

Justice Committee

Community Justice (Scotland) Bill

Written submission from the Care Inspectorate

The Care Inspectorate is the official body responsible for inspecting standards of care in Scotland. That means we regulate and inspect care services, including services for offenders and former offenders, to make sure they meet the right standards. We also carry out joint inspections with other scrutiny bodies to check how well different organisations in local areas are working together to protect and support adults and children.

As well as regulating care services in Scotland, we have a statutory responsibility under section 53 of the Public Services Reform (Scotland) Act, 2010 to inspect social work services, including criminal justice social work. We help ensure social work services meet high standards. We provide independent assurance and protection for people who use services, their families and carers and the wider public.

In addition, we play a significant role in supporting improvements in the quality of services for people in Scotland. We already undertake particular roles in relation to scrutiny and improvement in criminal justice social work. For example, The Care Inspectorate provides a quality assurance role in Serious Incident Reviews (SIRs). SIRs should be carried out: 1. when an offender on supervision or licence may be charged with carrying out a criminal offence which results in death or serious harm to someone else, 2. When there may be significant concerns about the way such an offender is being supervised and 3. When an offender on supervision has died or been seriously injured in a circumstance likely to generate significant public concern.

Each time a serious incident occurs, local authorities must notify us within five working days. We quickly share that information with the Scottish Government, and we require the local authority to review the incident. We look at how reviews have been conducted and whether these have been undertaken in a robust and meaningful way. The Care Inspectorate provides a written response to local authorities commenting on the review conducted. This process enables us to recognise and share strengths in practice, but also where there is room for improvement. The role of the Care Inspectorate is not to undertake the review or become involved in any actions identified by local authorities. The Care Inspectorate can however provide a 'supporting improvement' role if this is requested by a local authority. The Care Inspectorate is required to produce a biennial national report on SIRs. Our first [report](#) covering the period January 2012 to May 2013 was published in August 2013. The second, follow-on report covering the period June 2013 to January 2015 will be published in September 2015.

In 2013/14 we led a supported self-evaluation exercise in the use of a new assessment and case planning instrument called LS/CMI to examine how effectively this tool had been introduced across Scotland's criminal justice social work services. This work was completed in 2014/15 and the findings published in August 2014 in a report entitled '[Improving Assessment and Case Management in Criminal Justice Social Work](#)'.

We are currently working with Her Majesty's Inspectorate of Constabulary in Scotland (HMICS), undertaking a review of the multi-agency public protection arrangements (MAPPA) in all community justice partnership areas in Scotland to examine how effectively these are working.

We are therefore very pleased to respond to this consultation and would be delighted to offer the Justice Committee oral evidence in any area it wishes.

We consider that the Community Justice (Scotland) Bill would benefit from greater clarity about the role of the Care Inspectorate and other scrutiny and improvement bodies, so the relationship between our work and Community Justice Scotland is clear. There are a range of different possible relationships, some of which are set out here, so it is important that roles and functions between these bodies are clearly described and not misunderstood by community justice partners, key stakeholders and communities. The Care Inspectorate and other bodies have had helpful discussions with the Scottish Government about the respective roles of different partners, including the development of self-evaluation frameworks and multi-agency scrutiny. This is important because the detail of their respective scrutiny and improvement and quality assurance functions must be clear. There are a number of areas where the Care Inspectorate is keen, and able, to support the implementation of the Bill and its associated aims.

While the Bill refers to quality assurance responsibilities to be held by community justice partners, in our opinion it is not clear whether those expectations include the quality assurance of Community Justice Scotland itself. Independent scrutiny of Community Justice Scotland would be helpful to ensuring quality of performance in leadership, strategy and direction, how this impacts upon the achievement of outcomes in the national performance framework, and the performance of community justice overall. It would also provide public, parliamentary, and ministerial assurance.

