

RCN Scotland submission to the Forensic Mental Health Review (FMHR)

Introduction

Nursing is at the forefront of mental health service provision and innovation in Scotland and RCN Scotland welcomes the opportunity to make a submission to the FMHR.

We broadly agree with the overall drive in Scotland to expand and embed preventative services as the model for mental health services. This approach is referenced in the existing Scottish Government Mental Health Strategy 2017 to 2027. The type of safe, effective, person-centred care to which that document refers (as do numerous other current Scottish Government policy documents on health and social care) is the right approach. This approach should shape the design, redesign, provision and spread of forensic mental health services. Nursing is already at the forefront of efforts to do this and one especially strong Scottish example is noted below under Issue 3.

In our submission we have highlighted five broad issues which we wish to bring to the Review's attention.

A Note on Forensic Mental Health Pathways

The RCN itself does not run a mental health service so we cannot provide the review with a document outlining a forensic pathway in that sense. Our members are involved at various points in several forensic pathways but to comprehensively catalogue them all is beyond the scope of this submission. Instead we wish to highlight five key examples of where our members provide support and interventions along forensic pathways so that the FMHR can be clear that our submission is founded not only on the published evidence sources cited but on the lived experience of our members.

1. Mental health assessments in custody suites on or after arrest
2. Mental health assessments during court processes
3. Mental health assessments upon admission to prison or to a secure health facility (e.g. the State Hospital; medium and low secure units including Intensive Psychiatric Care Units (IPCUs) and secure wards in local hospitals) and ongoing treatment and support for mental health during the period in prison (whether whilst on remand or after conviction) or in the secure health facility
4. In hospitals, when prisoners require to be admitted from prison
5. In community settings across primary care services for mental health (including third sector provision). These kinds of service may be accessed by individuals in various circumstances including those bailed with a condition that means they are able to return to the community (although the condition may prevent them from returning 'home' to a specific area or address); those subject to a non-custodial disposal or those who have been released. Issues that can affect these individuals include actual homelessness and/or the challenges of insecure/temporary accommodation. In keeping with our submission under issue 3 below it is our view that there are insufficient community-based, dedicated mental health services for ex-offenders in Scotland and, where they do exist, high levels of demand can make them difficult to access.

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Issue 1

Workforce, recruitment and retention.

Summary

There are insufficient mental health nurses to meet demand in forensic pathways. This is a safe staffing issue which we anticipate that the implementation of the new legislation (the Health and Care (Staffing) Scotland Act 2019) will address, including the need to create a 'staffing level tool' for prison nursing that will enable the new 'common staffing method' to be applied to prisons.

Evidence

ISD/NES statistics

ISD/NES record prison nursing workforce statistics under the sub-job-family of 'public health nursing'. The latest figures (to 30 September 2019) were published on 3 December 2019 and the dashboard that contains them is available here <https://www.isdscotland.org/Health-Topics/Workforce/NES-Publication/Visualisation-Nursing-and-Midwifery.asp> under the 'Vacancies tab'. The figures show a public health nursing vacancy rate of 7.4% which is the third highest after district (7.6%) and mental health (7.5%).

Although it is not possible to isolate prison workforce statistics based on the data provided it is reasonable to assume that the high vacancy rates in 'public health nursing' and 'mental health nursing' will apply proportionately to the prison nursing workforce. Even if that assumption is rejected, given the current and future workforce for prison nursing will come from these two sub-job-families, there is clearly a need to focus education, recruitment and retention efforts on them. On this point, the broad direction of travel for workforce as set out by the Scottish Government is appropriate, see:

- 'Mental Health Strategy 2017-2027' (especially Action 15)
- 'Integrated Health and Social Care Workforce Plan for Scotland' December 2019 (especially the recruitment campaign and the 2,600 more nursing and midwifery training places)

However, the extent to which these good intentions are actually realised via increased numbers of properly skilled nurses must be rigorously monitored. Should they not be realised, different approaches will need to be considered.

The Non-Medical Trend spreadsheet provided here https://www.isdscotland.org/Health-Topics/Workforce/NES-Publication/#core_workforce allows some disaggregation by 'prison' when it comes to numbers of 'staff in post'. This shows that since 3 September 2018 there has been

- a 13.4 % (approx. 4 WTE) rise in mental health nurses but a 1.3% drop since 3 June 2019
- a 4.3% (approx. 6 WTE) rise in public health nurses but 4.5% drop since 3 June 2019

This suggests a reasonable level of stability within the workforce but without a prison-specific vacancy rate it is difficult to know whether or not these rises and drops are in any way significant in themselves. What is very likely is that these staffing levels do not account for the overcrowding that is now regularly and widely reported in individual prisons (if not absolutely in terms of the entire prison estate). This overcrowding is bound to put increased workload pressure on available staff especially when there are already acknowledged shortages. Recent figures were released in response to a Parliamentary Question (S5W-25338) by Liam McArthur MSP in September 2019. They

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showed that nine of Scotland's fifteen prisons were operating at over capacity at August 2019, with one (HMP Barlinnie) at almost 150% capacity.

