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Prisoners and Mental Health

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This is a scoping paper on issues relating to prisoners and mental health and initiatives in other jurisdictions identified in a range of research reports.

Key Points

- Mental illness in the criminal justice system is highly prevalent. Some of the key statistics suggest:
 - In the UK, 70% of sentenced prisoners suffer from two or more mental health problems;¹
 - 64% of sentenced male prisoners and 50% of female prisoners are personality disordered.² 78% of male prisoners on remand are personality disordered.³
- It has also been noted that mental health is currently underfunded. This will translate to the prison setting. The Health Minister has stated that significant investment is needed but this may prove difficult in the current fiscal climate;
- This paper indicates that there has been a huge amount of work in recent years highlighting challenges facing criminal justice agencies in relation to dealing with offenders with mental health problems, in particular a report by the Criminal Justice Inspection Northern Ireland (CJINI) in March 2010. It is evident from the emerging policies, initiatives and services that there is an awareness of the need to factor in the needs of offenders with mental health issues. However some of the recent reports identify a number of key issues which may need to be given further consideration. These include the following:
 - Currently there is an anomaly in the Mental Health (NI) Order which does not include personality disorder within its scope unlike other parts of the UK. The CJINI found this has implications for criminal justice agencies, particularly for prisons who find they are coping with too many personality disordered prisoners who present a risk to themselves, staff and other prisoners. It has been proposed that a new Mental Capacity Bill will be enacted to bring personality disorder within the scope of mental health legislation, however it is anticipated the Bill will not be introduced to the Assembly until Autumn 2011.
 - There is a need for early screening, assessment and diversion of persons with mental health issues from the criminal justice system into health and social services in the community. This puts the focus on the need for improved community services in order to address levels of reoffending and recidivism. Some of the literature examined for this paper suggests that imprisonment may exacerbate mental health problems increasing likelihood of reoffending and emerging policies have acknowledged that mental health is a contributing factor in offending behaviour. Whilst there are some initiatives in Northern Ireland, it has been identified that there

1 Sainsbury Centre for Mental Health "London's Prisons: Mental Health, a Review"

http://www.centreformentalhealth.org.uk/pdfs/policy5_prison_mental_health_services.pdf

2 According to the DHSSPS, a person is thought to have a personality disorder "if their personal characteristics cause regular and long-term problems in the way they cope with life, interact with people, and respond emotionally." Personality disorders cause significant distress, evidenced by self harm, substance misuse, depression, and eating disorders and usually stem from a combination of genetic vulnerability and early adverse experiences, such as abuse and neglect."

3 Criminal Justice Inspection Northern Ireland (2010) Not a Marginal Issue www.cjini.org/CJINI/files/24/24d6cd45-20bb-4f81-9e34-81ea59594650.pdf page 7

is a need for more diversion schemes in police stations and courts. It has been recommended that the Mentally Disordered Offenders Scheme (MDO) is extended to all custody suites in Northern Ireland or that there should be pre trial hearings by a judge specialising in mental health. A key issue is when would diversion be used and who would be targeted for such schemes? For example, the scheme in the Republic of Ireland targets remand prisoners and in Canada and Australia, diversion is used in minor offences;

- One of the common themes identified in the research is that Northern Ireland has no high secure facility for the most dangerous mentally disordered offenders and such prisoners can be transferred to Carstairs in Scotland or remain in prison for the duration of their sentences. It has been highlighted this can have implications for family visits and continuing stability of prisoners. A key issue is whether it would be viable for Northern Ireland to have its own facilities as it has been suggested consideration should be given to sharing secure facilities with other jurisdictions;
- Many of the reports indicate there is a need for alternative custody arrangements for women, recommending an emphasis on a therapeutic rather than a secure environment. Other issues identified include the need for step down and supported accommodation. The Prisons Review Team will be considering provision for specialist groups including women in its final report;
- The policy on mental health and prisoners is a policy of equal access to treatment and services, however reports suggest there are still inadequate services for offenders with mental health problems both in prisons and once they re-enter the community. Other issues identified include lack of staff awareness in this area;
- There is a need for specialist child and adolescent psychiatric provision;
- Resettlement of prisoners with mental health problems has been challenging. It has also been identified that prisoners may find that they have been removed from GPs or psychiatrists lists on imprisonment and this can impact on referrals to community health teams;
- Issues have also been highlighted about the sharing of information and communication between different agencies. Suggested recommendations in reports include ensuring information is recorded properly by PSNI on specific IT systems and passing onto appropriate agencies such as the Public Prosecution Service (PPS), ensuring that information on mental health issues is brought to the attention of judges by the PPS;

Executive Summary

This paper is a scoping paper on issues concerning prisoners with mental health problems. Section 1 sets out the structure of the paper, outlining the content of the sections. Section 2 of the paper provides statistics, highlighting the prevalence of mental illness in the criminal justice system.

Section 3 of the paper sets out the legal framework governing the admission into hospital, detention and treatment of individuals subject to criminal proceedings or under sentence. The section identifies some gaps in the legislation, in particular that the legal framework does not include personality disorder within its scope. The Criminal Justice Inspection Northern Ireland comments that this has implications for prisons who are coping with too many personality disordered offenders.

Section 4 of the paper provides information on initiatives, services and policy developments in relation to mental health and prisons. The section highlights that there have been a number of positive developments indicating an awareness of the links between mental health and offending including a diversion scheme in Musgrave Street police station, the transfer of responsibility of healthcare to the health service, policy developments on vulnerable women offenders and a consultation seeking views on community sentences.

Section 5 of the paper considers research reports focusing specifically on mental health and criminal justice. The reports identify a number of issues that need to be addressed including the need for more diversion schemes, problems in information exchange between the agencies, lack of high secure facilities for the most dangerously disordered offenders, inadequate services in the community and in prisons, the need for a therapeutic environment for women offenders, and a lack of hostel accommodation for low risk offenders who require support in release. The section also identified resettlement problems for offenders with mental health issues.

Section 6 of the paper highlights a number of initiatives for other jurisdictions. These include court diversion schemes in England and Wales and Australia, mental health courts in the United States and a prison in-reach and court liaison scheme in the Republic of Ireland. These schemes have had positive outcomes in diverting offenders to appropriate health services and reducing offending rates. In some jurisdictions such as Canada, diversion is used for minor offences and not violent offences. The Republic of Ireland scheme targets remand prisoners.

Section 7 of the paper makes concluding remarks and highlights key issues for further consideration.

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1 Introduction

It has been noted by the Criminal Justice Inspection Northern Ireland (CJINI) that mental health problems in prisons is prevalent and *“imprisonment may not be the best response to their offending behaviour; it frequently does them no good and risks further harming their mental health, making them more likely to reoffend.”*⁴ This paper highlights issues facing the criminal justice system in relation to prisoners with mental health problems.

Section 2 of the report presents statistics on the prevalence of prisoners with mental health problems in the criminal justice system. The third section explains the legislative context of mental health, in particular provisions relating to detention of mentally disordered offenders. The fourth section considers some of the initiatives to address the issues of mental health of prisoners, including the latest policy developments. The fifth section considers a range of research papers which have discussed these issues, and a number of challenges and proposals are highlighted. Section 6 examines some of the initiatives in other jurisdictions. Section 7 makes some concluding remarks and identifies key issues for further consideration.

2 Prevalence

Northern Ireland has 3 prison establishments: Maghaberry, Magilligan and Hydebank Wood (young offenders and women’s prison) with an average prison population of 1,500 and around 5,000 prisoners committed each year.⁵ Of these, around 5% are women. A separate juvenile justice centre, Woodlands, is located in Bangor. Figures relating to the extent of mental illness in the criminal justice system illustrate that:

- In the UK, 70% of sentenced prisoners suffer from two or more mental health problems;⁶
- 64% of sentenced male prisoners and 50% of female prisoners are personality disordered.⁷ 78% of male prisoners on remand are personality disordered.⁸ This is estimated to be 3 or 4 times greater than the general population.
- 20% of prisoners have four or five major mental health disorders.⁹
- 16% on individuals arrested into custody meet one or more of the assessment criteria for mental disorder.¹⁰

4 CJINI “Not a marginal issue: Mental Health and the Criminal Justice System in Northern Ireland” (March 2010.), viii.

5 Department of Justice personal correspondence 4.3.2011

6 Sainsbury Centre for Mental Health “London’s Prisons: Mental Health, a Review”
http://www.centreformentalhealth.org.uk/pdfs/policy5_prison_mental_health_services.pdf

7 According to the DHSSPS, a person is thought to have a personality disorder “if their personal characteristics cause regular and long-term problems in the way they cope with life, interact with people, and respond emotionally.” Personality disorders cause significant distress, evidenced by self harm, substance misuse, depression, and eating disorders and usually stem from a combination of genetic vulnerability and early adverse experiences, such as abuse and neglect.”

