Advance Statements

Advance Statements are documents that are written when people are well. They can outline how a person would like to be treated if they become unwell. Mental health professionals must consider the wishes of the individual and, if the wishes cannot be upheld, a written reason must be given.

All Advance Statements must be witnessed by someone who can confirm that the individual understands what it is they have written. The witness must be someone who has a professional capacity in the care and treatment of the person.

The Advance Statement must then be lodged with the relevant NHS Board and placed within the patient's record. The Mental Welfare Commission (MWC) will be notified of its existence and where it can be found. The Commission's Advance Statement register can be accessed by mental health professionals and individuals acting on behalf of the patient (including their advocate, solicitor, named person, guardian or welfare attorney).

The Mental Welfare Commission have a comprehensive guide to advance statements, which can be found here: https://www.mwcscot.org.uk/law-and-rights/advance-statements

Least Restrictive Security

One of the main principles of the 2003 Act is that people are treated in the least secure environment necessary. The new Mental Health (Scotland) Act 2015 allows people who are in a High Secure and Medium Secure Hospitals to appeal against excessive security.

Forensic Network

8. Mental Health Tribunals & Patient's Rights

The Mental Health Tribunal for Scotland was created under the Mental Health (Care and Treatment) (Scotland) Act 2003 as a judicial body to make decisions regarding people with a mental disorder, including those convicted of an offence.

What Does the Tribunal Do?

The Tribunal is responsible for granting and renewing various compulsory measures for the detention, care and treatment of people in Scotland who have a mental disorder.

The Tribunal will look at the cases of all people who enter the mental health system involuntarily. People may come into the mental health system through psychiatric services, or through the criminal justice system.

The Tribunal decides which section of the Mental Health Act is most suitable for that person and has the power to put various orders into place, or to revoke them.

A Tribunal panel is made up of three people:

- A legally qualified convener
- A medical member
- A general member

All Tribunals are held in private; a clerk is there to explain the procedures to people and answer any questions in relation to the manner and order of the proceedings.

Evidence is then taken from all parties; this can be oral or written. The panel will listen to all evidence and may ask questions to obtain the information they require before they can decide. Once a decision has been reached, this is usually given orally in the first instance, and a written decision will follow with a few days.

The principles of the 2003 Act require that:

- The past and present wishes of the patient are considered
- The views of the patient's named person, carer, guardian or welfare attorney are considered
- The patient participates as fully as possible, with access being provided to as much information and support as is necessary
- A range of options for the patient must be explored (maximum benefit, and least security)

Mental Health Tribunal contact details: 0800 3457060 or visit www.mhtscotland.gov.uk

The Tribunal must put the patient at the heart of the Tribunal process in that:

- All principles must be adhered to
- Advance statements must be considered
- The named person must be able to present evidence, and act in the best interests of the patient
- The guardian, welfare attorney, primary carer and any other relevant person must have the right to be heard at the Tribunal
- The patient must have access to independent advocacy
- The patient has a right to legal representation (as does the Named Person)

Patient's Rights

Personal Statements

Personal Statements are different from Advance Statements, as these statements do not need to be witnessed, but it is a good idea to date them. Personal statements can often be inserted alongside an Advance Statement. A Personal Statement allows the individual to state who it is they would like to be informed about their care and treatment, and who they would like to be involved and at what point.

This can be very useful if it is likely that, due to illness, the person is likely to say he does not want certain people involved. They allow people to provide information about mail, pets, their home etc.