

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from SAMH

SAMH is for Scotland's mental health. Since 1923 we have been working across Scotland to promote mental health and get people talking. We do this through community based services across Scotland, supporting 2,500 people every week; promoting mental health through physical activity, working to prevent suicide, challenging the stigma surrounding mental health issues and tackling bullying; campaigning for positive change – influencing mental health policy and legislation; and raising funds to continue this vital work.

We are grateful for the opportunity to comment on the Criminal Justice (Scotland) Bill. We hope that this legislation will provide the required emphasis to improve the experiences of people with mental health problems who come into contact with the criminal justice system. Estimates for mental health problems and mental disorders within the Scottish prison population vary, given the difficulty in assessment, but the numbers are high¹. Therefore, ensuring that individuals with a mental disorder receive appropriate support is fundamental to their human rights. It also demonstrates a clear need to legislate in this area.

The Bill contains provisions to ensure that vulnerable adult suspects with a mental disorder (as defined by the Mental Health (Care and Treatment) (Scotland) Act 2003), are not disadvantaged in comparison to their non-vulnerable counterparts during police procedures. To clarify, the term mental disorder is used in this context to cover mental illness, personality disorders, dementia, autistic spectrum disorder, acquired brain injury and learning disabilities.

SAMH welcomes the intention of these provisions, as we know that historically, people with a mental disorder have not always got a helpful response from the police, and sometimes reported that there was a failure to recognise signs of mental distress. Since the Scottish Government's 2002 evaluation² of the Appropriate Adult Scheme, several measures have attempted to improve the operation and management of the schemes. The Committee will be aware of the National Guidance³ published in 2007 and the Mental Welfare Commission's report, *Justice Denied*⁴, also made a series of recommendations in response to Ms A's treatment. Subsequent national standards were developed and issued to Appropriate Adult services to demonstrate how the service should be delivered.

¹The Sainsbury Centre for Mental Health (2007). *Mental Health Care in Establishments. Briefing 32*. London: The Sainsbury Centre for Mental Health.; Tickle, L. (2005) *Is the Prison System Failing Mentally Ill People?* The Herald Society Supplement 19th July 2005.

²Evaluation of the operation of appropriate adult schemes throughout Scotland in 2002. Dr Lindsay Thomson, Viki Galt, Dr RajanDarjee, Division of Psychiatry, The University of Edinburgh

³<http://www.scotland.gov.uk/Resource/Doc/1099/0053903.pdf>

⁴<http://www.mwscot.org.uk/media/51943/Justice%20Denied%20Ms%20A.pdf>

Access to Appropriate Adults

SAMH understands that access to an appropriate adult is a reasonable adjustment specifically to ensure understanding, as much as possible, between a suspect, victim or witness with a mental disorder as defined by the Mental Health (Care and Treatment) (Scotland) Act 2003, who experiences communicative difficulties as a result, and the police. (Appropriate adults are not a stated special measure for court, although SAMH would contend that extending their use could improve communication and understanding in such settings for some people with a mental disorder). Therefore this measure will not be suitable for all people with a mental health problem, nor will it address all the possible needs associated with mental health problems. We would also be concerned that others who might require the service might be overlooked, especially people with autistic spectrum disorder who are high functioning but don't communicate or process information in the way desired by police processes. As access to an appropriate adult may be required if the individual has a learning disability, dementia or brain injury, as well as a mental health problem, this potentially represents a significant number of people.

Ahead of the formation of regulations, it would be helpful to determine the satisfaction amongst people who have been supported by an appropriate adult; whether there are currently sufficient numbers of Appropriate Adults within Scotland to meet demand for suspects, victims and witnesses; and whether follow up with individuals who felt they were not provided with this support could be achieved.

Appropriate adults – workforce and training

The Bill will give Scottish Ministers regulation-making powers to detail who may provide Appropriate Adult Services and the training necessary to become an Appropriate Adult. We note that the requirements placed on states by Article 13 (Access to Justice) of the UN Convention on the Rights of Persons with Disabilities; while the proposed statutory provisions regarding appropriate adult support for vulnerable adults will make progress towards ensuring effective access to justice for persons with disabilities; however, the legislation does not satisfactorily address the requirements on other agencies to be able to identify people with mental health problems, which is necessary to then ensure that the vulnerable person is provided with appropriate support, either as part of the Appropriate Adult scheme, or in terms of medical support. As the Convention states:

‘And in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.’

SAMH hopes that an increase in the numbers of trained Appropriate Adults will also be able to support vulnerable victims and witnesses to communicate with the police, when required. We note that Appropriate Adults are mostly drawn from social work backgrounds, and therefore we highlight the need to ensure that there is adequate workforce capacity within that field to continue to provide this role. In the forthcoming regulations, **SAMH recommends that training of Appropriate Adults and service delivery of the Appropriate Adult scheme must be uniform across Scotland; and that it should sit as a funded, staffed, stand-alone service, rather than rely**

upon extraction from social work departments. We are aware that in areas which have historically relied on social worker extraction, this is the biggest barrier to people getting help, as already stretched departments can rarely afford for a social worker to absent themselves for a significant period of time. The previous approaches of Tayside and Fife should be looked at as good practice, and their approaches should be costed, funded and rolled out nationwide. We look forward to further consultation on the regulations in due course.

