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Criminal Justice Committee
The Scottish Parliament
Edinburgh
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By Email: Stephen.Imrie@parliament.scot
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11th September 2023

Dear Conveners,

Cross-committee on tackling drug deaths and drug harm - request for update

I am writing to you in response to the request from the cross-committee on tackling drug deaths and drug harm for an update on my consideration of a proposal for a pilot of a safer drug consumption facility in Glasgow.

As the members who attend the cross-committee meetings on behalf of their committees will be aware, I have been asked whether, if a safe drug consumption room (of the type described in the documentation I have been provided with) were to be established, as Lord Advocate I would consider making a public statement of prosecution policy to the effect that it would not be in the public interest to prosecute individuals using the facility for possession of controlled substances within the confines of the facility.

I understand that the proposers have taken legal advice and are content that the proposed facility could operate within the current legal framework, except in so far as users of the facility would be in possession of controlled substances, contrary to section 5(2) of the Misuse of Drugs Act 1971. The request made of me was therefore narrow and focused and quite different in nature and scale from what was asked of the then Lord Advocate, James Wolffe KC, in 2017.

Members will of course be aware that as Lord Advocate and independent head of the systems of prosecution and investigation of deaths, I cannot change the law, that could only be done by parliament. I wish to be clear that any statement of prosecution policy does not, and could not, represent legalisation of drugs or decriminalisation of the offence of being in possession of a controlled substance.



Rather, any statement of prosecution policy would be a public instruction to prosecutors of the way in which the public interest considerations relevant to a prosecutorial decision would fall to be applied in a particular context.

The particular context for this statement of prosecution policy would be the public interest in prosecuting individuals using a facility of the type described by the proposers for possession offences.

I understand that the proposed facility would operate in an area where public injecting is already a significant issue and is intended to engage with those in that area, whom health and support services find most difficult to reach.

Central to my consideration of the request has been the fact that the proposed facility would be co-located with other services which, taken together, may be able to offer a range of support and assistance to those consuming drugs. Further, although I am aware it is not the main aim of the proposed facility, my understanding is that the facility could, over time and in some cases, provide the necessary resources to assist those using the facility into recovery.

Against this backdrop therefore, I can confirm that were a facility, of the type described in the documents which I have been provided with, to open as a pilot in Glasgow, then I would be prepared to publish a statement of prosecution policy to the effect that it would not be in the public interest to prosecute users of that facility in terms of section 5(2) of the Misuse of Drugs Act 1971 for simple possession offences committed within the confines of the facility.

Such a statement of prosecution policy would represent an extension of the principles underpinning current policy in relation to diversion from prosecution. That policy allows prosecutors to make an offer of a referral to local authority where there is an identifiable need which has contributed to the offending which can best be met through a diversion scheme. I have previously said that addiction to drugs may be such a need and in these particular circumstances, I am content that the proposed facility could provide a mechanism to engage with some of the most vulnerable in our society.

The requested statement of prosecution does not extend to any other criminal offences, and the proposers would have to satisfy themselves, which I understand they have, that their processes and procedures ensure compliance with the current legal framework. I have not been asked to "sign off" any facility and it would not be appropriate for me to do so.

I have not been asked for a statement of prosecution policy to extend to individuals on their way to and from any facility, and I agree that it would not be



appropriate for me to provide any such guarantee; there would be significant practical and legal difficulties with such a proposal.

Nor would a statement of prosecution policy amount to an exclusion zone whereby a range of criminality is tolerated. As members are aware, Police Scotland have operational independence and it has been of the utmost importance to me to ensure that Police Scotland retain the operational ability to effectively police the facility and ensure that the wider community, those operating the site and those using the facility can be kept safe.

I have anticipated that the facility would operate as a pilot and that there would be careful and rigorous evaluation of the facility and its effects. Additionally, I consider it particularly important that there is proactive community engagement in relation to the proposal.

Yours sincerely,

A handwritten signature in blue ink that reads 'Dorothy R. Bain.' The signature is written in a cursive, flowing style.

**THE RIGHT HONOURABLE DOROTHY BAIN KC
LORD ADVOCATE**