While the policy memorandum at paragraph 58 suggests that Community Justice Scotland might provide independent assurance to Scottish Ministers on how community justice outcomes are being delivered, it is less clear how such independent assurance of its own performance could be achieved. The Care Inspectorate is keen to assist in this regard. Our knowledge and understanding of the importance of effective strategic leadership from past and more recent inspections and reviews suggests that any comprehensive scrutiny arrangement would require to examine and report on the performance of the national body, as well as local partners. Our ability to offer such assurance stems from our experience and expertise, including strategic inspections of children's services and care and health for adults. The quality and effectiveness of services provided to adults may have a direct impact on improving outcomes for children and young people who they may be caring for. Therefore, it is important not to look at models of inspection of other areas in isolation from each other. This would hold true for services provided to women offenders.

Paragraph 66 of the policy memorandum states the national performance framework will include scrutiny and inspection arrangements. It would be helpful if the Bill clarified further the role that the Care Inspectorate will undertake around scrutiny and improvement, in order to balance the need for effective independent scrutiny and the principles of public sector scrutiny set out in the Crerar Review.

Finally, the Bill would benefit from greater clarity about roles and responsibilities of the various bodies, including community justice partners and how any conflicting approaches will be mediated.

1. Will the proposals in the Bill transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report, such as addressing the weaknesses identified in the current model, tackling reoffending and reducing the prison population?

In our opinion, the Bill makes helpful references to early intervention and prevention approaches, but we would like to see more detail on intentions, expectations and models of good practice to strengthen this important aspect of the Bill. As it stands, it is difficult to see how effectively the new model could impact on levels of re-offending and on the prison population, as envisaged by the Commission on Women Offenders. The national strategy and planning partners' corporate plans are crucial to driving forward preventative approaches.

At this stage, what preventative services should look like and how much capacity exists to deliver them remains unclear. We are aware of a number of approaches which have proven to be effective in prevention and early intervention, including the whole systems approach, mentoring and projects such as the Turning Point 218 women offenders' service project. Our inspection evidence suggests that the way in which approaches are implemented are of as equal importance as the approaches themselves.

We consider the definition of 'community justice' within the Bill does not fully encapsulate the importance of reintegration from prison to community to support reduction of re-offending. Nor does it focus sufficiently well on preventative and early intervention services and alternatives to prosecution, as outlined by the Commission. It is essential that the national performance framework covers all aspects of offender management in the community, including pre-release and diversionary approaches. In our opinion, explicit expectations and standards, particularly in relation to women offenders and young offenders, would help to strengthen the Bill.

2. Are you content that the definition of 'community justice' in the Bill is appropriate?

We have made some reference to this in the preceding question and would offer the following additional points.

The policy memorandum is extremely helpful in starting to set out the detail of the way ahead and objectives. Characteristics within the policy memorandum are the

cornerstone of the restructure. Planning, strategy and the performance framework need to build upon these and should be a golden thread linking all parts of the approach. In our opinion, these crucial aspects do not come through as strongly in the Bill or other associated documents, as they do in the policy memorandum.

3. Will the proposals for a new national body (Community Justice Scotland) lead to improvements in areas such as leadership, oversight, identification of best practice and the commissioning of services?

We consider that the national performance framework will be crucial in driving progress. It is vital that key stakeholders, including the Care Inspectorate and other relevant scrutiny improvement bodies, are involved in the development of this process. We do consider that the reforms have the potential to deliver more effectively in terms of leadership, direction and best practice.

The learning hub is a crucial element that has the potential to support change and improvement. The Care Inspectorate's experience of promulgating learning within the criminal justice sector, and supporting improvement more widely in the social work/social care services could play a significant role. The four key activities seem sound and appropriately focused. The resourcing and funding of this is a key component to enable effective delivery.

The policy memorandum helpfully begins to explore the issue of strategic commissioning, and the importance of this is well recognised and reflected. It would also be helpful if the need and expectation for a commissioning strategy was more explicit. It is important to note that, in terms of sections 54-56 of the Public Bodies (Joint Working) (Scotland) Act, 2014, the Care Inspectorate already has responsibility through joint inspection with Healthcare Improvement Scotland to report on progress in establishing joint strategic commissioning arrangements and early impact of implementation of integration of health and social care by a local authority, health board or Integrated Joint Board from 1 April 2017. This work will also involve the Accounts Commission/Audit Scotland.

