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Dear Maureen Watt

3<sup>rd</sup> June 2015

**Re: Proposed Health Bill**

I hope this letter finds you well.

I read recently of Government plans to introduce a Health Bill which – among other things – will make it a statutory offence to smoke in the vicinity of hospital buildings. VOX is Scotland's national mental health service user-led organisation and works in partnership with mental health and related services to enable service users to contribute positively to changes in the services which serve them and wider society. VOX and its members take a strong interest in the Government's legislative programme, and we feel that the interests of our members – and society as a whole – would be better served if the exemption from any smoking ban for the grounds of mental health facilities identified in *Creating A Tobacco Free Generation* (2013) remains in place. Page 27 of *Creating A Tobacco Free Generation* states that:

*All NHS Boards will implement and enforce smoke-free grounds by March 2015. Smoke-free status means the removal of any designated smoking areas in NHS Board buildings or grounds. We will work with Boards to raise awareness of the move to smoke-free hospital grounds. **This action will not apply to mental health facilities.** [Emphasis added]*

We have consulted widely among our members on this issue and draw your attention to the following considerations:

**1)** Patients are admitted to psychiatric hospitals for mental health - rather than physical health - reasons and forcing a smoker patient to endure nicotine withdrawal while in hospital will only amplify their mental and emotional distress, delay their recovery and undermine staff-patient therapeutic relationships. Including the grounds of mental health facilities in your proposed Bill may also discourage individuals from seeking hospital support on a voluntary basis, and will also increase patient anxieties over hospital visits if they know they will be forced to renounce smoking while in hospital. Medication levels for patients who resume smoking on discharge will also require close monitoring and adjustment and this will require additional resources if patient safety is to be protected.

**2)** Current addictions research confirms that smokers are more likely to permanently abjure smoking when they (a) make a conscious and voluntary decision to do so (b) select a suitable date to become smoke-free, and (c) receive full support from family, friends and workmates. Such conditions will not obtain during enforced hospital stays.

**3)** Article 8 of the European Convention of Human Rights (ECHR) enjoins respect for private and family life and our members feel that the right to smoke constitutes a core part of their private life. If patients are to exercise this right in a meaningful way, they will have to be escorted off hospital premises by NHS staff (requiring the provision of additional resources) and if such support is not provided, Scotland may be in breach of the ECHR. We remind you of Lord Stewart's August 2013 ruling on Article 8 which confers "*a fundamental right... to have your identity, how you choose to express it and other personal, private and intimate choices, whatever they may be, respected.*"

**4)** Our members further contend that Lord Carloway's August 2014 ruling in *McCann vs State Hospitals Board* does not apply outside of State Hospital Carstairs for the following reasons:

- Lord Carloway's ruling concentrated entirely on the issue of smoking within the grounds of the State Hospital Carstairs, a point stressed 48 times within his ruling and by reference to comparable English institutions (e.g. Ashworth, Rampton). We therefore contend that his ruling does not apply to other inpatient environments, including medium- and low-security facilities.

- Lord Carloway justified his ruling in favour of a comprehensive smoking ban in the State Hospital on the grounds of the State Hospital Board's right and duty to "manage" the State Hospital as defined by section 102 of the NHS (Scotland) Act, 1978. However, the authority to "manage" other psychiatric facilities (i.e. low- or medium-security hospitals) derives from other sources, so Lord Carloway's interpretation of the 1978 Act does not apply to settings falling outwith the 1978 Act.

**5)** Our members also believe that a comprehensive smoking ban will undermine key principles underpinning the 2003 Mental Health (Scotland) Act, which include the importance of maximum participation and the least restrictive alternative as well as general respect for diversity. It is difficult to equate 'the least restrictive alternative' with a law which converts smoking in the open air into a criminal offence and which is strongly at variance with the exemption for mental health facilities identified as recently as 2013.

For the reasons noted above, VOX and its members believe that the smoking ban exemption for the grounds of mental health facilities specified in *Creating A Tobacco Free Generation* should remain in place even if the new Health Bill is passed, and we politely request that a clause to this effect is inserted into the proposed legislation. We strongly believe that the existing arrangement which permits patients to smoke in the grounds of mental health facilities represents a judicious and humane approach to a complex issue, while demonstrating full respect for diversity and individual rights. We enclose the research materials on which the above points are based, and welcome the opportunity to discuss these matters further with you at any time.

Yours sincerely

Joyce Mouriki, MBE  
Chair, Voices of Experience

cc: Geoff Huggins, Head of Mental Health and Protection of Rights Division, Scottish Government