fair hearing either. The RMO will be present to give evidence.

Learning Disability Alliance Scotland found in their 2016 survey that 98% of Mental Health Tribunals agreed with the psychiatrist.

### Outcomes from Mental Health Tribunal held in Scotland for Jan-Aug 2016

- Section: 63
- Brief Description: Application for Compulsory Treatment Order
- Total: 1378
- Granted: 1321 (98.2%)
- Refused: 24 (1.8%)

In my view, at Mental Health Tribunals:

- There is no "equality of arms" between the patient and the treating psychiatrist and therefore too many people are subject to compulsory treatment.
- There is a presumption that the patient has a mental illness.
- A patient is likely to be heavily sedated and cannot properly represent themselves.

- The National Health Service (NHS) controls all the documentation. Therefore, they have more time to prepare and can also withhold information that is unfavourable to them.
- The constitution of the tribunal (a lawyer, psychiatrist and usually an NHS employee) is such that the diagnosis of the treating psychiatrist is less likely to be challenged than if they were drawn from the public.
- They are held in secret and can therefore not be scrutinised.
- Witnesses are not on oath and are thus more likely to make misleading statements.
- The Limited Review of the Mental Health (Care and Treatment) Act 2003 (published in 2009) describes the quality of legal representation as poor.
- Tribunal members are paid about £400 per day. It is possible that it might be in their financial interest for people to be on compulsory treatment.
- The tribunal too often functions as a tick box exercise where judicial process is seen to be done but is not really fair or proper. Usually, it seems to boil down to the opinion of the Responsible Medical Officer which the tribunal team will rarely go against unless the patient can afford to get another psychiatrist as an alternate expert. The cross-examination process is quite feeble and clinical judgements such as how an opinion on lack of capacity was made are not tested.

The Scottish Mental Health Law Review was not fit for purpose. I believe that the executive team had a vested interest in a very conservative outcome, with members being affiliated to, or employed by, large organisations like the Mental Health Tribunal for Scotland and the Mental Welfare Commission; organisations which are integral to the system that is supposed to be making improvements to itself for the benefit of the users.

Three people, including myself were banned from the Review “for being abusive”. I totally reject this allegation.

Users external to the system, that have more significant complaints, tended to be marginalised.

The Review states that there should be a reduction in coercion without explaining how this will be done.

I would like supported decision making to be the norm rather than substituted decision making.