The Bill proposes that relevant data regarding multi-agency public protection arrangements should be reported to Community Justice Scotland, however, additional information on how this will align with other reporting processes, including the national performance framework, would provide clarity.

The on-going national thematic review of MAPPA in Scotland, which is being undertaken by the Care Inspectorate and HMICS, will be published in November of this year. This will make reference to the effectiveness of areas including leadership, oversight and delivery of key processes and best practice which should inform future decisions on public protection arrangements.

4. Taking into account the reforms set out in the Community Empowerment (Scotland) Bill relating to Community Planning Partnerships, will Community Justice Partners have the powers, duties and structures required to effectively perform their proposed role in relation to community justice?

We recognise that the role of Community Planning Partnerships is detailed elsewhere, however we think it would be helpful if it were laid out more clearly in the policy memorandum. There is no specific reference to Community Planning Partnerships in the Bill and we feel this raises questions about whether this will support a sufficiently clear and consistent understanding of their role in key areas, including governance, planning, performance monitoring, strategic leadership and direction-setting.

The financial memorandum indicates funds to be set aside to help Community Planning Partnerships with transition into their new role. Guidance and direction on expectations regarding key factors to aid transition may also be of assistance in ensuring a flexible but consistent approach and understanding across Scotland.

The policy memorandum helpfully starts to encapsulate the role under the Community Empowerment (Scotland) Bill for Community Planning Partnerships and how this fits with community justice partners. It would be helpful if the interface between Community Planning Partnerships, community justice partners and Community Justice Scotland was made more explicit with clear links to the overarching strategic planning function and governance arrangements. There is potential that how this is set out in related documents currently may cause confusion, misunderstanding and misinterpretation.

Paragraph 76 of the policy memorandum states that it expects Community Planning Partnerships and community justice partners to consult with each other when preparing plans. We suggest further consideration is given to the fact that it could be the same group of officers that sit on both the Community Planning Partnership and the Community Justice Partnership. We also suggest careful consideration is required about transparency and lines of accountability in this event and how it can be assured that partners are supported in exercising their responsibilities by appropriate challenge and governance.

5. Does the Bill achieve the right balance between national and local responsibility?

Other than the points made in question four above, we consider national and local planning and reporting requirements to be clear. We would urge a note of caution, however, in relation to the readiness of Community Planning Partnerships to undertake the strategic needs assessments, local assets and resources planning required by paragraph 79 of the policy memorandum. To date, our joint inspections of children's services in Scotland have examined integrated children's services planning in 17 of the 32 Community Planning Partnerships across the country and have found significant variation in content and quality of Integrated Children's Services Plans and the effectiveness of integrated children's services planning. While there are some beacons of good practice, we are already sufficiently confident to say that integrated children's services planning is an area which requires improvement nationally.

We note that community engagement and involvement are seen as key to success. We suggest it would be helpful for this to be more explicit within the Bill, with expectations and responsibilities clearly outlined.

6. Will the proposed reforms support improvement in terms of: (a) leadership, strategic direction and planning? (b) consultation and accountability? (c) partnership and collaboration? (d) commissioning of services and achieving best value for money?

In our opinion the intention to develop guidance to assist with these processes is helpful. However an overall planning structure with clear timescales is required as soon as possible, along with guidance to ensure all planning processes and approaches at national and local level are interconnected from the start.

The wording within the Bill naming the Scottish Government as a community justice partner requires to be made explicit in terms of governance, accountability and challenge. We foresee a particular difficulty in the expectation that Community Justice Scotland will be able to exercise 'independent' influence when reporting to Scottish Government, given that Scottish Government is one of the partners whose performance Community Justice Scotland will be monitoring.