Her Majesty's Inspector of Prisons for Scotland (HMIP)

In April 2019 RCN Scotland undertook a brief (unpublished) analysis of the HMIP reports published since 2016 with a focus on nursing and healthcare support workers. This covered eight prisons. Four clear themes emerge:

1. Staff shortages
2. Excessive case load
3. Lack of access to proper supervision
4. Inadequate training for required tasks

To an extent, 2-3 stem from 1 and give force to the RCN's longstanding argument that, on top of a recruitment drive, a workforce planning tool for prison nursing must be created. This is especially important as the Health and Care Staffing (Scotland) Act 2019 beds in because the existence of a tool will allow the proper running of the 'common staffing method' in prisons to help ensure safe and effective nursing provision is in place at all times.

Mental Welfare Commission (MWC)

A similar (unpublished) RCN analysis of the nine MWC prison reports published during 2018 and 2019 echoes the HMIP themes, particularly

- Staff shortages
- Lack of access to proper supervision

It must be noted that prisoners gave positive reports of interactions with nurses and the issue very much seems to be one of quantity of nursing provision, rather than of its quality.

European Committee for the Prevention of Torture and Degrading Treatment or Punishment (CPT) Report (October 2019)

The Review will be aware of this report on Scottish prisons and we will not rehearse its detail here except to note that it also highlights problems with staffing, particularly around the provision of mental health nursing (pages 7, 57-67).

Issue 2

Physical and psychological safety of nursing staff in mental health pathways especially (but not only) in secure units.

Summary

Nurses in these settings can be subject to physical and psychological violence.

Evidence

RCN Scotland has a small amount of information on this matter via the data collected for our latest Employment Survey for Scotland, published in December 2019. We would wish to caveat our use of this data here however by noting that

- we fully appreciate that prison is only one point on a forensic mental health pathway

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- we do not seek to equate 'prison nursing' with 'mental health nursing'
- we do not intend or wish to stigmatise people with mental health difficulties by inadvertently suggesting (or even appearing to suggest) that they are particularly, or even at all, responsible for any physical and psychological violence to which our members working in prisons may be subject

We therefore consider what follows may be informative by way of context but that is all. What we would suggest is that the *perception* that assaults on staff in forensic settings are commonplace (or rising) does create a problem re: recruitment and retention and that wherever appropriate, in order to protect staff, matters should be taken forward under the Emergency Workers Act 2005.

For respondents who identified their 'place of work or main or usual job' as 'prison service' (46 of 1,916 respondents or 2.4%) our data shows that, in the preceding twelve months:

- 13% had experienced physical abuse, all incidents of which were reported
- 19% had experienced verbal abuse, circa. 53% incidents of which were reported. There were various reasons for this level of reporting but the 'top two' were 'didn't think it was serious enough' and 'wasn't confident anything would change', the latter of which is especially disappointing.

We acknowledge that these are low percentages and that we are dealing with small numbers of individuals but that is not really the point given the deleterious effect on the health and wellbeing of staff caused by physical and verbal abuse. Within the bounds of reasonableness we must strive for zero incidences of both. This will in part be achieved by putting in place services which accord with the model of safe, effective, person-centred care noted above, in which professionals and those in receipt of the service see themselves as partners in the care of the latter as opposed to adversaries in any way. It will also be achieved by the proper implementation of the safe staffing legislation in prisons and in other forensic settings.

Issue 3

Provision of forensic mental health services across Scotland.

Summary

Our members report that there is inconsistency across Scotland in the provision of these services across the pathways that we describe in our introduction, particularly in terms of the fifth pathway.

There are examples of good practice of nurse-led services which could provide a model and these should be spread and resourced to ensure consistency. Everyone treading a forensic mental health pathway should have access to assessment by a suitably qualified health professional at appropriate points (including in prison) and this will often (and should) include the involvement of a mental health nurse. It is for Scottish Government to identify the appropriate body to take responsibility for this provision given the landscape of integration but we would expect that body to be the Integration Authorities, which should receive appropriate funding to do so.

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Evidence

We are of the view it is more appropriate to focus on clear examples of good practice rather than seek to identify any as 'bad'. That would be unhelpful given the complexity of providing forensic mental health services. The RCN has placed a number of examples of good practice online. Most are from outwith Scotland but are sufficiently general to be useful. One is from Scotland and is entitled 'A nurse who has revolutionised care in the cells.' They are available here:

- <https://www.rcn.org.uk/clinical-topics/criminal-justice-services/case-studies-and-good-practice>

This video from Central and North West London NHS Foundation Trust (CNWL) may also be useful as it is applicable to any such service. It covers the positives of working in offender health and provides reassurance on some of the concerns people may have about working in this environment.

