# Independent Review into the Delivery of Forensic Mental Health Services – call for evidence

## Response from Mental Welfare Commission

The Independent Review into the Delivery of Forensic Mental Health Services has made a public call for evidence.

The Mental Welfare Commission for Scotland is responding as an organisation with a role in protecting the rights of people using Forensic Mental Health Services and an involvement in visiting and monitoring prisons and hospitals.

Our response is in relation to the issues that have come the Commission's attention mainly through our visits, advice line and correspondence.

For the review 'forensic mental health services' means:

Services that provide assessment, care, treatment and support* to:

- People in high, medium and low secure hospitals or hospital units.
- People accused of offending or who have offended and are in intensive psychiatric care hospital units or open rehabilitation inpatient facilities.
- People not in hospital who are at risk of offending, accused of offending or who have offended and have a mental illness, personality disorder or learning disability**.

** 'Support' includes all forms of support, including reintegration into the community.*

*** This includes people who develop a mental illness while in prison.*

We understand that the Review has the principal aim of reviewing the delivery of forensic mental health services across hospital, criminal justice and community settings in Scotland.

We will address issues under these headings.

## Delivery of forensic mental health services in hospitals

### High security

The Commission has repeatedly raised concerns regarding the lack of any high security beds for women in Scotland. We are currently aware of two women adversely affected by this situation and having to be accommodated in England away from their home areas and family. This situation is also affecting their return to Scotland because of a reluctance of medium security services to accept them due to a lack of 'high-security back up' if the move breaks down.

It is also likely that the lack of high secure beds for women is contributing to difficulties for women being transferred from prison to hospital, although this is harder to evidence. The issue of forensic mental care for women has been highlighted by the short life working group *'Female Pathways across the Forensic Estate'* report to which the Commission contributed.

The Commission is also aware of the decline in the number of patients receiving care in the State Hospital and the closure of wards. This would appear to create additional capacity in the system, but it does not appear that any appropriate use has been found for this.

### Medium security

From our casework, regular 'local visits' and our 2017 Monitoring report relating to medium and low secure forensic wards it is evident that there is a considerable pressure on medium secure beds, and there is generally a waiting list for these beds. Patients often come from high security at the State Hospital but can also come on transfer from prison, intensive care beds (IPCUs) and from court or the community. There are particular issues at the present time (in relation to delays) for patients assessed as requiring medium secure care, in that priority is being given to patients who have successfully appealed against being held in conditions of high security.

Medium secure units are regional facilities which can result in patients being away from their home areas, and variations in local low security provisions when ready for discharge can cause delays.

### Low Security

The same situation of pressure on beds also applies to low security beds only more so. There is even more of a log jam in relation to low security services given that there can often be difficulties in getting appropriate accommodation and support in the community for forensic patients. Patients in low security do not (unlike high and medium security patients) have the legal powers to appeal their level of security, even though they may be ready to move on. Patients often spend very many years in low secure beds and in our 2017 monitoring report[1] we found just over 20% of low security patients waiting to move on to either a rehabilitation service or community setting. We suspect this has not improved.

Low security provision is the responsibility of local integrated joint boards / health boards and there is a major disparity in what is provided across Scotland by the various boards. There is also significant use of private provision, generally away from the home area. Some large health boards, principally NHS Lothian, do not have their own low secure step-down provision. We recommended in 2017 that NHS Boards and integration authorities should be required by Scottish Government to submit co-ordinated development plans for low secure and community forensic services. This recommendation was not taken forward by Scottish

[1] Medium and Low Secure Forensic Wards

Government. We believe there is still a need for a firm policy direction at a national level, linked to clear development plans at local level.

### Excessive security appeals

The ability to appeal against excessive security has made a major impact since it was introduced, initially in relation to high security and more recently medium security. The Commission has been monitoring these appeals and by far the highest number of appeals have come from Rowanbank, where there have been 46 successful appeals against excessive security since the introduction of this right in 2016. These appeals have put huge pressures on low security beds in particular and have effectively prevented other patients being able to access low security beds resulting in major difficulties for patients in IPCUs.

