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Convener  
Criminal Justice Committee  
The Scottish Parliament  
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Dear Convener,

Thank you for your letter of 20<sup>th</sup> June following the Criminal Justice Committee's two roundtable evidence sessions on 18 May.

I would like to begin by extending my appreciation of the incredibly valuable work that all police officers, police staff and key partner agencies undertake every day of the year, serving the needs of every individual who comes into contact with the criminal justice system.

On the issue of policing and mental health, I have carefully considered the points and the proposed solutions provided by police officers and other stakeholders. I would like to reassure the Committee, Police Scotland and key partner agencies that the priority for Scottish Ministers remains ensuring that everyone receives the best possible care and treatment from health and care services.

### **Section 297 of the Mental Health (Care and Treatment) (Scotland) Act (2003) (the 2003 Act) and the Management of Compulsory Treatment Orders In the Community**

The Committee asked whether the Scottish Government will extend the reach of Section 297 of the 2003 Act to enable police officers to remove a person from a private dwelling place, to a place of safety. At present Sections 297 and 298 of the 2003 Act, only allow the police to take a person to a place of safety from a public place when they appear to be mentally disordered and in immediate need of care or treatment. The purpose of this detention is to allow a medical practitioner to examine the person and to make arrangements for their care and treatment.

In your letter you describe the challenges Police Scotland have been experiencing when attending a dwelling place while there are ongoing concerns for a person's safety and I therefore understand why there has been this request for change.

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This Government is clear that effective and up to date legislation plays a vital role in ensuring that the rights of everyone are respected, protected and fulfilled. This is why we commissioned an overarching review of the mental health legislative framework, chaired by Lord John Scott QC. The principal aim of the Review is to improve the rights and protections of persons who may be subject to existing provisions of mental health, incapacity or adult support and protection legislation as a consequence of having a mental disorder and to remove any barriers for those caring for their health and welfare.

The Review is examining developments in mental health law and practice on compulsory detention, which includes looking at where improvements could be made. I also note that Police Scotland have commented on the delivery of community based Compulsory Treatment Orders. You may be interested to know that the Review is also considering the way compulsory treatment orders in hospital and the community are currently used and how this might be approached differently in the future. It would therefore be inappropriate to comment on any potential legislative reforms until the Review reports in September 2022, however the Review has been informed of the points that Police Scotland raised.

### **Support from Mental Health Staff When Responding To a Mental Health Emergency and Shorter Time Periods Spent At Hospital by Officers**

Turning now to mental health staff attending alongside police officers when responding to a mental health emergency, the Cabinet Secretary for Health and Social Care and I welcome the proposed multi-agency approach to providing assessment and care to individuals experiencing a mental health or distress emergency.

As referenced by Dr Hayman in their evidence to the Committee, through the Redesign of Urgent Care programme, the Scottish Government is working with key partners, including Police Scotland, to ensure that people with urgent or unscheduled mental health care needs get the right help, in the right place, at the right time. The improvements to the mental health unscheduled care pathway will be facilitated by ensuring that each Health Board provides access to a mental health clinician 24 hours a day, seven days a week.

Establishing 24/7 access to these clinicians will allow for the increased provision of professional-to-professional support to be offered, utilising telephone or video consultation where possible thereby minimising the need to attend Emergency Departments (similar to the telephone Community Triage pilot referenced in your letter). The clinicians will also be able to access national and local routes to ensure people in crisis or distress and those in need of urgent mental health care are assessed and supported regardless of how they access services.

This work will be supported by investment from Action 15 of the Mental Health Strategy 2017-27 to deliver our commitment to funding at least 800 additional mental health workers in key settings, including A&Es, GP practices, police station custody suite and prisons – ensuring local provision and support is at the heart of our plans. As at 1 April 2022, an additional 958.9 whole time equivalent (WTE) mental health roles have been filled using Action 15 funding allocations. The national figure includes 179.2 WTE roles in A&E departments and 35.6 WTE roles police station custody suites. Further information about these figures can be found at:

[Mental health workers: quarterly performance reports - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions/mental-health-workers-quarterly-performance-reports-2022-23/)

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We have allocated almost **£84 million** since 2018-19 to deliver Action 15 and will continue to provide the necessary funding to ensure that these posts are protected in 2022-23 and beyond.