8 CJINI (2010) Not a Marginal Issue www.cjini.org/CJINI/files/24/24d6cd45-20bb-4f81-9e34-81ea59594650.pdf page 7

9 Prison Reform Trust (2009) citing Paul Goggins, Minister for Prisons and Probation speaking in a debate on prisons and mental health, Hansard, 17 March 2004

- There is a growing ageing population in Northern Ireland prisons. People aged over 60 are now the fastest growing age group in the prison population and dementia will become an increasing mental health issue.¹¹
- 700 out of 850 prisoners in Maghaberry prison are on medication mainly tranquilisers¹² and it is estimated that around half of all prisoners in Magilligan Prison are prescribed psychotropic medication.¹³

3 Legislative Context of Mental Health

The nature of mental health law is complex, and particularly contentious with regard to prisoners. The legal framework governing the admission into hospital, detention and treatment of individuals subject to criminal proceedings or under sentence who have a *significant mental disorder* falls under Part III of the Mental Health (NI) Order (MHO, 1986). The MHO defines a 'mental disorder' as "*mental illness, mental handicap and any other disorder or disability of mind.*"¹⁴

According to the SEHSCT, "*prison healthcare use the MHO and its accompanying handbook as the legislation and guidance in relation to the mental health treatment of prisoners rather than a policy.*"¹⁵ The Order does not specifically apply to Prisons, as Prison Establishments are not 'hospitals' as defined within the MHO. If a prisoner is assessed by two psychiatrists as having a mental illness, 'Part III' of the MHO can be used to make an application to Criminal Justice for the transfer of a prisoner to an NHS hospital, for either assessment and or treatment under a 'Transfer Direction Order'. When the prisoner has been fully assessed or treated when in the NHS hospital, they can then be returned to the custody of a prison to continue their remand or sentence.

The MHO can also be used as a prison sentence by a court. If the prisoner is deemed to have a mental illness they can be given a 'Hospital Order' sentence. When this occurs, responsibility for the care and management of the prisoner is handed directly from Criminal Justice to the Health Service. Most prisoners who are sentenced to a 'Hospital Order' are transferred to one of the High Security Special Hospitals, either in Scotland or England, but some prisoners who have sentenced to a 'Hospital Order', have been transferred to the NHS in psychiatric hospitals within the province. During 2010, 15 prisoners in Northern Ireland were transferred to NHS hospitals using 'Transfer Direction Orders'.¹⁶

Some of gaps in the current legislation include:

10 Bamford Review of mental health and learning disability: Forensic services working committee consultation report 2008, page 12.

11 Independent Monitoring Board "Maghaberry Prison: Independent Monitoring Board's Annual Report for 2009/10", 18

12 The Criminal Justice Inspection Northern Ireland "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" (March 2010,) 31

13 Independent Monitoring Board "Magilligan Prison: Independent Monitoring Board's Annual Report for 2009/10", 11

14 Mental Health (NI) Order 1986 Part 1 (3) <http://www.legislation.gov.uk/nisi/1986/595>

15 Personal correspondence with Director of Adult Services, SEHSCT 7.2.2011

16 Personal correspondence with Director of Adult Services, SEHSCT 7.2.2011

- In order for an individual to be considered and treated for a ‘mental disorder’ they must satisfy Article 3 of the MHO. However, not all prisoners (less than 15%) will have a significant level of illness as defined within the Order, and therefore their needs may largely go unmet within the prison setting;¹⁷
- According to the Forensic Services¹⁸ report of the Bamford Review, there are legal problems which currently make it impossible to transfer unsentenced prisoners to high secure hospitals;¹⁹
- Unlike the rest of the UK, the MHO does not allow for the detention and treatment of individuals with personality disorders, unless they have a co-existing mental illness.²⁰ The Order does not recognise a separate category of psychopathic disorder, regardless of whether a person is considered needing treatment. Therefore, prisoners with a personality disorder, who would be better treated in hospital, have to be detained in prison.²¹ Accessing appropriate services, particularly for prisoners with a personality disorder is difficult. The CJINI identified that the legislative failure to recognise personality disorder on a par with mental illness resulting in prisons coping with too many personality disordered prisoners who present a risk to themselves, staff and other prisoners;²²

Given that the MHO (1986) was developed over two decades ago, it is now considered outdated and unlike Scotland, England or Wales, Northern Ireland has yet to update its mental health legislation. Significant gaps in policy, legislation and service provision, have also been highlighted in the Bamford Review Forensic Services Report,²³ and an extensive series of recommendations to improve forensic services in Northern Ireland have been proposed.²⁴ To replace the MHO, a new Mental Capacity (Health, Welfare and Finance) Bill is due to be introduced to the NI Assembly later in 2011. The Bill will be underpinned by a range of human rights principles as proposed by the Bamford Review.

4 Initiatives, Services and Policy Developments

Responsibility for Healthcare in the Criminal Justice System

Responsibility for mental healthcare in prisons was transferred to the South Eastern Health and Social Care Trust (SEHSCT) in April 2008. According to the SEHSCT, around £1 million is currently spent on the provision of mental health services to

17 Northern Ireland Affairs Committee Report “Northern Ireland’ Prison Service” First Report of session 2007-2008,41

18 Forensic services: the care of mentally disordered offenders who come into contact with the criminal justice system. For example, services can be delivered through police stations, courts, prison, inpatient (hospital) or community services.

19 Bamford Review of Mental Health and Learning Disability Services in Northern Ireland “Forensic Services”, 29

20 House of Commons session 2007-8 Northern Ireland Affairs Committee – First Report: Mental Health Services.

21 As cited above 3

22 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010, 19

23 The Bamford Review of Mental Health and Learning Disability. Available online at www.rmhdni.gov.uk

Website accessed 26.11.10.

24 See The Bamford Review of Mental Health and Learning Disability (NI) Forensic Services Working Committee.

prisons per annum.²⁵ A key concern is that the Minister for Health has repeatedly stated that Northern Ireland's mental health services are underfunded by 25% when compared with the rest of the UK.²⁶ The CJINI reports that these are going to be difficult times and there unlikely to be additional resources.²⁷ However they comment that, given the prevalence of mental health in the offending population, "it is in the wider public interest- for financial reasons no less than for reasons of public protection, that they should receive special attention." They suggest this could mean placing a criminal justice 'premium' in the budget for mental health provision.²⁸

Access to mental healthcare is available both in custody suites and in prison. The SEHSCT has stated that mental health services provided to prisoners through local health Trusts "*are dependant on the specific individual needs of the patient. Prisoners are entitled to the same range of health care services as someone living in the community. This can range from high secure inpatient care to community support and follow up, following discharge from prison.*"²⁹ A variety of support services are also available which include for example, mental health support, listener schemes, drugs and alcohol awareness programs aimed to promote positive mental health.³⁰

The South Eastern Health and Social Care Trust's policy is to ensure that prisoners have equal health services to those in the community.³¹ Each prison has some onsite healthcare facilities and specialist staff to treat mental health offenders, however further investment is required.³² This is not a unique issue to Northern Ireland as recent studies in England have suggested that prisoner health services are underfunded, and only receiving a third of the money needed to meet the government's goal of providing equivalent services to those in the community.³³

Services in the Community

The South Eastern Health and Social Care Trust have provided details of what mental health services are available in their trust to meet the health care needs of the population of Northern Ireland.³⁴ Care ranges from inpatient hospital treatment to care packages. The following facilities and services include:

- Regional Medium Secure Unit;

25 NI Assembly Question AQO 629/11 by Mr Tommy Gallagher to DHSSPS Minister regarding what resources are available to address the high levels of mental illness and personality disorders among prisoners.