We have now also seen several cases being taken to judicial review due to health boards' inaction regarding moves to lower levels of security. In the first two to be heard in court, the board abandoned their defence half way through the first day, having finally found places after arguing for months that it was impossible to do so.

An unfortunate consequence of this legislation is that patients who do not appeal appear now to be less urgent for transfer and are potentially disadvantaged. This is a particular issue for patients lacking capacity to appeal or those concerned about being moved out of area.

Nevertheless, we strongly support the statutory right of appeal – indeed we believe there may be merit in extending it further to other forms of security. We do not accept an argument that Boards simply cannot comply because of a lack of facilities. The need for these services, and the implications of the appeal rights, have been known about for several years, and the patient population has not, so far as we are aware, grown unexpectedly. The statutory right is, and should be, a spur to develop appropriate services to a level which would avoid the risk of places being afforded to patients with a lower clinical priority because they happen to have this legal right.

We also suspect that, even without the specific appeal right, it would only be a matter of time before someone entrapped in a service which is wholly inappropriate for their needs successfully raises an appeal based on a breach of the European Convention on Human Rights. This issue was in play in the recent judicial reviews.

### Problems for patients in IPCUs who are stuck due to log jam in forensic services

Patients not being able to access appropriate forensic services has been a feature of the majority of our local visit reports to IPCUs. We have also raised concerns regarding the impact of patients spending many months, often years, in IPCU wards. These patients are being disadvantaged due to their restrictive environment, and the lack of input of specialist services available in forensic units, such as psychology and specialist forensic nursing care. The situation is also having an impact on the wider system, particularly in relation to moves from acute adult wards.

### Differences in provisions / restriction for patients in the same levels of security

Our 2017 monitoring report found considerable variance in practice between wards at the same level of security in relation to the application of restrictions. Some patients had access to their room during the day, privacy for phone calls, access to computers and phones and were allowed more belongings. We were not always clear why some wards seemed to keep the use of restrictions to a minimum and others did not. We are aware that patients (at least initially) can find their move from medium to low security more restrictive and frustrating. We recommended that national guidance on consistent practice in relation to security restrictions be developed, and we still support this.

This also applied to the use of specified person provisions in low secure wards. We have had a number of patient raise concerns with us particularly in relation to their ability to access technology.

The Forensic Network some time ago established a short life working group (Communications and Specified Persons) at the request of Scottish Government, to review access to communication and technology for specified persons and people accessing mental health services. The report is currently with Scottish Government and has yet to be actioned. We are disappointed at the time it has taken to progress the recommendations of the report.

Specified persons regulations date back to long before the development and widespread use of smartphones and tablets. They have been completely overtaken by technology and are now outdated and requiring urgent review.

## Overarching issues

There are a number of general issues which regularly come to the Commission's attention.

### Lack of female provision

In addition to the lack of high security beds there also appears to be a shortage of female beds across both the medium and low secure estate. Some female provision in both medium and low secure wards is on mixed sex wards. This can create difficulties both with regard to patient mix and risk; it also means that limited female provision is in completion with male beds.

There is a general lack of more specialist learning disability (LD) provision across the estate and issues have also been raised about more autism specific care.

Delays in getting Suspension of detention (SUS) / time out - We often hear of frustrations particularly on transition from a higher level of security to a lower level; when patients who had been able to achieve a considerable level of more independent leave and access to grounds and community had to regain these 'privileges' when moved to a lower security setting.

We are becoming increasingly aware that there are a number of cases of older forensic patients in secure care who are physically frail, some with dementia. Many of these patients are considered to be inappropriately placed in high/medium secure environments, but for whom there is a lack of alternative provision. Lack of alternative provision is also preventing the transfer of prisoners from prison to a mental health forensic setting.