- <https://t.co/Z7qXBd04hR>
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Issue 4

Recommendations from Her Majesty's Inspector of Prisons (HMIP), Fatal Accident Inquiries (FAIs, for deaths in custody/prison) and the Mental Welfare Commission (MWC)

Summary

It is not at all clear that the recommendations from HMIP inspections and the findings of FAIs are acted upon consistently. Such recommendations must be properly considered and, if accepted, implemented and/or acted upon consistently in any case but especially because they frequently identify matters to do with improving the provision of forensic mental health services and of the mental health of those in custody/prison. The same applies to MWC prison reports, which, of course, always deal with matters to do with mental health.

Evidence

We accept that our evidence consist of member anecdote and not systematic research but that does not compromise our point about consistency. When researching this matter, it became clear that there is no easy way to establish what action has been taken by Scottish Government in response to HMIP and MWC reports or FAI findings except in high –profile cases that have attracted significant media coverage.

Our current understanding is that whether or not (and if so to what extent) the Scottish Government acts in response to HMIP and MWC recommendations is at its discretion. As for FAIs, we appreciate that the role of the Sheriff is not to offer recommendations as such and that unless his/her findings lead to prosecution, no further action on the basis of them may be necessary.

However, based on what we do know and given the Scottish Government's current focus on mental health we suggest that it should improve the evidence base by:

- Commissioning recurring research to analyse a selection of recent HMIP and MWC reports and FAI determinations to identify matters and themes to do with mental health in forensic

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settings and commit to taking practical action in response to them, prioritised appropriately, with requisite funding attached.

- Publish, as a matter of course, its responses to the recommendations of HMIP and MWC reports and, wherever appropriate, any response that may be appropriate to a Sheriff's findings at an FAI and place them online in an accessible and obvious place and ensure that they are linked online from the other places where one would expect to find such a link i.e. on the HMIP, MWC and Judiciary of Scotland websites.
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Issue 5

Women in custody and in prison.

Summary

We recognise that much is being done to address the particular needs of women in custody and in prison, for example as contained in the Scottish Government's justice strategy: 'Justice Vision and Priorities for Scotland'.

However, we remain of the view that there is an insufficiently specific, consistent and widespread approach and provision designed to tackle the issues that women face overall but especially in terms of mental health. In particular, a higher proportion of women in custody and in prison are there for lesser offences (than men) but more frequently have a recognised mental health issue (than men) and this is not dealt with proportionately in terms of resources. For example, there are too few beds for women across medium and secure units to meet demand but even then they are not always used properly as those who may benefit from that sort of provision are not always directed to it. There is no high security provision for women in Scotland.

Many women's physical health issues are fundamentally different from men's (for example, breast, cervical, perinatal, postnatal and menopausal health) and directly affect women's mental health and wellbeing in very specific ways. Issues to do with care of children, welfare benefits and housing can also have gendered effects. Problems in these areas (typically the loss of all three as a result of incarceration and in the case of children, restricted access both during incarceration and on release) can add trauma to an already traumatised group, thereby exacerbating existing mental health problems and sometimes giving rise to new ones. These then affect the chances of rehabilitation, early release and impact on anticipatory care planning for successful return to the community upon release. Provision of safe staffing should have a positive impact on this issue (see issue 1).

Evidence

A number of publications include information that support our positions on this issue and we trust the review will be familiar with them:

HMIP Annual Report 2018-19 (e.g. pages 25, 49) & 2017-18 (e.g. page 18)

- <https://www.prisonsofscotland.gov.uk/publications/hm-chief-inspector-prisons-scotland-annual-report-2018-19>

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European Committee for the Prevention of Torture and Degrading Treatment or Punishment (CPT) Report (October 2019)

- As noted above. The report makes extensive comment in the section entitled ‘Prisons establishments holding women and female juvenile inmates’ (pages 45-55) much of which will usefully inform the work of the review.

Justice Vision and Priorities for Scotland (Scottish Government, 2017) (e.g. p. 23-24) and attendant documents

- <https://www.gov.scot/publications/justice-vision-priorities-delivery-plan-overview-progress-2017-18-new/>
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These programmes continue to build on the work of the 2012 Commission on Women Offenders chaired by Dame Elish Angiolini.

SPS ‘Prisoner Survey - Women in Custody’, 2017 being the latest published

- <https://www.sps.gov.uk/Corporate/Publications/Publication-6069.aspx>

MWC Local Visits Reports (see especially the most recent report for Cornton Vale Prison, 12 October 2017)

- <https://www.mwscot.org.uk/visits-investigations/local-visit-reports>

The BMA report ‘Addressing unmet needs in women’s mental health’ (2018)

Although this is not concerned with forensic matters, it is helpful in that it sets out the gendered nature of mental health issues.

- <https://www.bma.org.uk/collective-voice/policy-and-research/public-and-population-health/womens-health>

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