26 NI Executive (March 2010) Health Minister's statement on the criminal justice inspectorates report on mental health. Available online at www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-march-2010/news-dhssps-16032010-health-ministers-statement.htm

27 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, ix

28 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, viii

29 Personal correspondence with Director of Adult Services, SEHSCT 7.2.2011

30 See the Independent Monitoring Board's Annual Reports for all three prison establishments for 2009-2010

31 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, 33

32 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, 34

33 Sainsbury Centre for Mental Health "Short Changed: Spending on Prison Mental Healthcare", May 2008, 3

34 This information was provided by the Director of Adult Services for the South Eastern Health and Social Care Trust, via email on 7 February 2011

- Acute inpatient facilities;
- Specialised mental healthcare teams;
- Crisis response teams;
- Home treatment services;
- Rehabilitation services;
- Dementia services;
- Community forensic services;
- Child and Adolescent Mental Health Services;
- Eating disorder services;
- Hidden harm teams; and
- Regional and Local mental health promotion strategies

The trusts are supported in the delivery of the work by a wide range of voluntary agencies and groups, such as NIACRO and Extern, however despite their value; these initiatives are piecemeal and not widely available in Northern Ireland. The Prince's Trust also has a project inside Hydebank Wood which supports young offenders from custody to the community known as the 1:2:1 project.

Services in custody and prison

There have been a number of positive initiatives to deal with offenders with mental health problems in recent years. The Mentally Disordered Offender Scheme (MDO) was established in 1998 and is based in Musgrave Street police station and covers four Belfast custody suites. The Scheme involves two psychiatric nurses who undertake risk assessments and make referrals to mental health services. The scheme has generally been identified as positive and represents good practice. However, there have been some limitations identified, particularly that the service is limited to daylight hours and alternate weekends. There also appears to be some uncertainty about the future of the scheme.³⁵ The Criminal Justice Inspection team has commented that "their recommendations as to how cases should be disposed were given great weight by District Judges."³⁶ Another initiative is the Appropriate Adult Scheme which was established in 2009. The scheme enables a Custody Sergeant who suspects a person may be mentally disordered to seek the services of "an appropriate adult" to represent the person's best interests as obliged under PACE. The appropriate adult provides support to the person and ensures they understand their rights during detention.³⁷

As well as these initiatives in police stations, there is an initiative in Maghaberry Prison called the REACH project which is designed for offenders displaying personality

35 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" (March 2010,) 18.

36 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" (March 2010,) 18

37 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" (March 2010,) 16

disorder, poor coping skills or self harming behaviours. There are 20 places for remand and sentenced prisoners.³⁸

The Shannon Clinic at Knockbracken healthcare is Northern Ireland's first medium secure unit.³⁹ The clinic has 34 beds, however the CJINI report that these are not all available for offenders.⁴⁰ The clinic takes referrals from specific hospitals, courts and prisons, psychiatric intensive care units and community forensic mental health teams and will accept mentally disordered offenders as a step down from state hospitals like Carstairs in Scotland.⁴¹ The courts can also place individuals in facilities such as Muckamore Abbey Hospital under a hospital order or detain individuals in Knockbracken hospital under the Mental Health Order.⁴²

Relevant Policies

There are few specific policies that deal primarily with the issue of mental health in prisons in Northern Ireland. However there are a number of policies and strategies published by the Department of Health Social Services and Public Safety (DHSSPS), the Department of Justice and other criminal justice agencies that include commitments in the area. Since the Bamford review, a Northern Ireland *Personality Disorder Strategy* (June 2010) which takes account of forensic services has been developed.⁴³ In terms of other policy developments, the *Northern Ireland Mental Health Service Framework* is currently underway, as is the South Eastern Trust/ Northern Ireland Prison Service (NIPS) *Healthcare Strategy* which aims to encompass mental health and addiction services.⁴⁴ This strategy will include actions such as assessment of the mental health needs of women prisoners and provision of multi agency interventions and the creation of a more therapeutic environment to promote women's health and well being.⁴⁵

The Department of Justice published a strategy on the management of women offenders in 2010.⁴⁶ The strategy noted the CJINI report on mental health and commented that a Criminal Justice Board sub group has been established to take forward the report's recommendations.⁴⁷ The strategy contains a number of commitments in relation to women offenders with mental health problems including: working with other government departments in diverting women offenders away from

38 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" (March 2010,) 37

39 http://www.interpreting.n-i.nhs.uk/sebservices/shannon_clinic.html

40 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, 27.

41 http://www.interpreting.n-i.nhs.uk/sebservices/shannon_clinic.html and CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, 28

42 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, 29

43 DHSSPS (2010) Available online at: www.dhsspsni.gov.uk/northern-ireland-personality-disorder-strategy-june-2010.pdf

44 Mental Health Service Framework http://www.dhsspsni.gov.uk/sf_mental_health_pid.pdf

45 Department of Justice "A Strategy to manage women offenders and those vulnerable to offending behaviour", December 2010, 33

46 Department of Justice "A Strategy to manage women offenders and those vulnerable to offending behaviour", December 2010

47 Department of Justice "A Strategy to manage women offenders and those vulnerable to offending behaviour", December 2010, 22.

the criminal justice system and establish joint working groups to ensure integrated services for women with mental health problems in prison.

Efforts have been made recently to consider alternative disposals to custody, particularly in low risk offences. The Department of Justice is currently consulting on a review of community sentences. The document notes that mental health is a contributing factor in offending behaviour and mental health problems can be exacerbated in prison.⁴⁸ The consultation highlights that community sentences can minimise the factors which contribute to offending and reoffending.⁴⁹ The aim of the consultation is to seek views on the effectiveness of existing community sentences and ensure that judges have a sufficiently wide range of disposals to deal with low risk adult offenders. The paper considers disposals in other jurisdictions such as Community Orders in England and Wales. Furthermore, the Justice Bill, which is currently making its passage through the Assembly, contains clauses on live links which aim to improve services for mentally disordered offenders by allowing live links between psychiatric hospitals and courts.⁵⁰ Other clauses include alternative disposals to custody including fixed penalty notices and conditional cautions. The conditional caution approach diverts offenders to programmes or activities to target offending behaviour, for example drug intervention strategies.⁵¹ It has been noted in the consultation document that penalty notices are not suitable for dealing with offences involving mental health issues.⁵² In evidence given during the Committee Stage of the Justice Bill, the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) noted that financial penalties may not address the causes of offending behaviour such as homelessness, mental health issues or substance abuse.⁵³

The NIPS Corporate and Business Plan 2008/11 states that, "Prisoners' access to health services must be appropriate to their needs and at least equivalent to those services available to the public."⁵⁴ The NIPS published a guide in November 2010 on working with women which provides information on the complex needs experienced by women in custody. The guide highlights that women prisoners tend to experience high levels of mental health problems and that these problems can be exacerbated due to separation from families.⁵⁵ The guide provides information for staff on practice and procedures in Ash House including information on the prison services Supporting Prisoners at Risk (SPAR) model which helps staff identify prisoners who are vulnerable and may be at risk of self harm,⁵⁶ dealing with anti-social behaviour, reducing self harm

48 Department of Justice "Consultation on A Review of Community Sentences", February 2011, 15

49 Department of Justice "Consultation on A Review of Community Sentences", February 2011, 15

50 Part 2 of the Justice Bill 2010, see explanatory memorandum,
http://www.niassembly.gov.uk/legislation/primary/2010/niabill1_10_efm.htm

51 Northern Ireland Office "Alternatives to Prosecution: a discussion paper", March 2008, 25

52 Northern Ireland Office "Alternatives to Prosecution: a discussion paper" March 2008, 18

53 Report of the Justice Committee on the Justice Bill, 9 December 2010, vol 1, para 1571, available at
http://www.niassembly.gov.uk/justice/2007mandate/reports/2010/report_nia41_10_11R_v1.htm#9

54 Northern Ireland Prison Service Corporate and Business Plan 2008/11, pg 9, available at,
http://www.niprisonservice.gov.uk/publications/Final%20NIPS_Corporate_Plan.pdf.PDF