As highlighted in my letter of 10 May, included within this funding is the development of an Enhanced Mental Health (EMH) Pathway for those in distress or who require mental health support who come into contact with frontline services such as NHS 24, the Scottish Ambulance Service (SAS) or Police Scotland. This pathway enables emergency calls received by Police Scotland or SAS where callers are identified as requiring mental health advice to be directed to a dedicated Mental Health Hub within the NHS 24 111 service. NHS 24 will also have access to Health Board clinicians 24/7 where further specialist assessment or urgent referral to local services is required.

These areas of investment and development will further assist Police Scotland in supporting their contact with individuals who require mental health support and reduce the time required to wait with people awaiting assessment.

### **Improved Data Sharing Between NHS 24 and the Police Service**

I appreciate the concerns raised by police officers regarding the difficulties in accessing information from NHS 24. Significant learning from the collaboration between NHS 24 and Police Scotland through the Enhanced Mental Health Pathway has taken place. As a result, 10 recommendations and lessons for the future have been identified, with data sharing between NHS 24 and Police Scotland being recognised as an area for further development.

While Police Scotland does not at present have access to NHS 24's information, they are able to request any information through a Data Protection request. Alternatively, if the information is urgently required, police officers are able to attend one of the NHS 24 centres and listen to the call, provided they complete the required paperwork.

In addition to the above, and through the test of change defined as Phase 2 of the EMH Pathway where a Mental Health Nurse Practitioner (MHNP) is co-located within Police Scotland's West Division, the MHNP can access NHS 24's records and offer police officers any pertinent information verbally if required.

With regards to your request for details on the outcomes and evaluation of the test of change within Police Scotland's West Division, this is still underway, however NHS 24 have confirmed that a future rollout to the North and East Commands is planned once the evaluation of the first area has been completed.

### **Distress Brief Intervention (DBI) Programme Evaluation**

The Committee also asked about DBI and its evaluation. I am pleased to share that to date DBI has supported over 29,500 people. This includes just under 2,900 people who were referred to DBI by police officers, around 10% of the total. Furthermore, up to June 2022, a total of 1,238 Police Scotland staff have undertaken DBI training. Police Scotland have been key national partners in the development and implementation of DBI since the programme began.

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In May this year we published an independent evaluation of the original pilot of the DBI programme. The research summary is available at [Distress Brief Intervention Pilot Programme evaluation: findings report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions/consultations-petitions/2022/distress-brief-intervention-pilot-programme-evaluation-findings-report-gov.scot).

In broad terms the evaluation was very positive, endorsing the programme, with recommendations for improvements. Highlight points from the evaluation include the following:

- Overall, DBI has been successful in offering support to those in distress, with most individuals receiving a compassionate and practical response that has contributed to their ability to manage and to reduce their distress in the short term, and for some in the longer term. This is particularly encouraging, given that the background to the development of DBI was a recognition that current supports did not meet the needs of many people, which could lead them to feel let down, vulnerable or at risk.
- The offer of contact within 24 hours, followed by up to (a guideline of around) 14 days, was strongly welcomed by people being referred to DBI.
- Individuals tended to report very positive impacts of the DBI Level 2 intervention on their ability to self-manage their distress.
- There is also evidence that DBI may be contributing to prevention of some deaths by suicide – one in 10 evaluation participants reported that they may have attempted suicide or continued with suicidal thoughts if DBI had not been offered to them.

The evaluation also supports our plans to roll the programme out to all NHS Board areas by March 2024. A key element of this rollout is the development of “associate sites” in which the principles of DBI are embedded into local practice in areas outwith the 4 original pilots. We are making strong progress towards the 2024 target - DBI is now live in 19 of the 31 Integrated Joint Board areas, with more expected to go live in the coming months.

With the DBI Central team and the wider DBI community we will work to address the evaluation’s findings and its recommendations for improvements, in support of achieving our target of coverage in all NHS Board areas by March 2024.

An additional independent evaluation – of the introduction of the NHS 24 national pathway to DBI in 2020 – has been carried out. We expect to publish the report of this evaluation later this summer.

