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15 May 2023

Dear Ms Nicoll,

Thank you for your bringing to my attention the work of the Criminal Justice Committee to consider the proposals from the Scottish Mental Health Law Review. The Cabinet Secretary for Justice and Veterans has requested that I respond to your recent letter as it regards our work to respond to the Review; the provision of safe spaces and the Enhanced Mental Health Pathway. Apologies for the delay in this response.

Mental Health Law Reform

As you are aware, the Review was a substantial piece of work which set out over 200 recommendations for reform to complex areas of law, policy and practice. This includes proposals for changes to the purpose and scope of mental health, incapacity and adult support and protection law; reforms to support fulfilment of human rights and equalities obligations and to strengthen the governance, regulation and scrutiny of mental health services. The Review also sets out recommendations for a range of reforms for children and young people; people within the forensic mental health system and adults who lack capacity.

As your letter recognises, the report set out a significant number of proposals and cross-government work is now underway to carefully consider its recommendations and what further work might be required. We plan to provide an initial response to the report by Summer 2023. I am not in position to provide a specific publication date at this stage, however, I will be happy to inform you when this has been agreed. The response will set out next steps in progressing implementation of any reforms that are deemed necessary or beneficial to better protect or fulfil our international human rights obligations. It will particularly set out priority actions that will be taken in the short term.

In terms of your questions regarding specific proposals for changes to the Mental Health (Care and Treatment)(Scotland) Act 2003, any proposed amendments to legislation will of course require careful consideration and our response will set out the approach that Scottish

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Government will take to further engagement and policy development on this and other recommendations regarding law reform. I would welcome the input and support of the Committee in this process once we have set out our plans.

Safe spaces

The Scottish Government is committed to understanding and addressing the impact of mental health demand on Police Scotland resources. This includes the time officers may need to spend with some patients in mental health distress at A&E departments, how those patients are safely handed over to clinicians and how the responsibilities of the officer are discharged. The pressures hospitals have faced over the winter have made this process particularly challenging. We are therefore working with partners across justice and health to both improve the service for patients and ensure that resources are deployed appropriately.

Through the Redesign of the Urgent Care Programme, the Scottish Government is working with partners to ensure that people with urgent mental health care needs get the right help, in the right place, at the right time. This includes ensuring that people do not have to attend A&E Departments to receive support where this can be better provided in the community.

Through this Programme, the Professional to Professional (P2P) initiative has ensured that each Health Board provides access to a mental health clinician 24 hours a day, seven days a week for those who require urgent specialist mental health assessment or urgent referral to local mental health services. All Health Boards report that P2P support is in place for Police Scotland, allowing frontline services access to a Mental Health Clinical Decision maker who can provide advice, triage or full assessment to determine whether care can be provided closer to home and arrange for that care to be put in place.

In addition, Action 15 of the Scottish Government's Mental Health Strategy 2017-2027 outlines our commitment to funding 800 additional mental health workers to ensure increased capacity to deliver support in key locations where people may need help the most, including police custody suites. At the end of this commitment an additional 958.9 WTE mental health posts had been recruited. In recognition of the pressures facing services conveying individuals to Emergency Department settings for mental health assessment and treatment, the total figure includes the recruitment 179.2 WTE additional mental health workers within ED settings and 35.6 WTE posts in Police Custody suites.

We recognise that Police Scotland (and others) have emphasised the need for alternatives to the legal place of safety (most commonly A&E) for individuals who are in distress, at risk and not requiring any physical medical intervention. The Scottish Government is currently exploring this internally and will liaise with Police Scotland as this develops. Implementation of an alternative safe space is not without complexities, requiring consideration of estates, geographical variation in demand, safe staffing and the need for individuals to consent to stay in an informal safe space for monitoring and assessment.

Distress Brief Intervention programme (DBI)

Police Scotland have been key national partners in the development and implementation of the Distress Brief Intervention programme (DBI). DBI is an innovative 2-level approach provided for presentations of distress that have an emotional component and do not require alternative emergency service involvement. It is non-clinical. The programme was developed

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to allow frontline services – including police officers - a new option for supporting people who present to them in emotional distress but who do not require emergency clinical intervention.

DBI began as a pilot in 4 areas in 2017 and was initially for over 18s only. Following a Programme for Government commitment, the age limit was reduced to 16 and over in 2019. We have committed to roll the programme out to all NHS Board areas by March 2024; we are making strong progress towards this target, with DBI already live in 20 of the 31 Health and Social Care Partnership areas (as at April 2023), and several more working towards going live across Summer 2023.

As you may be aware, in April 2020 we announced additional DBI support to help people look after their mental health and wellbeing during and after the coronavirus pandemic. The support on DBI was to set up a new national pathway to DBI via NHS24. Anyone who calls the NHS24 Mental Health Hub in emotional distress from anywhere in Scotland and who does not need emergency clinical intervention and is assessed as appropriate for referral to DBI, can now be referred to the DBI Programme for further support. NHS 24 can pass on the person's details to the nearest Third Sector DBI provider, who will make contact with the person in distress within 24 hours and work with them over a two-week period to help them manage their distress.

The NHS24 pathway went live in Spring 2020, and as at April 2023, over 13,000 people have been referred to DBI support via this pathway. This figure is a subset of the wider picture in which DBI has, to date, supported over 40,000 people referred by frontline services. We have also been working with Police Scotland and the Scottish Ambulance Service (SAS) to develop additional national pathways to DBI, with the aim of allowing referral to DBI Level 2 from national police and ambulance contact centres. The SAS call centre pathway went live in 2022, allowing direct referrals to DBI (where callers are assessed as appropriate) from SAS call handlers; in addition, people who call Police Scotland can now be referred to DBI (again where assessed as appropriate) via the NHS24 pathway mentioned above, which itself has incrementally grown since Spring 2020.

Enhanced Mental Health Pathway

As noted, the Enhanced Mental Health pathway enables officers and staff to refer people requiring mental health and wellbeing support to NHS 24's Mental Health Hub. Since NHS 24's Mental Health Hub started providing 24/7 support in 2020, they have responded to over 200,000 calls. The referral numbers from Police Scotland to the Hub remain low (over the last quarter, approx. 50 calls per week) compared to the overall volume of mental health related calls that Police Scotland report receiving. However, based on learning from phase 2, the model for accessing mental health support is being redesigned under the governance of the Mental Health Pathway Strategic Steering Group, chaired by ACC Emma Bond, to increase use. Police Scotland are leading on an evaluation which they expect to be available in summer 2023.

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I appreciate your interest in these issues and the vital role of the police in supporting people experiencing crisis and distress within communities. I hope that the Committee will continue to work with us on these matters as we progress our programme for reform. I note your suggestion for a simple process for tracking and monitoring progress and will ensure that officials take this into account as we develop our plans for implementation and delivery.

Yours Sincerely,



Maree Todd

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