55 Northern Ireland Prison Service "Working with women prisoners: a guide for staff" November 2010, 20, 21

56 Northern Ireland Prison Service "Working with women prisoners: a guide for staff" November 2010, 21

through use of distractions,⁵⁷ searching procedures,⁵⁸ available services and support for women prisoners. The NIPS has also published a revised suicide and self harm prevention strategy in 2011 which aims “to identify vulnerable prisoners at risk of self harm or suicide and provide the necessary support and care to minimise the harm the individual may cause to himself or herself throughout their time in custody.”⁵⁹ The policy sets out the responsibilities of all staff in the implementation of the policy and standard operating procedures. The policy also sets out the responsibilities for prisoners to take responsibility for their own well being and attend SPAR case conferences.⁶⁰

5 Research Papers and Reports

There have been numerous reports on issues concerning mental health in Northern Ireland prisons. There have been reports by bodies connected to the prisons service and the oversight of the prisons service, for example the Independent Monitoring Boards, Criminal Justice Inspection NI and Her Majesty’s Inspectorate of Prisons, and the Prisons Review Team set up after the Hillsborough Agreement has also produced an interim report. There are several reports by human rights organisations. These include reports by the Northern Ireland Human Rights Commission (NIHRC) – Connecting Mental Health and Human Rights and The Hurt Inside. In addition to these the Bamford Review on Mental Health produced a Report on Forensic Services that addresses mental health issues in prisons while there is also a relevant report by the Northern Ireland Affairs Select Committee.

The following sections will focus on a number of recent reports (2004-2011) in chronological order which highlight some of the issues relating to prisoners with mental health problems and suggest some possible reforms.

NIHRC Reports on Mental Health and Prisons (2004)

The issue of mental health and human rights has been addressed in a number of reports. Northern Ireland Human Rights Commission (NIHRC) commissioned research on the issue of mental health and human rights highlighting potential human rights violations in relation to mental health in the context of prison.⁶¹ Areas of concern included potential rights violations of offenders with mental health problems by not receiving treatment in appropriate settings. The NIHRC highlighted case law from the European Court of Human Rights which held in cases involving mental health and prisons there were violations of a number of convention articles in particular, convention Article 2 (the right to life), Article 3 (freedom from torture, inhuman and

57 Northern Ireland Prison Service “Working with women prisoners: a guide for staff” November 2010, 21

58 Northern Ireland Prison Service “Working with women prisoners: a guide for staff” November 2010, 26

59 Northern Ireland Prison Service “Suicide and Self Harm Prevention Strategy” 2011, 4

60 Northern Ireland Prison Service “Suicide and Self Harm Prevention Strategy” 2011, 29

61 Davidson, G, McCallion M and Potter M “Connecting Mental Health and Human Rights”, on behalf of the Northern Ireland Human Rights Commission, December 2003

degrading treatment) and Article 5 (the right to liberty and security of person).⁶² A particular issue raised by the NIHRC is the issue of diversion from the criminal justice system. The NIHRC stated “failure to divert people with mental health problems from prison to health and social services therefore may expose them to a greater risk of self harm and suicide.”⁶³ NIHRC recommended that people with mental health problems should be diverted away from the criminal justice system to health and social services at the earliest opportunity.⁶⁴ Other recommendations include:⁶⁵

- An inter-agency group should devise clear policy and guidance;
- Inter-agency training should be established to develop expertise and encourage communication and co-operation
- Adequate services should be in place to allow for the transfer of people with mental health problems to the appropriate level of security and care;
- Current arrangements under review to facilitate secure settings should be kept under review to ensure compliance with Article 8 of the European Convention on Human Rights;
- Health and Social Services should provide an in-reach service to people with mental health problems in prison to facilitate transfer, continuity and resettlement;
- Prisons and prison health care centres are not hospitals therefore powers to provide compulsory health care should not be extended to prisons;
- Additional safeguards such as mental health advocates and automatic access to a tribunal should be available to people with mental health problems who have committed offences.

The NIHRC also commissioned research on the experiences of women prisoners in Northern Ireland. The report indicated that there were inadequate therapeutic mental health services for women and girls in prison. Other recommendations included: the development of a gender-specific multi agency strategy to identify and meet the mental health needs of women and girls in prison; mental and physical health assessments should be carried out on all women and girls in custody; and prison officers and professionals should be given training on issues including mental health, suicide prevention and awareness, self harm and abuse.⁶⁶ The Department of Justice and NIPS have recently devised gender specific policies as outlined in the previous section. To give some more detail on the European human rights law standards, examples of leading European Court of Human Rights cases on the rights of persons with mental illness in prison are included in **Annex A**.

62 As cited above 65

63 As cited above, 66.

64 As cited above, 68

65 As cited above 68

66 Scraton P and Moore L “The Hurt Inside: The Imprisonment of Women and Girls in Northern Ireland” , published by the Northern Ireland Human Rights Commission (NIHRC) June 2005,92

Bamford Forensic Services Report 2006

As part of the Bamford Review on mental health and learning disability in Northern Ireland, the Forensic Services steering group concerned with the development of services for offenders with mental health problems produced this report. The report noted that often, persons subject to all stages of the criminal justice system have high levels of mental health problems.⁶⁷ The report makes 167 recommendations; some of these are short term and others are to be implemented on a long term basis that may take up to ten years. Some of the recommendations include⁶⁸:

- A Regional Forensic Network to co-ordinate and the strategic planning of forensic services;
- Statutory, voluntary, community mental health and learning disability service providers must ensure equity of access and provision of services to persons detained in police stations, attending courts;
- DHSSPS in partnership with criminal justice agencies should ensure an assessment is undertaken of the learning and development needs of stakeholders, including police, Forensic Medical Officers, lawyers, judiciary and health and social services staff;
- Northern Ireland Prison Service (NIPS) should commission research on the feasibility of reducing the number of offenders with mental health problems in prison by providing a broader range of services in the community;
- Commissioners of mental health services in prisons must ensure service users and carers are involved in development and delivery of services;
- NIPS should commission a research project into alternatives to prison for women with mental health problems, including placements at lower levels of security;
- People who require admission into hospital for assessment or treatment under mental health legislation must have equal access and priority whether they are in the community or prison;
- DHSSPS should commission research into needs of offenders with mental health problems including healthcare centre places, transfer of prisoners to the health service, bail and community step down⁶⁹ facilities;
- The provision of high and medium secure facilities, complemented by low secure and community step down facilities.

67 Bamford Review on Mental Health and Learning Disability Northern Ireland "Forensic Services" vii, available at http://www.dhsspsni.gov.uk/forensic_services_report.pdf

68 Please note this is not an exhaustive list of recommendations, see Bamford Review on Mental Health and Learning Disability Northern Ireland "Forensic Services" pages 125 -142 for full recommendations.

69 Step down services are low secure services. Semi secure hostel accommodation is an example of a step down service, see CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, 29

Northern Ireland Affairs Committee Report on the Northern Ireland Prison Service 2007

A report by the Northern Ireland Affairs Committee addressed mental health in Northern Ireland prisons. The Committee welcomed the then forthcoming transfer of healthcare from prisons to the health service. The Committee however reported on the challenges presented to prisons by the numbers of prisoners with personality disorders and recommended that the Government give serious consideration to amending the Mental Health (Northern Ireland) Order 1986 to bring personality disorder within its scope.⁷⁰ The Committee noted the urgency in ensuring there were more facilities for persons with personality disorder. The Committee also called for the further development of the REACH unit in Maghaberry and supported the proposal from the NIPS and Probation Board to provide a hostel to assist the resettlement of prisoners with personality disorders.⁷¹ The Committee also reported the strain placed on the prison service caused by the lack of a high secure unit. It was noted that this resulted in the prison service accommodating prisoners but are not equipped to provide appropriate care. Some prisoners are transferred to Cartaris however in evidence to the Committee it was highlighted remand prisoners cannot be transferred outside Northern Ireland and Carstairs rarely accepts patients with a primary diagnosis of personality disorder.⁷² The Committee recommended that the NIPS and health service enter into discussions with the Scottish Executive and government of the Republic of Ireland on sharing secure facilities. Furthermore the Committee recommended that before considering this, consideration should be given to a separate small facility in the grounds of Maghaberry or Hydebank Wood.⁷³

Independent Monitoring Boards Reports 2009-2010

There are Independent Monitoring Boards (IMBs) responsible for visiting each of the prisons and reporting to the Justice Minister on conditions of imprisonment and treatment of offenders.⁷⁴ The annual reports of the IMBs have raised a number of issues relating to prisoners with mental health problems. The IMB for Maghaberry highlighted prisoners with serious mental health problems such as schizophrenia present great challenges for the prison service. The IMB highlighted that there is no secure facility in Northern Ireland with severe mental health problems, with Carstairs hospital in Scotland providing this level of care. The IMB noted the impact of transferring prisoners to Carstairs on family visits and ensuring the continued stability

70 House of Commons Northern Ireland Affairs Committee "The Northern Ireland Prison Service", First Report of Session 2007-2008

71 House of Commons Northern Ireland Affairs Committee "The Northern Ireland Prison Service", First Report of Session 2007-2008, 44.