I would now like to address the points raised in your letter on the issue of tackling online child abuse, grooming and exploitation.

## **Gaps in Existing Legislation and Proposals for New Offences**

Police Scotland have highlighted a number of areas where they consider that the law concerning child sexual exploitation and abuse may require reform, particularly where the legislation in question pre-dates the widespread adoption of the internet and smart-phone technology, which have changed the ways in which perpetrators may seek to sexually abuse and exploit children. However, criminal laws can be flexible and in practice have often proven effective at tackling internet-based offending even if developed prior to development of new technology such as the internet.

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For instance, Police Scotland suggest that existing legislation concerning possession of indecent images of children should be modernised to avoid the risk of future legal challenges as it was drafted in a pre-internet era. It is acknowledged that the law in this area was developed without necessarily focusing on internet offending. We are not aware of any particular cases where this issue has arisen and it appears that this law has operated satisfactorily for over twenty years in addressing people viewing indecent images of children using the internet.

However we do keep criminal laws under review and we have sought views from the Crown Office and Procurator Fiscal Service (COPFS) in this area given their role in prosecuting cases. Informed in due course by these views as well discussion with Police Scotland, the Scottish Government will consider whether offences in this area require to be adjusted through proposals for future legislative change.

With regards to the point made on offences concerning the 'taking/making' and distribution of indecent images of children being extended to cover extreme pornographic images, I note that 'extreme pornography' offences criminalise possession of extreme pornographic images but do not contain 'making and/or taking images' offences. We are in discussion with COPFS regarding the extent to which this may have presented a barrier to the prosecution of people viewing extreme pornographic material in individual cases.

I also note that Police Scotland flagged issues with the use of cloud storage when investigating these offences in terms of securing evidence from a search warrant. The Scottish Government is happy to consider this in conjunction with Police Scotland. However, it should be noted that the scope for any legislation that may be required to address this issue to be introduced in the Scottish Parliament may be limited as cloud storage sites are often located overseas and the power to legislate to regulate the provision of internet services is reserved to the UK Parliament. As such, UK legislation and/or international agreements may be required to address some of these issues.

On the point of Police Scotland indicating that they think that the possession of certain material that is not currently a criminal offence to possess should be criminalised, this would in effect represent extensions to the criminal law. This includes the possession of non-real or 'cartoon' images of child sexual abuse, the possession of 'child-like' sex dolls, and the possession of so-called 'paedophile information manuals' which provide information on how to commit sexual offences against children.

Turning first to Police Scotland's proposal to criminalise possession of 'cartoon' or 'non-real' indecent images of children along the lines of Section 62 of the Coroners and Justice Act 2009, a consultation was undertaken in 2005 by the then Scottish Executive in this area. It was decided not to progress legislative proposals at that time. In recent years, there have not been had significant numbers of queries about or calls to criminalise 'non-real' or 'cartoon' images of child sexual abuse. As with all of these suggestions for law reform, the Scottish Government will discuss with Police Scotland the extent to which they are encountering such material and if so, to what extent people who do possess such material do not also possess separate material that is currently illegal.

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Turning to Police Scotland's proposal to criminalise the possession of material providing advice or guidance on the commission of child sexual exploitation and abuse offences as per Section 69 of the Serious Crimes Act 2015, the Scottish Government will discuss further with Police Scotland the extent to which they are encountering such material and seek information from the UK Government on the extent to which the 2015 Act offence has been used.

Prior to the Police Scotland letter, there have not been calls for Scotland to legislate in this area. It is worth noting that anyone providing or producing such material may, depending on the facts and circumstances of the case, be committing an offence of inciting, aiding or abetting the commission of a sexual offence against a child.

Your letter also touched on the criteria for a Risk of Sexual Harm Order (RoSHO). In Scotland there are already a broad range of powers to enable the police to protect the public from the risk of sexual harm to children. With regard to RoSHOs, these are available where a person is suspected of directing sexual activity towards, or engaging in, sexual activity with a child online or offline where that falls within one of the categories of behaviour set out in Section 2(5) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. RoSHOs are available as civil orders, where the individual has not had a criminal conviction. Criminal courts (and on civil application where there has been a historic conviction) can also put in place a Sexual Offences Prevention Order covering a wide range of behaviour including online offending.

