

## MENTAL CAPACITY BILL

Thank you for your letter of 9 June 2015 informing the Policing Board that the Ad Hoc Joint Committee on the Mental Capacity Bill is currently seeking views and comments on the contents of the Bill. This is an issue that has previously been considered by the Board's Performance Committee and I have enclosed for your information a copy of the Committee's response to the DHSSPS/DOJ consultation on the proposed Bill dated 27 June 2014.

The Performance Committee will not have the opportunity to consider and respond to the Ad Hoc Joint Committee's call for submissions prior to the closing date of 7 July 2015 as the Board has recently been reconstituted and so the first meeting of the newly formed Performance Committee is likely to be mid-August at the earliest. I will however provide the Committee with a copy of your correspondence in the event they should wish to provide any comments, albeit outside the closing date for submissions. In the interim I thought it would be useful if I brought to your attention some issues previously considered by the Performance Committee which impact on the PSNI.

I note that a number of the issues previously under consideration by DHSSPS/DOJ appear to have been determined, in particular, the Bill *will* extend to the criminal justice system; and it *will not* apply to under 16s. The Performance Committee's previous submission therefore remains relevant as regards ensuring police officers receive sufficient support and advice from healthcare professionals when making decisions regarding capacity, and also in respect of the confusing legislative landscape which police officers will be required to navigate, particularly where it is unclear if a person is over or under 16 years of age. In this context I note that **clause 276** of the draft Bill provides for the DHSSPS to prepare and issue as many codes of practice as it sees fit. While this includes power to delegate the preparation or revision of any of the codes as the DHSSPS sees fit, the Ad Hoc Joint Committee may wish to consider whether there should be a specific obligation placed upon the DOJ to prepare a code of practice for criminal justice organisations.

Another issue that the Performance Committee has previously raised with DHSSPS and DOJ is the definition of a "place of safety". I note that **chapter 9** of the draft Bill will mean that police officers will retain their powers to remove a person of any age to a place of safety in appropriate circumstances. As per **clause 158**, a "place of safety" means (a) any hospital whose managing authority is willing temporarily to receive persons who may be taken there by a police officer exercising the place of safety powers; or (b) any police station. **Clauses 140 and 141** deal with powers to detain in hospitals and police stations respectively and the detention conditions are contained within **clause 142**.

The DOJ had previously indicated that while a police station would still fall within the definition of a place of safety, there would be a provision requiring that a police station should only be used if no other suitable place of safety is available. This in itself stops short of the recommendations in a recently published report by the UK Government on mental health laws in England and Wales (*Review of the Operation of Sections 135 and 136 of the Mental Health Act 1983*, Department of Health and Home Office, December 2014). That report recommends that police cells should never be used as a place of safety to detain mentally ill young people and that they should only be used as a place of safety to detain adults when their behaviour is so extreme they cannot be managed elsewhere.

The Performance Committee in its June 2014 response to the DHSSPS/DOJ consultation highlighted concerns raised by the Criminal Justice Inspection Northern Ireland as regards PSNI's difficulties in dealing with mentally ill persons and a lack of co-operation on occasions from hospitals. The Committee highlighted developments in England in this regard, such as a new

assessment suite at the Royal Bolton Hospital which will provide a place of safety, and suggested that DHSSPS and DOJ may wish to further consider the issue.

I note however that the Bill as drafted does not seek to move towards the position advocated by the UK Government in its December 2014 report, nor does it appear to include the DOJ suggestion of a provision to limit the use of a police station to circumstances where there is no other suitable place of safety available. There appears to be no obligation placed upon health to accept a person brought to them by a police officer under place of safety powers, with a hospital constituting a place of safety only if the hospital management is “willing” to temporarily receive the person. On the other hand the police will find that officers may be left with no choice but to use a police station for this purpose.

**Clause 154** of the draft bill provides that PSNI must keep annual records of the number of persons detained in hospital and the number of persons detained in police stations under place of safety powers. The figures must be reported in the Chief Constable’s annual report under section 58 of the Police (NI) Act 2000. I anticipate the Performance Committee will welcome this provision as it will reveal the frequency with which the powers are used by the police and the extent to which police custody is relied upon as a place of safety.

I hope this information is useful and I would be grateful if you would keep the Board informed of any further consultation or significant developments with regard to criminal justice as the Ad Hoc Joint Committee commences its deliberations.



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