72 House of Commons Northern Ireland Affairs Committee "The Northern Ireland Prison Service", First Report of Session 2007-2008, 44.

73 As cited above, 45

74 Section 3 of the Treatment of Offenders Act (NI) 1968 and the Prison Act (NI) 1953

of health of prisoners.⁷⁵ Issues have been raised in relation to the REACH landing in Maghaberry which deals with prisoners often displaying symptoms associated with personality disorder or other mental health problems. It has been reported that the provision is “more aspirational than reality” and that programmes are often limited and infrequent.⁷⁶

The IMB for Magilligan has strongly commented that “prison is not the correct place to hold or to treat prisoners with serious mental health problems”.⁷⁷ The IMB Hydebank report echoes this, stating “prison is an inappropriate location for prisoners with severe and enduring mental health issues with continued evidence of prison being used as a default position for individuals for whom community based resources has failed.”⁷⁸

It has been reported by IMB Magilligan in its annual report that there are a significant number of prisoners who attempt to self harm and commit suicide in prison. It was noted that often prisoners with poor coping skills and vulnerable to self harm will have items such as radio or television removed, often resulting in increased risk of harm.⁷⁹ In response, it has been recommended that prisoners are allowed a form of distraction where requested. The need for a secure unit for treatment of prisoners outside of prison with mental health problems was also raised by the IMB for Magilligan who commented that issues have been raised in relation to the resettlement needs of prisoners with mental health problems such as release into the community without supported housing and absence of appointments with carers in community services.⁸⁰ It was noted that this situation is being addresses through the appointment of discharge of two discharge co-ordinators and two addiction nurses.⁸¹ The IMB for Hydebank has reported on the need for protocols to be established to enable health related sharing of information between healthcare and landing staff, the extension of psychiatric sessions for work with young men and women and the need for child and adolescent provision.⁸²

Joint Reports by HM Inspectorate of Prisons and Criminal Justice Inspection Northern Ireland

The CJNI and Her Majesty’s Inspectorate of Prisons have conducted a number of joint inspections to the prisons in Northern Ireland and have identified concerns regarding mental healthcare in prisons. In a report on Maghaberry prison, it has reported that “there were insufficient mental health services.”⁸³ Other issues indentified included the

75 Independent Monitoring Board “Maghaberry Prison: Independent Monitoring Board’s Annual Report for 2009/10”, 15

76 As cited above, 19

77 Independent Monitoring Board “Magilligan Prison: Independent Monitoring Board’s Annual Report for 2009/10”, 11

78 Independent Monitoring Board “Hydebank Wood Prison and Young Offenders Centre: Independent Monitoring Board’s Annual Report for 2009/10”, 30.

79 Independent Monitoring Board “Magilligan Prison: Independent Monitoring Board’s Annual Report for 2009/10”, 11

80 As cited above, 11

81 As cited above

82 Independent Monitoring Board “Hydebank Wood Prison and Young Offenders Centre: Independent Monitoring Board’s Annual Report for 2009/10”, 30.

83 HM Inspectorate of Prison and CJINI “ Report on an unannounced inspection of Maghaberry Prison”, 19-23 January 2009, 6

need for better co-ordination of services, problems with staff shortages, no support for the REACH landing and problems in transferring prisoners to secure mental health beds in the community.⁸⁴ Inadequate services have also been raised as an issue in Magilligan prison.⁸⁵ Problems also highlighted included: staff shortages, limited day services, no mental health clinics, few psychiatric sessions and limited mental health awareness training for officers. It was also reported that in cases involving severe mental health problems, prisoners were transferred to Maghaberry for care and treatment.⁸⁶

Criminal Justice Inspection Northern Ireland Report 2010

The Criminal Justice Inspection Northern Ireland (CJINI) has published a major report on the issue of mental health and the criminal justice system in Northern Ireland.⁸⁷ The report identifies the challenges and issues faced by all the criminal justice agencies in relation to mental health and makes a number of detailed recommendations which can be found at **Annex B**.⁸⁸ The report highlights the importance of early screening and assessment and indicates that the strategic objective should be to divert more offenders away from the criminal justice system.⁸⁹ It has been acknowledged that prisons can often exacerbate mental health problems.⁹⁰ The report noted that judges were in favour of a stronger diversionary policy.⁹¹ However police officers had reported they found it difficult to divert people, believing there to be inadequate services in the community.⁹²

The report highlights six key areas that criminal justice agencies, in partnership with Health Service “should focus on.”⁹³ These include:

- Establish clear rules about where people with mental health problems are to be taken when arrested or detained by the police;
- Make sure that mentally disordered people are properly assessed when they arrive at the place of safety, in particular in police stations, extend the Mentally Disordered Offender Scheme to cover all the custody suites across Northern Ireland;
- Make sure that assessment and other available information is properly recorded on the NiCHE RMS IT and passed on as part of any file that goes to the Public Prosecution Service (PPS);

84 HM Inspectorate of Prison and CJINI “ Report on an unannounced inspection of Maghaberry Prison”, 19-23 January 2009
8

85 HM Inspectorate of Prison and CJINI “Report on an announced inspection of Magilligan Prison” 29 March- 2 April 2009

86 HM Inspectorate of Prison and CJINI “Report on an announced inspection of Magilligan Prison” 29 March- 2 April 2009 ,
37, 38

87 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010

88 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010, ix

89 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010, viii

90 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010, viii

91 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010, 14

92 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010, 14

93 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010,63, 64

- Make sure that the PPS brings any mental health issues to the attention of the court so the judge can consider it;
- Make sure the care of prisoners is based around the 'healthy prison' agenda. There is need to continuously review the quality of care provided by the Health Service. Furthermore there is a need for a local high secure hospital to which the most dangerous mentally disordered offenders can be transferred for treatment. The report has highlighted occasionally these offenders are transferred to state hospitals in Carstairs in Scotland or Broadmoor in England. In the last five years 4 patients have been transferred to Carstairs and two have been transferred to English prisons.⁹⁴ However it has also been noted that often some very dangerous mentally disordered offenders remain in Maghaberry for duration of their sentences. As well as high secure accommodation, the CJINI report that adult and adolescent offenders may be sent to privately run medium and low secure facilities in England and Wales at a cost of £250,000 per year. It was reported that two severely personality disordered offenders had been sent to such facilities. The CJINI considered whether private providers should be invited to build a new facility in Northern Ireland but stated " But the economic unit seems to be around 70 beds and it is unlikely that Northern Ireland could justify a facility of its own unless in partnership with the Republic of Ireland";⁹⁵
- The report notes that there is a case for semi secure hostel accommodation as a step down from custody for those who are low risk but need continuing support. It has been recommended that there is a need to focus on suitable accommodation to facilitate the transition of offenders with mental health problems back into the community with adequate supervision and after care. The report identifies that hostel accommodation represents good value for money as around £20,000-£30,000 per place per year.⁹⁶

In response to the publication of the report, the Health Minister stated that a new high secure hospital "must be considered with the context of the very scarce resources available to the health service and the entire population."⁹⁷ The Health Minister noted a number of developments in place to improve the quality of healthcare in prisons including the development of a health care strategy, including mental health services by the South Eastern Trust in partnership with NIPS and a Service Improvement Board chaired by the South Eastern Trust to improve the quality of healthcare in Maghaberry.⁹⁸

94 This information was provided by the Director of Adult Services for the South Eastern Health and Social Care Trust, via email on 14 February 2011