The concerns regarding LD and autistic patients are not simply about a lack of specialist provision. We have undertaken research into the position of forensic patients with these diagnoses. On average, they spend significantly longer in hospital – because their disability will not be alleviated in the same way that a mental illness might with appropriate treatment, and it can be difficult for them to demonstrate that the level of perceived risk has reduced. This can result in people with LD or autism spending much longer in a restrictive hospital environment than they would have spent in prison for any offence they may have committed. We do not equate hospital with prison but this still gives rise to significant concerns about human rights and potentially discriminatory treatment.

This matter has been considered in the Independent Review of the Mental Health Act as it affects people with learning disabilities and autism. We appreciate that legal reform is likely to be some years away, particularly as this will need also to be considered by the Scott review of the Act. In the meantime, we believe that more should be done at the service level to ensure that forensic patients with learning disabilities or autism can progress at a reasonable speed through the system, and particularly that they are not held to a much higher standard in terms of risk avoidance than applies to the wider population who may be at risk of offending.

There is also a general issue regarding patient mix. In our 2017 monitoring report nearly half of the patients in low security wards were not detained by the criminal courts but were on Mental Health Act orders. This does raise issues about their forensic status and whether there are in fact two very distinct groups of patients mostly in low security with different needs to be considered.

Many of the 'non-forensic' patients are in the Independent hospitals and away from their home areas; most of the women in low security are in this group of patients. We often hear comments particularly from relatives voicing concerns that their loved ones are being kept with serious offenders when they have done 'nothing wrong' particularly in higher levels of security.

## Delivery of forensic mental health services in prison

The Mental Welfare Commission visits Scottish prisons regularly as part of our visiting programme. The fact that prisoners have a much higher rate of mental disorder than the general population has been well documented and is the reason for our visits to prisons; we look at mental health services being provided to prisoners and ask prisoners about their experience of using these services.

One of the main issues we find is that the experience of prisoners in relation to their mental health provision in Scottish prisons is variable. Prisoners we speak to often say it can be very difficult to get mental health support and there can be very long delays in accessing a mental health nurse. The referral process is very different across different prisons with mental health drop-ins operating on the halls in some prisons and paper referral systems operating in others.

There is also a need to look at what is actually being provided. There is a major focus on suicide prevention but this does not necessarily provide a therapeutic intervention. A big issue is access to input from psychology and also access to lower level psychological interventions, therapies and support for trauma. Medication in prison is also a major issue which can affect prisoners in relation to what medication has previously helped them.

In many prisons mental health nurses' time is also spent in dispensing medication which takes time from mental health provision.

The role of prison officers in relation to mental health issues and mental health training is also an area that needs to be addressed. Relationships between health centre staff and prison officers are vital in being able to arrange interviews and access visiting services. We have found these relationships again to be variable in different units.

The Commission continues to promote the expectation that prisoners should have access to a full range of full multi-disciplinary services to promote their mental health. Our experience is that there is little coordinated input to mental health care of prisoners beyond the input of mental health nurses and psychiatrists, despite cases being discussed in a multi-disciplinary forum.

The Commission will shortly be undertaking a 'themed visit' focusing on the mental health of prisoners; we will be visiting all Scottish prisons between April and July 2020. Our report from these visits will be published early next year.

## Recent concerns reported to the Commission in relation to the delivery of forensic mental health services in prison:

The Commission is following up on serious concerns raised by the European Committee for The Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following a visit to Cornton Vale prison in October 2018[2]. Concerns regarding four female prisoners who were regarded as being in need of hospital mental health treatment are being reviewed by the Commission. This raises concerns regarding the availability of beds enabling the transfer of prisoners to hospital care and possible issues concerning the lack of female high secure care.

We are looking into concerns of two vulnerable prisoners with mental health issues both receiving general hospital care. We have concerns regarding handcuffing and restraint by prison security staff in these cases.

[2] https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-the-united-kingdom-focusing-on-police-and-prisons-in-scotland

We are aware from our visit of particular difficulties facing prisons at the current time. There are increasing numbers of prisoners with dementia whose needs are difficult to meet in the prison setting. There is also an increasing awareness of groups of prisoners with specific mental health needs often not being met. Young prisoners, prisoners with cognitive impairments, acquired brain injury (ABI), prisoners with alcohol related brain damage (ARBD) and prisoners with learning disabilities (LD) and prisoners with Autism.