According to the Policy Memorandum to the Bill, 'where a person is assessed as vulnerable, the police will endeavour to secure the attendance of an Appropriate Adult as soon as reasonably practicable after detention and prior to questioning. As is current practice, the Scottish Government would expect the police, in deciding whether a person is vulnerable: to be guided by comments from carers or others who know the person, to seek medical advice if necessary, and to keep matters under review in case vulnerability becomes apparent at a later stage.' However, it should also be noted that as Appropriate Adults are to provide impartial communication support, they may not be the most suitable person if the Police suspect the individual is 'vulnerable'. The suspect, victim or witness might require medical attention if they are distressed or unwell.

SAMH's research with Capability Scotland⁵, which involved focus groups of people who had come into contact with the criminal justice system, also described the attitudinal and communication barriers as a major difficulty:

"People with mental health problems and other impairments find attitudinal barriers, and institutional failure to recognise signs of mental distress, PTSD, crisis, mania, psychosis, catatonia, depression or other mental health conditions highly problematic when interacting with the Police, the Courts, Solicitors and Prison staff."

And recommended:

"Communications by Justice Professionals with (people who have mental health problems) must be respectful, active and inclusive and should seek to include families, peer supporters, advocates, social workers and CPNs where possible. When working with supporters Justice Staff should talk to the supported individual rather than 'about them'."

These concerns are reinforced by the 2013 HMICS' thematic inspection of the care and welfare of persons detained in police custody in Scotland⁶, where the following points were made:

"10.4 The inspection revealed widespread variation in how forces responded to situations where the mental health of an individual was a cause for concern. This is a challenging and difficult area, particularly when those health concerns are exacerbated by the immediate presence of alcohol and/or drugs.

⁵http://www.capability-scotland.org.uk/media/97020/samh_report_18.09.09_final.pdf

⁶<http://www.hmics.org/sites/default/files/publications/Thematic%20-%20Inspection%20of%20the%20Care%20and%20Welfare%20of%20persons%20detained%20in%20police%20custody%20in%20Scotland.pdf>

Accordingly, forces find it difficult to provide definitive guidance which encapsulates the range of possible scenarios facing police officers and staff where there is a concern for the mental state of certain detainees.

10.5 Almost without exception, staff interviewed during the inspection expressed a desire to have clearer processes in place, including protocols with local mental health practitioners. Some of these factors are beyond the scope of resolution by the police service and accordingly the ACPOS Custody Manual of Guidance only offers advice on assessments under the Mental Health (Scotland) Act 2003.

10.6 HMICS is aware that there is currently an ongoing project sponsored by ACPOS, to engage with NHS Scotland, with a view to producing an appropriate healthcare model to support the care and welfare of any person brought into police custody and to reduce the associated costs that are currently borne by the police service. It is anticipated that this will extend to the identification and treatment of any persons coming into police custody with mental health issues. There is therefore an opportunity to introduce some uniformity of approach to ensure a standardised approach throughout Scotland.”

The following recommendation was also made:

“Post-reform, the Police Service of Scotland should develop a standard national training course for staff working in the custody setting and that this should include a refresher training programme to support ongoing staff development.”

Our research with Capability Scotland highlighted that staff within the justice sector need to be able to ask sensitive questions that might allow someone to disclose information about their mental health; the national standards for Appropriate Adults also encourages this approach. The Scottish Government evaluation of Appropriate Adults in 2002⁷ showed that almost all Appropriate Adults had received training relating to their role, however training amongst other professional groups was low. SAMH is concerned about whether police officers in this position have the skills and have received the required training to meet the role which is being proposed for them; whether police support staff, who would be working in areas involving custody and detention, would have the skills, training and status to determine and question whether someone was potentially vulnerable, and what is the suitable response; and if a solicitor had the necessary training to determine whether the suspect was vulnerable and could therefore not waive their support.

SAMH recognises that evaluating the vulnerability and capacity of an individual is difficult, and can be compounded by the circumstances of being in police custody. Stress and anxiety levels are likely to be raised, and the use of alcohol, drugs and/or prescription medication could all have an impact on the individual’s behaviour.

We are aware that newly qualified police officers currently receive a level of training in mental health at the Scottish Police College – indeed, SAMH delivers suicide prevention training in this setting. However, it might be beneficial for mental health

⁷Evaluation of the operation of appropriate adult schemes throughout Scotland in 2002. Dr Lindsay Thomson, Viki Galt, Dr RajanDarjee, Division of Psychiatry, The University of Edinburgh

awareness and mental health first aid training to be delivered to new recruits, and for continuing professional development of all officers to include mental health awareness and suicide prevention training. We think it would be beneficial if solicitors and police support staff also received this training. While not everyone with a mental health problem would necessarily qualify for an appropriate adult to support them in communicating to the police, improving training and awareness amongst the staff listed will ensure that the individual is treated appropriately, and this could improve take up of mental health community payback orders or access to diversion schemes.

To support the rights of vulnerable suspects to the highest attainable standards of mental health, SAMH also proposes that links between the NHS and the Police are strengthened, to ensure that prompt access to a GP, psychiatrist or CPN could be provided if a vulnerable suspect needed medical attention. We know that there are good examples of local partnerships in this regard – best practice needs to be disseminated and built upon, especially given the reforms to the health, social care and criminal justice landscapes.

SAMH
30 August 2013