95 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010,27, 28

96 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010,29

97 Health Minister's Statement on the Criminal Justice Inspect Report on Mental Health, available at <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-march-2010/news-dhssps-16032010-health-ministers-statement.htm>

98 As cited above.

Review of the Northern Ireland Prison Service Interim Report 2011

The Hillsborough Agreement in 2010 committed to reviewing the conditions of detention, management and oversight of prisons, a comprehensive strategy for the management of offenders and consideration of a women's prison that meets international obligations and best practice.⁹⁹ The Prisons Review Team chaired by Dame Anne Owers has recently published an interim report on the review of the Northern Ireland Prison Service. The Review Team welcome a number of recent initiatives undertaken such as the consultation on alternatives to custody and proposals for diversion from custody.¹⁰⁰ However the report emphasises that many people with mental health disorders end up in prison due to inadequate mental health services in the community. The Review Team notes this applies to community based services failing to pick up need at an early stage or inability to access and also to secure and residential facilities.¹⁰¹ The Team emphasised that there is a need for more diversion schemes for those with mental health problems and more supportive environments and services in the community.¹⁰² The interim report of the Review Team identifies a number of issues including:

- Woodlands Centre in Bangor may not be suitable for some young people who require specialist help in a more therapeutic environment. The report recommends where appropriate the use of the new mental health unit at Beechcroft.¹⁰³
- Insufficient mental healthcare to meet need, particularly those with personality disorder and learning difficulties. Some of the problems identified include shortages of primary mental healthcare and talking therapies, absence of daycare provision and no effective services for prisoners with personality disorders;¹⁰⁴
- Under-investment in services, particularly the REACH landing at Maghaberry prison.¹⁰⁵ This is consistent with the CJINI report which noted the project had to fight for ongoing resources;¹⁰⁶
- Ineffective communication and information systems between healthcare and prison staff, with confidentiality used as rationale;¹⁰⁷
- No step down unit or community provision for women with learning difficulties or personality disorder and insufficient supported accommodation.¹⁰⁸ The Prisons

99 Hillsborough Castle Agreement 2010, see http://www.nidirect.gov.uk/castle_final_agreement15_2_-3.pdf, 7.

100 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 69

101 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 10.

102 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 10.

103 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 25.

104 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 72.

105 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 72.

106 CJINI "Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland" March 2010, 37

107 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 72.

Review Team will be considering provision for specialist groups, including women in its final report;¹⁰⁹

- Problems for prisoners on release for example GPs and psychiatrists reported to have taken people off their lists if they were imprisoned. This could have consequences for referral to community and voluntary mental health services as referrals can only take place if registered with GP.¹¹⁰

The Review Team has stressed the importance of cross-departmental working, recommending a 'safer society strategy' led by the Department of Justice which would 'link in and reinforce' cross departmental policies for crime prevention, mental health, rehabilitation and desistance."¹¹¹ The report has highlighted that there is a need "to ensure there is adequate provision outside prison to promote health and well-being and to provide alternatives to prison."¹¹² It was noted that there were insufficient opportunities in place to divert offenders from prison to mental health facilities. The Review Team recommended that diversion schemes should be in place in police stations and courts. The report also stresses the importance that sentencing courts should have assessments especially at remand stage and information about alternative disposals.¹¹³ It was suggested that the NIPS should invite organisations to tender for a training programme which contains drivers for change including mental health awareness to reach a significant number of managers and staff within 18 months.¹¹⁴ The report makes it clear there is a need for a new custodial environment for women and proposes an option of a facility within a larger unit to provide courses, counselling, step-down accommodation and mental health support.¹¹⁵

108 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 73.

109 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 5

110 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 73.

111 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 10.

112 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 73.

113 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 23.

114 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 51.

115 Prison Review Team "Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of All Prisons", Interim Report, February 2011, 70.

6 Initiatives in Other Jurisdictions

England and Wales

Diversion schemes in England and Wales were established following the Reid Report in 1992 and mainly take the form of nurse led-liaison, based at magistrate court level, with the purpose of directing people towards the available mental health services in the community and prisons.¹¹⁶

“Of the 47 prisons in England and Wales that take unsentenced prisoners, less than one-fifth have court diversion schemes covering all the courts they serve (Birmingham, 2001). In a recent review of NHS commissioning only 2 out of 23 primary care trusts surveyed knew about diversion schemes in their area (HM Inspectorate of Prisons, 2007)”¹¹⁷

There are also approved 101 approved hostel premises with 2025 places in England and Wales. This enables the management of the offenders risk outside custody and in cases of breaches of conditions, the offender may be liable to sanctions including return to court or immediate recall to prison if released on licence.¹¹⁸ The Bradley Review highlights that a recent report on approved premises found that high numbers of residents suffered from physical and mental health problems.¹¹⁹

The Sainsbury Centre for Mental Health are advocates of the use of diversion schemes:

“There is a particularly strong case for diverting offenders away from short sentences in prison towards effective treatment in the community. Diverting people towards effective community-based services will improve their mental health. It can also reduce the prevalence of other risk factors such as substance misuse and improve the effectiveness of interventions aimed at other influences on offending.

Even on conservative assumptions, it is estimated that this will lead to savings in crime-related costs of over £20,000 per case, including savings to the criminal justice system of up to £8,000 and benefits from reduced re-offending valued at around £16,000.”¹²⁰

They go on to say that while initially the focus in diversion schemes in the UK had been on taking prisoners with severe mental illness out of the criminal justice system focus has moved to diversion within the system, liaison with offenders in the community as

116 Sainsbury Centre for Mental Health, *Diversion: A better way for criminal justice and mental health*, Executive Summary, Pg 17, 2009, <http://www.centreformentalhealth.org.uk/pdfs/Diversion.pdf>

117 Sainsbury Centre for Mental Health, *Diversion: A better way for criminal justice and mental health*, Executive Summary, Pg 17, 2009, <http://www.centreformentalhealth.org.uk/pdfs/Diversion.pdf>

118 The Bradley Report “Lord Bradley’s review of people with mental health problems or learning disabilities in the criminal justice system” Executive Summary, April 2009, 65

119 The Bradley Report “Lord Bradley’s review of people with mental health problems or learning disabilities in the criminal justice system” Executive Summary, April 2009, 65

120 Sainsbury Centre for Mental Health, *Diversion: A better way for criminal justice and mental health*, Executive Summary, Pg 5, 2009, <http://www.centreformentalhealth.org.uk/pdfs/Diversion.pdf>

well as improved mental health support in custody.¹²¹ They have subdivided diversion into three areas:

- Early intervention;
- Criminal justice decision making; and
- Through-care and recovery

The Bradley Review which was tasked with examining the extent to which offenders could be diverted from prison to other services noted that the implementation of the policy of diversion has been inconsistent due to the absence of a nationally guided approach.¹²² The review considered the whole offender pathway rather than diversion schemes in the courts and made a number of recommendations including:¹²³

- The Government should undertake a review to examine the potential of early intervention and diversion for children and young people with mental health problems or learning disabilities who are at risk of offending with the aim of bringing forward appropriate recommendations;
- The Crown Prosecution Service (CPS) should review the use of conditional cautions for individuals with mental health problems or learning disabilities and issue guidance to relevant agencies;
- All police custody suites and all courts including pilot specialist courts should have access to liaison and diversion services;
- Courts, health services and the probation service and CPS should work together to agree a local service agreement for the provision of psychiatric reports and advice to the courts;
- Probation staff, judiciary and prison officers should undertake mental health and learning disability awareness training;
- Research should be commissioned by the Department of Health and the Court Service on the use of mental health requirements of community treatment orders;
- A new minimum target should be set for the NHS of 14 days to transfer a prisoner with acute, severe mental health illness to appropriate healthcare setting;
- An evaluation of the current prison health screen should be undertaken;
- Development of a national strategy for the rehabilitation of prisoners with mental illness or learning disability on release;
- Liaison and diversion services to liaise with prison mental health in reach teams to ensure planning for continuity of care of prisoners;

121 Sainsbury Centre for Mental Health, *Diversion: A better way for criminal justice and mental health*, Executive Summary, Pgs 16 and 17, 2009, <http://www.centreformentalhealth.org.uk/pdfs/Diversion.pdf>

122 The Bradley Report "Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system" Executive Summary, April 2009

123 Note this is not an exhaustive list of recommendations. See The Bradley Report "Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system" Executive Summary, April 2009, 2-27 for all recommendations.