We have heard from several families of prisoners that their concerns about relatives in prison have been ignored and also of concerns about lack of professional input and access to medication.

### Delivery of forensic mental health services in community settings

This is an area where the Commission has less direct involvement in relation to visits though we do pick up issues via our advice line and through correspondence.

The main issues raised with us are generally in relation to accessing community rehabilitation and accommodation resources.

We have heard that due to financial restrictions there is a reduction in the amount of supported accommodation available with many projects being 'decommissioned'. Lack of appropriate accommodation causes a delay in forensic patients leaving hospital. The patient journey through forensic services can be a long one, with many patients having been in hospital for 10+ years and some in excess of 20 years. More often than not these patients are assessed as requiring very supportive placements on discharge.

We are also aware of increasing difficulties in sourcing community placements and vocational opportunities for forensic hospital patients in relation to rehabilitation. This can lead to a delay in the patient progressing to conditions of lesser security. Scottish Government will generally not consider a restricted patient ready for conditional discharge or a move to lesser security unless they have an established pattern of meaningful vocational activity.

### Interface with police, courts and community

These do not exist in a vacuum and the importance of agencies working together cannot be stressed enough. The Commission comes across many situations where it seems services are looking for reasons not to work with specific individuals rather than how they can contribute to their care; services often seem to work in silos rather than achieving a holistic perspective. These gaps are particularly evident in relation to criminal justice and community/health care services.

We also frequently hear, mainly from families where lack of community support has resulted in serious offending; where cries for help have not been responded to.

There have been some improvements with regard to early interventions and crisis responses. There is still however a need for considerable development in the use of Place of Safety[3] measures, assessments in custody and early interventions to divert people with mental health difficulties from the court system where possible. We welcome the development of the Health and Justice Collaboration Board, but would like to see a clearer plan for a coherent response across the system to ensure that people with mental disorders entering the criminal justice system are given rapid access to the right care and treatment to reduce future risks and secure their wellbeing.

[3] Place of Safety Monitoring Report 2018

In general, we feel the current system will often (but not always) work reasonably well for people who are acutely ill and require treatment in a mental health hospital. Most of the complex range of mental health disposals in the Criminal Procedure (Scotland) Act 1995 (CPSA) are directed at this group. However, there is a huge gap for people whose offending may well be influenced by mental illness, learning disability or autism, but for whom a lengthy stay as an in-patient is not indicated. We share the frustration expressed to us by several sheriffs about the lack of sentencing options in such cases.

These difficulties can be compounded where people have co-morbidities, such as mental illness complicated by personality disorder, or substance misuse. In some ways it feels as if these groups are excluded as not being the people for whom the system was designed, when in fact these are the kinds of complex needs which are particularly likely to lead to a person with a mental disorder coming into contact with the criminal justice system. We believe there is a great need for innovative services with multi-disciplinary input, both for responding to people presenting in crisis, and to provide longer term support and care.

We are also aware of situations where people appearing in court have been assessed as requiring 'remand' to hospital for assessment (Section 52D CPSA) but there are no beds available; so these vulnerable and sometimes overtly psychotic prisoners have to be remanded to prison whilst they wait on a bed to become available. This can be a particular issue for women prisoners given the lack of high security beds and female forensic beds in general. This period of remand can be traumatic for the prisoner and can quite often result in a delay in them receiving treatment.

## Finally, we would make two observations

Most of these problems are not new, and have been known about by people working in the forensic mental health system for a number of years. There have been several previous reviews which appear to have run into the sand, and we hope that this review will lead to the kind of substantial and coordinated change which is required

None of what we say is intended to disparage the professionalism and commitment of those working in the forensic mental health system. Despite the gaps and difficulties we identify, many of the services we visit are delivering compassionate and high-quality care, sometimes against considerable odds.

We hope this submission will be of assistance to the review and we are happy to be contacted in relation to any of the issues we have raised.

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On behalf of the Mental Welfare Commission for Scotland

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