



The Scottish Parliament  
Pàrlamaid na h-Alba

## Criminal Justice Committee

Keith Brown MSP  
Cabinet Secretary for Justice and  
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Scottish Government

By email

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Dear Cabinet Secretary,

I am writing to you to request information following two roundtable evidence sessions which the Criminal Justice Committee held on 18 May on policing and mental health, and tackling online child abuse, grooming and exploitation.

There were a number of issues raised during the [evidence session](#) and in the [written evidence](#) received.

On the issue of policing and mental health, the Committee considered the demands placed on the police service when dealing with people with mental health challenges, how Police Scotland deals with people with mental health challenges who are taken into custody. The Committee also took evidence on the mental health of police officers and staff due to the demands placed upon them in the course of their duties.

An issue was raised about the practical implications for police officers of Section 297 of the Mental Health (Care and Treatment) (Scotland) Act (2003). Section 297 places a duty on officers to remove the relevant person from a “public place” to a place of safety. Police officers are therefore not able to remove a person experiencing mental distress from private dwelling place, yet the majority of individuals encountered by police officers are in their homes. This means that officers have to request the attendance of a health professional, normally a GP, to provide a mental health assessment before any further action can be taken. This normally takes several hours and has a serious impact on local resourcing. This situation is routinely exacerbated out of hours when GP attendance can take many hours, leaving officers ‘holding the baby’ until a decision on next steps can be taken. Frustratingly, this can be limited to arresting the person and taking them into custody for their own safety.

The Committee would appreciate your view on whether the Scottish Government will amend Section 297 of the Mental Health Care and Treatment (Scotland) Act 2003 to enable police officers to remove a person from a private place to a place of safety. In its current form it is not meeting the needs of police officers who are now routinely encountering people experiencing mental distress in a private dwelling place.

The Committee heard that a key impact on police officer time is the lack of capacity of other agencies to provide their services, such as the NHS, to a person in need of a mental health assessment. This is particularly challenging out of hours.

Police officers are spending excessive periods of time waiting in hospitals with people for assessment, only to be advised the person is distressed and does not require to be admitted. In the event there are no services or individuals available to take care of the person, officers have few, if any, options other than to arrest the person. It also prevents officers from providing assistance to colleagues attending incidents. This would be avoided if the person requiring a medical assessment is seen more quickly, and the appropriate health and social care support was available.

The Committee would appreciate it if you and the Cabinet Secretary for Health and Social Care, who has been provided with a copy of this letter, would jointly give consideration to some of the solutions proposed by police officers and other stakeholders. The suggested solutions arising from the committee's roundtable evidence sessions to reduce the impact on police resources when dealing with people requiring mental health assistance include:

- Mental health staff attending alongside police officers to assess the person's needs. In particular, when responding to a mental health emergency.
- Shorter time periods spent at hospitals by officers waiting with people requiring a mental health assessment. This could be resolved by medical staff taking responsibility for an individual once the police service have taken them to hospital, whilst they await an assessment and when there is no criminality evident.
- Improved data sharing between NHS24 and the police service, as police officers spend a lot of time on administrative work to establish evidence of offences for call recordings from NHS24. This is due to difficulties in accessing information from NHS24 as they are not a police partner.
- All NHS Boards in Scotland providing the assistance of in-patient staff in the management of Compulsory Treatment Orders in the community. This is necessary as, generally, community-based staff do not have the training or resources to physically detain patients who have become acutely unwell and who require hospital treatment. This regularly leads to situations where the police service become the backstop.

The Committee understands a Community Triage pilot has been run in a number of areas where a mental health nurse conducted telephone assessments and that this was found to greatly reduce the length of time police officers spend on calls.

Distress Brief Interventions (DBI) has been in place for some time and has included training to frontline police staff to improve compassionate responses and referrals for onward care.

It would be helpful if you could provide details of the outcome and evaluation of these pilots and any plans to introduce these services on a permanent basis throughout Scotland.

On the issue of tackling online child abuse, grooming and exploitation, Police Scotland highlighted a number of gaps in current legislation. These are outlined below.

### **Civic Government (Scotland) Act 1982 (the 1982 Act)**

The application of Section 52 offences under the 1982 Act has evolved over time to accommodate changes in technology, with case law interpreting 'making' an image as including causing it to be downloaded and displayed on an electronic device. Possession of an image has been accepted to include having custody or control, e.g. that the accused is capable of accessing, or in a position to retrieve an image. However, the legislation predates the modern internet and its use and would benefit from being amended to avoid potential legal challenges.

Section 51 relates to the possession of extreme pornography. There are legislative gaps in respect of 'take/make' and distribution offences, as well as application of the extreme pornography offence to computer-generated imagery and cartoons.

There has been exponential growth in the use of 'cloud' storage in respect of child sexual abuse material. Cloud storage is where digital data is stored remotely from the devices used to access and view the material, and is typically owned and managed by a hosting company. The servers which host the data can be located anywhere. Risks exist around the application of the 1982 Act to imagery recovered from cloud storage, with issues in terms of locus and of securing evidence from a search warrant.

### **Areas where legislation is required**

Live streaming, such as overseas pay-per-view, chat rooms and content produced by children can be progressed by Police Scotland on the basis of the core offence. For example, rape or sexual assault. This can be achieved through the application of legal concepts such as conspiracy, incitement, or aiding and abetting. However, despite these options, live streaming presents unique challenges to the police service and bespoke legislation would assist in ensuring a robust legal framework.

There is no specific Scottish legislation specific to prohibited images of children. In England, Section 62 of the Coroners and Justice Act 2009 creates the offence of possession of a prohibited image of a child. A prohibited image is a non-photographic image, including computer-generated images, cartoons, manga images and drawings. The offence specifically excludes photographs and pseudo-photographs of children.

There is no specific legislation in Scotland which creates an offence to be in possession of any item that contains advice or guidance on how to sexually abuse children. In England, this is legislated for under Section 69 of the Serious Crime Act 2015.

The current criteria for application for a Risk of Sexual Harm Order (RoSHO) do not include online child sexual abuse and exploitation offences. Legislation should be amended to allow more robust and proactive management of those who present an online child sexual abuse and exploitation risk to prevent them from offending.

In Scotland, there is no specific offence for the possession, purchase or importation of sex-dolls with child-like features. This is an increasing concerning phenomenon.

End to End Encryption (E2EE) is an emerging threat for law enforcement in respect of online child sexual abuse and exploitation, as well as other criminality. There is a risk that offenders will seek to take advantage of the increased rollout of E2EE across social media platforms to commit offences undetected.

The Committee understands that the Scottish Government is working with Police Scotland to address these issues. Could you please provide details of how that work is being progressed?

The Committee heard that there is a need for an overarching strategy to tackle online child sexual abuse, which covers all relevant Ministerial portfolios. Could you please confirm whether there is currently a Scottish Government strategy which includes all relevant Ministerial portfolios and, if not, provide details of plans to develop such a strategy.

A response by Friday, 5 August, would be much appreciated.

Best wishes,

A handwritten signature in black ink that reads "Audrey N : AN". The signature is written in a cursive, flowing style.

Audrey Nicoll MSP  
Convener, Criminal Justice Committee

CC: Cabinet Secretary for Health and Social Care