- The establishment of a National Programme Board and criminal justice agencies derived from health, social care to develop a clear and national approach to mental health/learning disabilities for offenders. This has been established and a national delivery plan has been published.¹²⁴

Mental Health Court (MHC) pilots were established in Brighton and Stratford Magistrate's Courts in 2009. The key elements of these models were:¹²⁵

- Identify defendants with mental health and/or learning disability through screening and assessments;
- Provide the court with information on a defendant's mental health needs to enable the court to effectively case manage the proceedings;
- Offer sentencers credible alternatives to custody to support an offender by way of a Community Order with a supervision or a Mental Health Treatment requirement;
- Offer enhanced psychiatric services at court;
- Implement regular reviews of orders;
- Signpost those individuals not suitable for the MHC Community Order to mental health and other services.

An evaluation of the pilots identified a number of key learning points including:¹²⁶

- The MHC pilots yielded innovative multi-agency collaborations that addressed needs that probably would have gone unmet. A wider implementation if MHCs require significant changes, supported at national level in the current patterns of multi-agency information sharing and data collection;
- The MHC benefitted from early consultation at senior management level;
- The MHC excluded certain groups. It would be beneficial to investigate if current exclusions could be removed to allow for wider access to services offered at MHCs. The evaluation notes that some were excluded from the pilot as they were in an acute mental phase and were unable to give informed consent.¹²⁷

Currently the Ministry of Justice is consulting on proposals to ensure effective punishment and rehabilitation of offenders. The document sets out proposals to pilot and roll out liaison and diversion services nationally by 2014 for mentally ill offenders. These liaison and diversion services involve health staff placed at either police stations or courts to screen and assess people for mental health problems.¹²⁸

124 HM Government "Improving Health and Supporting Justice: The National Delivery Plan of the Health and Criminal Justice Programme Board" November 2009.

125 Ministry of Justice "Process Evaluation of the Mental Health Court Pilot", September 2010, v

126 Ministry of Justice "Process Evaluation of the Mental Health Court Pilot", September 2010, viii

127 Ministry of Justice "Process Evaluation of the Mental Health Court Pilot", September 2010, 23

128 The Ministry of Justice "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders". December 2011, 36

Republic of Ireland- Prison In-reach and Court Liaison Service Cloverhill Prison

The Prison In-reach and Court Liaison Service in Cloverhill Prison was established in 2006 by specialists from the Central Mental Hospital in response to the high levels of psychiatric illness amongst remand prisoners.¹²⁹ One of the core aims of this service is to divert offenders with mental health problems from the criminal justice system. A report by the Irish Penal Reform Trust highlights that in 2008, the service diverted 91 offenders to community based mental health services, up by 19 referrals in 2005.¹³⁰ The Irish Penal Reform Trust note that despite progress in the area of diversion to mental health services that large numbers of offenders with mental health problems continue to be imprisoned. The report notes the inadequacies of mental health provision across the system and difficulties in ensuring prisoners are linked to services on release.¹³¹

United States of America

Mental health courts are the dominant form of diversion used in most American states.¹³² Benefits of the Mental Health Court system included the increased uptake in Mental Health services, while those seen in ordinary courts are much more likely to have decreased involvement in mental health services following a court appearance.¹³³

Reductions in recidivism were also noted in a study, looking at a mental health court in South Eastern United States, but these reductions when compared with the recidivism of those who did not go through the Mental Health Court system were consistent with the rates of arrest in the twelve month period before the study. Those who went through the Mental Health courts had lower rates of earlier conviction in correspondence with their lower rates of recidivism.¹³⁴ Analysis of a mental health court in Brooklyn in 2002 demonstrated very positive results, again using a 12 months before and after design: The number of participants arrested at least once fell by 41% comparing the 12 month periods before and after enrolment; The average number of days spent homeless fell from 60 to 35. The proportion of participants admitted to a psychiatric hospital fell from 50% to 19% (viewed positively as a sign that participants were actively engaged in community-based treatment).¹³⁵

129 Irish Penal Reform Trust "It's like stepping on a landmine: Re-integration of Prisoners in Ireland", 16

130 Irish Penal Reform Trust "It's like stepping on a landmine: Re-integration of Prisoners in Ireland", 41

131 Irish Penal Reform Trust "It's like stepping on a landmine: Re-integration of Prisoners in Ireland", 41

132 Sainsbury Centre for Mental Health, Diversion: A better way for criminal justice and mental health, Executive Summary, Pg 14, 2009, <http://www.centreformentalhealth.org.uk/pdfs/Diversion.pdf>

133 Sainsbury Centre for Mental Health, Diversion: A better way for criminal justice and mental health, Executive Summary, Pg 15, 2009, referencing a study of Broward Mental Health Court in Florida by Boothroyd et al. 2003) <http://www.centreformentalhealth.org.uk/pdfs/Diversion.pdf>

134 Moore, ME, "Mental Health Court Outcomes: A comparison of Re-arrest and Re-arrest severity between mental health court and traditional court participants", Law and Human Behaviour, October 2006

135 Sainsbury Centre for Mental Health, Diversion: A better way for criminal justice and mental health, Executive Summary, Pg 16, 2009, referencing a study of a Brooklyn Mental Health Court by O'Keefe (2006) <http://www.centreformentalhealth.org.uk/pdfs/Diversion.pdf>

It should be noted that the use of mental health courts was considered by the CJINI who concluded that they did not believe that there needed to be a specific mental health court, but rather all courts needed to be mental health courts due to the large number of people coming before courts with mental health problems. However the CJINI did see merit in some form of pre trial hearings by a judge specialising in mental health where such issues arose.¹³⁶

Canada

There are government funded diversion schemes in operation in Ontario at the pre-charge, court and post-conviction stages.¹³⁷ These were developed in response to what was seen increasingly as the criminalisation of mental illness where more people with mental illnesses were ending up in the criminal justice system as the number of psychiatric beds were reduced in the mid-90s.¹³⁸

“In Ontario, the Crown Practice Memorandum Manual for Diversion of Mentally Disordered/Developmentally Disabled Offenders specifies that when the accused suffers from a mental illness that the Crown Prosecutor believes is the underlying cause of the criminal conduct, the accused is seen as a suitable candidate for diversion. Usually, violent crime renders the offender ineligible for diversion. In Ontario, diversion is offered mainly for Class-I offenses; these may include joy riding, theft, or fraud under \$5,000 in damages. Diversion may also be offered for Class-II offenses—such as uttering threats, public mischief, and break and enter—in which there are extenuating circumstances not involving violence. An accused with a criminal record or who was previously diverted is not automatically precluded from diversion. As in California’s formal diversion program, if the accused completes the diversion program, the criminal charges are dismissed.”¹³⁹

Australia

In New South Wales, Australia, a Magistrates Court Diversion Programme (MCDP) was established initially as a pilot programme with one Magistrate appointed to hear all the cases referred to the MCDP. Participation in the program is voluntary so if someone is identified as having a mental impairment but does not wish to proceed through the diversion court then they can opt out and go through the standard criminal courts. Clients who do wish to proceed have to be assessed for suitability. At the end of a set time the defendant returns to court for a final determination hearing after completing a set program. The programme staff provide a report at this hearing detailing the client’s progress. A determination is made at this point by the magistrate

136 CJINI “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland” March 2010,22

137 Ontario Ministry of Health and Long Term Care, A Program Framework for: Mental Health Diversion/ Court Support Services, February 2006

138 Hartford, K, Carey R., Mendonca, J “Pretrial Court Diversion of People with Mental Illness”, The Journal of Behavioural Health Services & Research, April 2007

139 Hartford, K, Carey R., Mendonca, J “Pretrial Court Diversion of People with Mental Illness”, The Journal of Behavioural Health Services & Research, April 2007

taking into account the person's commitment to the agreed intervention plan. Special legislative arrangements granted powers to the magistrates to divert offenders with mental illnesses or intellectual disabilities into community treatment.¹⁴⁰ This only applies to those who have committed minor offences.