Police Scotland have also proposed criminalising possession of 'child-like sex dolls', this is another matter that we will discuss with Police Scotland in order to determine the extent to which they are encountering such material. It is worth noting this is not currently an offence in any part of the UK, though the import, sale etc. of such items would likely amount to a criminal offence relating to obscene material.

Likewise, we will discuss with Police Scotland their concerns about how the increased use of end-to-end encryption is making the detection and/or enforcement of the law more difficult in an online environment. Depending on the specifics of any legislative reform, the power to legislate in this area is likely to be reserved to the UK Parliament as it may concern regulation of the provision of internet services. As the Committee will be aware, the UK Government Online Safety Bill makes provision relating to the use of end-to-end encryption and requires services providers to take steps to prevent the use of end-to-end encrypted messaging to transmit illegal material.

In summary, the Scottish Government welcomes these suggestions for consideration and intends to consider further with partners, including Police Scotland, whether legislative reform to address these issues would improve the protection of children from online sexual exploitation and abuse. An evidence based approach is essential, including taking account of evidence from how current laws operate in Scotland and how similar laws operate in other jurisdictions in the UK and abroad.

## **National Strategy to Tackle Online Child Sexual Abuse**

Protecting children from online harm is a key priority for the Scottish Government. We are committed to ensuring the safety and wellbeing of Scotland's children and young people. Child abuse in any context is an abhorrent crime and can have devastating impact on its victims and their families.

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While there is no overarching online child sexual abuse strategy nor any current plans to develop one, the Scottish Government is taking forward a range of actions to prevent and tackle child sexual abuse and exploitation, including online-enabled abuse. These actions include for example the revised National Guidance for Child Protection in Scotland published in September 2021, which provides updated information on Child Sexual Abuse and Exploitation to support local areas in developing effective, evidence-based responses; and continuing our funding commitments to strengthen early intervention and prevention to better protect children and young people in Scotland from abuse and neglect. Such actions are further strengthened by The Promise's proposals to incorporate the UNCRC into Scots Law and Scotland's GIRFEC approach.

The Scottish Government's response to this threat is also supported by the implementation of a range of commitments outlined in a number of interconnected areas, including Scotland's Serious Organised Crime Strategy, the Cyber Resilience Learning and Skills Action Plan, Scotland's Digital Strategy, the National Internet Safety Action Plan, the Curriculum for Excellence, the Equally Safe Strategy, the Scottish Child Interview Model, Bairns' Hoose development, the Child Protection Improvement Programme, delivery of the proposals of the Expert Group on Preventing Sexual Offending Involving Children and Young People, the Chief Medical Officer's Rape and Sexual Assault Taskforce and the Joint Strategy for Policing, as well as the passing of the Disclosure (Scotland) Act 2020, the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019, and the Redress for Survivors (Historical Abuse in Care) (Scotland) Act 2021.

In February and March 2022, the Scottish Government ran a national public awareness campaign to support parents and carers to help keep their children safer online, across video-on-demand, radio and digital channels. This encouraged parents and carers to take as close an interest in their children's safety online as they do offline. It linked to the Scottish Government's Parent Club website and two newly created hubs - [Online Safety Hub](#) and [Child Sexual Abuse and Exploitation Hub](#). The campaign advert appeared 5.4 million times on social media resulting in 1 million completed views of the campaign film.

Stricter regulation of the internet and technology companies is a key stand in the UK's overall approach to protecting children and young people in the digital world and the Scottish Government is pleased that child welfare has been given prominence in the UK Government's Online Safety Bill. We continue to engage with UK Government, Ofcom, law enforcement and third sector partners to consider the implications of this Bill for child protection in Scotland and ensure it is as robust as possible in protecting children and holding industry to account. In a recent letter from Mr Stewart, Ms Haughey and Ms Regan to Chris Philp, the former Minister for Tech and the Digital Economy, it was noted that while the measures in the Bill are a step in the right direction, more needs to be done to encourage the technology sector to design child sexual abuse and exploitation material out in the first place.

Thank you again for your letter and I trust that this response comprehensively addresses the issues raised at the Committee's two roundtable evidence sessions.

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