



## What is a mental health officer?



Mental health officers (MHOs) are social workers with a minimum of two years post qualifying experience who have gained the Mental Health Officer Award (MHOA), which prepares experienced social workers to undertake the statutory role. MHOs have a unique role in supporting and protecting people vulnerable because of mental disorder. MHOs may have to assess whether someone:

- is detained under the Mental Health (Care and Treatment) (Scotland) Act 2003
- lacks capacity to manage their own Welfare or Finances or both - under the Adults with Incapacity (Scotland) Act 2000

Their duties include:

- protecting health, safety, welfare, finances, and property
- safeguarding of rights and freedom
- duties to the court
- public protection in relation to mentally ill offenders.

MHOs are involved in the assessment of individuals experiencing mental disorder who may need compulsory measures of care, treatment and in some cases, detention. The role carries considerable autonomy and responsibility and involves working alongside medical and legal professionals.

## What do MHO's do?



MHOs have duties under the Mental Health (Care and Treatment) Scotland Act 2003 and the Adults with Incapacity (Scotland) Act 2000. MHOs have a wide range of specific tasks which include:

- Consideration of consent for anyone who is to be assessed or treated in hospital under an Emergency or Short- Term Detention Certificate.
- We write Social Circumstances (SCR's) reports which are for the Responsible Medical Officer (RMO) and the Mental Welfare Commission.
- Applying to the Mental Health Tribunal for Scotland Service in circumstances where it is assessed that someone may require a period of further detention under a Compulsory Treatment Order.
- Provide supervision if you are subject to compulsory measures –Adults with Incapacity (Scotland) Act 2000 or The Criminal Procedures (Scotland) Act 1995 – Part VI
- Provide supervision if you are subject to compulsory measures • Providing evidence at Tribunal Hearings
- Undertake inquiries where someone may be at risk
- Advising individuals of their rights (including the right to an independent advocacy worker and legal representation)
- Identifying a named person and completing the necessary paperwork to support this.
- Make applications and provide assessments and reports for the Sheriff Courts when use of the Adult with Incapacity (Scotland) Act 2000 is being considered such as Welfare Guardianship or Intervention Order – where this is needed and nis not being done by someone else.
- Write statutory reports to support private Guardianship Applications, including a view on the suitability of a proposed Guardian, and Intervention Orders.
- Complete assessment and prepare reports for Court, Tribunal and Scottish

- Ministers.
- Investigate complaints made against Private Welfare Guardians.
- Providing advice for other professionals, users of services and carers about the use of mental health legislation.
- MHOs are accountable to the local authority that employs them, but their assessments are independent. They are also independent of health service staff but work closely with colleagues from a range of disciplines.
- MHOs carry out a range of roles as required in the Mental Health (Care & Treatment) (Scotland) Act 2003, (as amended by MHA 2015), Adults with Incapacity (Scotland) Act 2000, and Criminal Procedures (Scotland) Act 1995

## Where key pieces of legislation overlap



The Mental Health (Care and Treatment) (Scotland) Act 2003, the Adults with Incapacity (Scotland) Act 2000 and the Adult Support and Protection (Scotland) Act 2007. These three Acts form a network to support and protect people with mental disorder.

The 2000, 2003 and 2007 Act requires the principles to be applied when deciding which measure will be most suitable for meeting the needs of the individual. Any person or body taking a decision or action under the Act must be able to demonstrate that the principles in sections 1 and 2 of the 2007 Act, sections 1 of the 2003 Act and section 1 of the 200 Act.

The principles in section 1 require that any intervention in an adult's affairs under Part 1 of the Act should:

Provide **benefit** to the adult which could not reasonably be provided without

intervening in the adult's affairs; and  
be the option that is **least restrictive** to the adult's freedom.

### **Principles for performing functions all Acts say we must consider: -**

The views and feelings of the Adult  
The views of others  
The importance of the Adult participating as fully as possible

### **The 2000 Act**

**Protects the welfare, finances, and property of an adult incapable because of mental disorder.** It provides the authority to treat mental disorder under section 47 part 5 of the Act. It does not provide compulsory powers and certain medical treatments are out with the extent of the Act, particularly those found within the 2003 Act. It allows the local authority, where necessary, to apply for guardianship to safeguard and protect the adult's welfare and/ or financial interests.

**Primarily supports and protects adults with:** Dementia; intellectual disabilities; adults with alcohol related brain damage; adults with acquired brain injury and some adults with severe and enduring mental illness.

**The 2000 Act does not have emergency powers** for example, it has no warrants for entry or removal. This is where consideration should be given to the 2003 and/or 2007 Act.

### **The 2003 Act**

Has provisions across health, safety, and welfare risk – it both supports and protects; provides treatment and care; gives greater rights to services; provides a range of powers in response to risk to an adult or the safety of other persons.

It also specifies a range of special criminal offences (Part 21) where mentally disordered adults are open to sexual exploitation, abuse, ill treatment, and neglect.

**The 2003 Act, has no civil powers against harmers** such as the ability to ban (now in the 2007 Act, S19 Banning Order), nor has it the power to manage property or finances (like Guardianship s,57 the 2000 Act) Where it is clear under after inquiry/ assessment under the 2003 Act, action can proceed through the 200 or 2007 Act, where necessary)

**Compulsory Powers under the 2003 Act:** A short-term detention certificate (STDC) (s.44); an emergency detention certificate (EDC) (s.36) and a Compulsory Treatment Order (CTO) (s63).

Depending on the needs of the adult and level of risk, these can be applied for in isolation of each other or applied consecutively.

They may also follow inquiry and investigation.

## **The 2007 Act**

The 2007 Act has a range of duties and powers to protect an adult at risk. These include investigation and the banning of harmers from being in an adult at risk's premises. The 2007 Act must be viewed in context with the 2000 and 2003 Act.

The 2007 Act lacks the power to provide care and treatment or protect welfare and finances on a long-term basis. The 2007 Act is designed primarily to respond to risk from others and its primary power is a banning order. The 2007 Act highlights the range of risk that is covered across the Acts, i.e., from others, from self to personal welfare, to health, to property and finances, and to others. It includes types of harm such as from self, self-neglect, or lack of self-care.

In crossing the Acts, the primary common criterion to access any of the primary Acts is 'mental disorder' this is because it features in the criteria of each of the primary Acts as it affects adults.

## **References:**

Keegan, T. (2011) . Crossing The Acts. The Support and Protection of Adults at Risk with Mental Disorder, Across the Scottish Legislative Frameworks for Key Practitioners. The British Association of Social Workers.