*"Any diversion program should be part of a broad package of reforms that focus on the issue of criminalisation of individuals with mental illnesses. It is unlikely that mental health courts and diversionary programs can adequately address the problem on their own, but their development provides a pragmatic solution while work is done to improve mental health care in other areas of the mental health and criminal justice systems."*¹⁴¹

The results of the MCDP have been monitored by the government of South Australia and in 2004 they produced a report which showed positive outcomes in terms of post program offending:

- Just over three quarters (76.4%) of the participants either became non-offenders or were charged with a smaller number of incidents post-program;
- 12.7% remained the same – i.e. they were not apprehended for offending either pre- or post-program or were charged with the same number of incidents pre- and post-program; while
- 10.8% recorded more incidents post-program"

The total number of offending incidents committed prior to program entry was significantly higher than the number detected post-program. Pre-program, the 157 participants were charged in relating to 348 incidents. Post-program this decreased to 116. This difference was statistically significant and was primarily due to the large number of participants who did not offend in the 12 months following program completion."¹⁴²

7 Conclusions and Key Issues

This paper indicates that there has been a huge amount of work in recent years highlighting challenges facing criminal justice agencies in relation to dealing with offenders with mental health problems, in particular a report by the Criminal Justice Inspection Northern Ireland (CJINI) in March 2010. It is evident from the emerging policies, initiatives and services that there is an awareness of the need to factor in the needs of offenders with mental health issues. For example a sub-group of the criminal

140 Sections 32 and 33 of the Mental Health (Forensic Provisions) Act 1990 (NSW) (formerly known as the Mental Health (Criminal Procedure) Act 1990 (NSW)); Richardson, Elizabeth, McSherry, Bernadette, Diversion down under – Programs for offenders with mental illnesses in Australia, International Journal of Law and Psychiatry, 2010

141 Richardson, E McSherry, B," Diversion down under – Programs for offenders with mental illnesses in Australia", International Journal of Law and Psychiatry, 2010

142 Skrzypiec, G, Wundersitz, J, McRostie, H, "Government of South Australia, Magistrates Court Diversion Program: An Analysis of Post-Program Offending", July 2004, available at, http://www.ocsar.sa.gov.au/docs/evaluation_reports/MCDP2.pdf

justice board has been established to take forward the recommendations of the CJINI's report on mental health and the criminal justice system. Some of the recent reports have identified a number of key issues which may need to be given further consideration. These include the following:

- There has been an under-investment in mental health care;
- Mental illness in the criminal justice system is prevalent and presents significant challenges for criminal justice agencies;
- Legislation is outdated and needs to be updated, particularly to bring personality disorder within its scope;
- There need to be more diversion schemes in police stations and courts to divert offenders away from the criminal justice system to community mental health services;
- There needs to be more facilities including a local high secure unit for dangerously mentally disordered offenders, alternative therapeutic custodial arrangements for women, and low secure step down facilities including hostel accommodation;
- There is a lack of resources including staff shortages, limited mental health provision and mental health awareness training for staff.
- Lack of continuity of care for prisoners leaving prison, particularly in accessing community mental health services;
- Need for greater inter-agency working particularly in information sharing and communication.

Annex A – European Human Rights Standards on Mental Health and Prisons in the European Human Rights System

Prisoners with mental health problems “find themselves at the intersection of the healthcare system and the criminal justice system in most European Countries.”¹⁴³ This can be illustrated by cases in relation to prisoners and mental health that have come before the European Court of Human Rights (ECtHR). These cases are relevant to Northern Ireland as the European Convention on Human Rights (ECHR) standards are binding on the Northern Ireland Assembly and public authorities.

The ECtHR has held that a state may violate a vulnerable person’s Article 3 rights in instances where they are subjected to disciplinary measures such as segregation and lengthening sentences. In *Keenan v UK*, the applicant was the mother of Mark Keenan, a prisoner who hanged himself in prison. Mr Keenan had a history of mental health problems and was diagnosed as suffering from paranoid schizophrenia. The ECtHR held that there was a violation of Article 3 of the European Convention on Human Rights (ECHR). The Court in holding this violation noted a number of factors including a lack of effective monitoring of Mr Keenan’s condition, segregation in the punishment block as a disciplinary measure and additional days added onto his sentence a few days prior to his release which amounted to inhuman and degrading treatment.¹⁴⁴ In *Renolde v France*, the ECtHR held that there was a violation of Article 3, noting that Mr Renolde was given the maximum penalty without any consideration of his mental state or that it was his first such incident. The Court held that the penalty imposed was not consistent with the treatment required in respect of a seriously mentally ill person and constituted inhuman and degrading treatment.¹⁴⁵ The Court has also held that authorities may violate Article 3 rights in cases of inappropriate detention conditions and medical treatment.¹⁴⁶

The ECtHR has also held that a state may violate a vulnerable person’s Article 5 rights if they are inappropriately detained. In *Aerts v Belgium*, the applicant was held in psychiatric wing of a prison rather than a social protection centre designated by a competent mental health board. The ECtHR held that there was a violation of Article 5 (1) of the ECHR as the psychiatric wing in which Mr Aerts was detained was not an appropriate institution for persons of unsound mind as he was not receiving appropriate treatment. The ECtHR noted the view of the Mental Health Board who expressed that the situation was harmful to the applicant as he was not receiving treatment which gave rise to his detention. The ECtHR stated that “the proper relationship between the aim of the detention and the conditions in which it took place was therefore deficient.”¹⁴⁷

143 Prior P “Mentally Disordered Offenders and the European Court of Human Rights” *International Journal of Law and Psychiatry* 30 (2007) 546-557, 546.

144 *Keenan v UK*, (2001) Application No. 27229/95, para 116

145 *Renolde v France* (2008), Application No, 5608/05

146 *Dybeku v Albania* (2007) , Application No 41153/06

147 *Aerts v Belgium*, (1998) Application No. (61/1997/845/1051), para 49

Annex B-Recommendations from CJNI report “Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland”

- The PSNI should introduce a training module on mental health based on an e-learning package currently being developed by the National Centre for Applied Learning Technologies, the National Police Improvement Agency and Association of Chief Police Officers;
- The PSNI should finalise a protocol with the health service making clear the precise respective responsibilities of the two services so that there is clarity about how mentally disordered persons are to be handled;
- The PSNI should ensure that Custody Officers complete a mental disorder warning on the NiCHE RMS for those detainees presenting with a mental health condition;
- The Mental Disordered Offender (MDO) scheme should be extended to all custody suites in Northern Ireland;
- The Northern Ireland Court Service (NICtS) should arrange for judges to have access to expert advice in interpreting psychiatric reports and handling cases which involve mental health issues;
- Where material issues of mental health are raised by the Public Prosecution Service for Northern Ireland (PPS) or other advisers, judges should hold preliminary hearings to establish the mental state of the defendant;
- The Public Prosecution Service Code for Prosecutors should devote more space to questions of fitness to plead and possible non responsibility by virtue of mental incapacity or mental disorder;
- The PSNI should bring mental health issues that might affect the conduct of a case to the attention of the PPS at the earliest opportunity;
- The PPS should be proactive in flagging up for the Courts, mental health issues that might affect the conduct of a case;
- The Probation Board for Northern Ireland (PBNI) should be granted more time to prepare pre sentence reports (PSRs) in cases which involve mental health issues;
- Assess the need for a local high secure hospital to which the most dangerous mentally disordered remand prisoners can be transferred for medical treatment;
- The needs of mentally disordered offenders should be factored into the strategic review of hostel (approved premises) accommodation;
- A specialist child and adolescent psychiatrist should be appointed, based in Northern Ireland, to advise the criminal justice agencies;

- All the criminal justice agencies in Northern Ireland should collect statistics on the incidence of mental health issues in the cases they handle and these should be shared with the health service;
- The health service should be held accountable for the delivery of the programme to mental healthcare in prisons which is planned;
- The Northern Ireland personality disorder strategy should be pursued as quickly as possible, and to the degree that resources allow;
- A formal review of the service provided by the health service should be undertaken in 2014. The review would consider the impact on prisoner outcomes of the services provided by the South Eastern Health and Social Care Trust against NIPS requirements and Her Majesty's Inspectorate of Prisons 'healthy prison' test;
- A joint Health and Criminal Justice Programme Board should be created to bring together all relevant organisations to develop a clear approach to the needs of mentally disordered offenders.