The section on multi-agency public protection arrangements proposes that current arrangements are to remain "at least in the short term". While we agree with the majority view on this, we believe there is a need to plan ahead in this area. With the integration of health and social care, and the redesign and the disbanding of Community Justice Authorities, local areas are already considering where changes may occur. The Bill does not account for potential readjustments that are being considered by local planning partners. The joint thematic review of multi-agency public protection arrangements in Scotland is currently being carried out by the Care Inspectorate and HMICS. The findings, due to be published later this year, should inform any decisions about future direction of public protection arrangements.

7. Are the resources, as set out in the Financial Memorandum, sufficient to transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report?

The additional ring-fenced funding to support partners in transition is valuable. It would be helpful going forward to see a clear focus on Community Justice Scotland's and Community Planning Partnerships' responsibilities and how these are resourced.

In the Financial Memorandum (paragraph 88) an indicative cost of one in depth inspection has been given. Further discussion is needed with Scottish Government policy officials to determine the nature, scope and frequency of any scrutiny and improvement work the Care Inspectorate may be asked to undertake before any firm commitments or cost can be agreed.

8. Is the timetable for moving to the new arrangements by 1 April 2017 achievable?

It is important that all aspects covered earlier in our response are in place at the earliest opportunity to help achieve the timescale. The Care Inspectorate has established structures and experiences to be able to play, if desired, a major role in supporting the quality of performance in the community justice landscape. This would be consistent with our firmly established role and build on emerging responsibilities around the strategic commissioning of health and social work services and our statutory role in the scrutiny of both social work provision and regulated care services.

Whilst further dialogue and discussion is needed regarding the specifics of our role in scrutiny, improvement and quality assurance, it is possible to have the appropriate supports in place well before 1 April 2017, assuming appropriate resources are available.

9. Could the proposals in the Bill be improved and, if so, how?

The term “as soon as reasonably practicable” is used frequently in the Bill and supporting memoranda. In our opinion, outlining specific timelines, targets and deadlines would be more helpful.

We would welcome more explicit comment on the implications and impact of the multi-agency public protection arrangements’ extension to category 3 offenders on relevant agencies and partnerships.

We note that paragraphs 105, 106, 107 and most importantly, 111 of the policy memorandum, relate to Care Inspectorate business. Paragraph 111 outlines the Care Inspectorate’s understanding and general approach to scrutiny and improvement in terms of providing independent assurance about the quality of services and impact and outcomes for service users, and in the case of community justice services the wider community, as well as playing a key role in supporting continuous improvement. It also gives due recognition to the importance of promoting and building capacity for self-evaluation for improvement and embraces the concept of targeted and intelligence led scrutiny and improvement work which we support.

However, as stated earlier in this response, the detail of the contribution the Care Inspectorate can make, either working independently or with partner scrutiny bodies, merits further discussion and clarification.

The Care Inspectorate’s experience and range of work means we can add significant value to the implementation of the Bill and the redesign of community justice in Scotland. We would welcome clarity on the range of supports and interventions we can add, so we can prepare the necessary costings and strategic arrangements.

The range of supports we can add include developing a Memorandum of Understanding with Community Justice Scotland to work closely on existing

programmes of work, undertaking joint scrutiny activities, undertaking joint scrutiny programmes, jointly supporting self-evaluation, undertaking scrutiny of Community Justice Scotland's performance, undertaking sector-wide scrutiny programmes, and developing and promulgating improvement supports on the back of scrutiny.

We are confident we could play an immediate and helpful role in developing a quality framework to support and build capacity for self-evaluation, service planning, scrutiny and improvement. Our experience in this regard is extensive, having developed similar quality frameworks around child protection, the delivery of services for children and young people, and the delivery of services for adults and older people. We may be able to more readily undertake specific scrutiny and improvement activities than a new body which is not yet established.

A clear distinction between the independent assurance provided by Community Justice Scotland and that which may be provided by the Care Inspectorate as an independent scrutiny and improvement body needs to be made.

Care Inspectorate
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