Mental Health **Reform**
Promoting Improved Mental Health Services

Submission to the Interdepartmental Group to examine the issue of people with mental illness [*sic*] coming into contact with the criminal justice system

Introduction

Mental Health Reform welcomes this opportunity to make a submission to the Interdepartmental Group on the issue of people with mental illness[1] [*sic*] coming into contact with the criminal justice system. As the national coalition of organisations promoting improved mental health services and implementation of *A Vision for Change*, Mental Health Reform welcomes the establishment of the Interdepartmental Group and the valuable work that has been done to date through the Cross-Departmental Group on mental health and criminal justice. In particular, we welcome:

- The agreement of a Memorandum of Understanding between the Garda Síochána, the HSE, the Mental Health Commission and service users on the removal or return of a person to an Approved Centre under Sections 13 and 27, and the removal of a person to an Approved Centre in accordance with Section 12, of the Mental Health Act 2001.
- The appointment of a member of the Garda Síochána at Inspector rank in each Garda Division to act as liaison person to the Approved Centre to the catchment area(s) that extend to their Division.
- Plans for a specific training programme for these Liaison Officers.
- The development of a protocol for the provision of psychiatric expertise to the Gardaí in emergency incidents.

Mental Health Reform also acknowledges developments that have taken place to date with regard to mental health services for people involved with the criminal justice system, including:

- The court diversion scheme in place for Cloverhill remand prison. This service has been a significant positive development that has enabled prisoners identified as having severely poor mental health to be diverted from prison to more appropriate mental health care. There is also a prison in-reach service to other prisons outside of Dublin.

[1] Mental Health Reform uses the phrase 'mental health condition' to refer to people living with a variety of mental and emotional experiences that can include but does not always entail a diagnosis of a mental disorder. We refer to 'poor mental health' when such a condition interferes with a person's ability to cope with life. This definition of 'poor mental health' comes from page 16 of the government's mental health policy *A Vision for Change.*

- The commitment to proceed with replacement of the Central Mental Hospital and the appointment of a Project Manager to lead on planning for this facility.
- The decision on the location of regional high-secure units as set out in *A Vision for Change*.
- Amendment of the Criminal Law Insanity Act 2006 during 2010 in order to enable conditional discharge of people held in the Central Mental Hospital who are suitable for discharge.
- Amendment of the Criminal Law Insanity Act 2006 during 2010 to enable diversion of persons whose fitness to be tried is in question to mental health treatment.

Many of these developments have been driven by leadership from staff of the forensic mental health service who have persistently advocated for improved conditions and systems for people with poor mental health under their care.

Mental Health Reform notes that the Criminal Law (Insanity) Act 2006 is currently under review by the Department of Justice and Equality. MHR has previously made a submission to the Department of Justice and Equality on this Act which is available on our website at www.mentalhealthreform/resources.

A Vision for Change recommendations in relation to criminal justice

The Government's mental health policy *A Vision for Change* makes three key recommendations relevant specifically to the criminal justice system:

- Forensic mental health services should be expanded and reconfigured so as to provide court diversion services and legislation should be devised to allow this to take place.
- Education and training in the principles and practices of forensic mental health should be established and extended to appropriate staff, including An Garda Síochána.
- A senior Garda should be identified and trained in each Garda division to act as resource and liaison mental health officer.

It can be seen that some progress has been made in relation to each of these recommendations, though the facilities of the forensic mental health services have not been expanded regionally nor re-located to modern premises during the six years since *A Vision for Change* was launched.

Circumstances when people with a mental health problem come into contact with the criminal justice system

The ways that people with a mental health problem come into contact with the criminal justice system can be grouped into three categories:

- When the individual comes to the attention of the Gardaí due to engaging in behaviour that gives rise to a charge of an offence. For this group, the main issue is the need for adequate routes for diversion away from the prison system into mental health treatment if that is appropriate and wherever possible.
- When the Gardaí are called to assist with involuntary admission of an individual to an inpatient unit under the Mental Health Act 2001. In these circumstances, the issues include minimising the stigma and distress arising from Garda involvement and providing alternatives to Garda involvement wherever possible, e.g. through the use of an Authorised Officer.
- When an individual in prison or in a juvenile detention centre develops a mental health difficulty. For this group the key issue is access to mental health services and integrated addiction services, as appropriate.

Prevalence of mental health difficulties in the prison population

A Vision for Change notes that upwards of 7.6% of remand prisoners and 2.6% of sentenced prisoners have a severe or enduring mental health problem, and that this proportion far exceeds that of the general population. More recent research has found that among women prisoners 16.3% had a major depressive disorder while 15.2% had an anxiety disorder. In the same study it was found that among male life sentence and fixed sentence prisoners, almost one quarter had a mental disorder of some type.[2]

A significant issue in the prison population is the presence of people with a diagnosable personality disorder. The diagnosis of 'personality disorder' is contested and can be experienced as very stigmatising. As stated in *A Vision for Change* with reference to Borderline Personality Disorder*,*

> "The term borderline personality disorder carries great stigma from the point of view of service users. From their perspective the term carries a strong implication that their behaviour is manipulative, attention-seeking and that they are to blame for their maladaptive behaviours. They seldom experience validation of their emotional distress or receive confirmation that they merit the same investment of time and expertise which is extended to mental health problems."[3]

One way of describing what are called 'personality disorders' is to say that this refers to when a person has patterns of thinking, feeling and behaving that are difficult to change and a limited range of emotions, attitudes and behaviours with which to cope with everyday life.[4] *A Vision for Change* notes that "[f]rom a mental health perspective a person with a personality disorder can present with histories of abusive relationships, repeated self-harm behaviour, emotional instability and failure to sustain steady employment or housing."[5]

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[2] Reported in Niall Hunter, Editor, 'High rate of prison mental illness', 01/06/2006, *Irishhealth.com*

[3] Quoted from *A Vision for Change,* page 162.

[4] MIND UK 'Understanding personality disorders' available at http://www.mind.org.uk/help/diagnoses_and_conditions/personality_disorders

[5] *A Vision for Change,* page 162.

Between 60-80% of male and 50% of female prisoners are likely to be diagnosable as having a personality disorder. While the most common diagnosis will be of Anti-Social Personality Disorder, with approximately 50% of all prisoners having this condition[6], one study found 30% of newly convicted prisoners had Borderline Personality Disorder.[7]

There is also significant overlap between people with difficulties in line with personality disorder and those with mental health problems such as depression, anxiety and psychosis.[8]

Many people with a diagnosable mental health condition also have difficulties with problematic drug and/or alcohol use. The 2006 Irish study found that 65% of female and 73% of male prisoners had a history of difficulties with problematic drug and/or alcohol use.[9]

Thus three factors are evident with regard to mental health conditions among people in the criminal justice system: firstly, the prevalence of poor mental health is higher among prisoners than in the general population. Secondly, there is a widespread presence of individuals in prison who have difficulties with behaviour and thinking that interferes with their ability to cope with daily life in the community ('personality disorders'). Thirdly, there is likely to be significant overlap between people with poor mental health and those with problematic drug or alcohol use. Thus mental health services and addiction services need to provide care that recognises and works with people with a dual diagnosis.

Issues for consideration by the Interdepartmental Group

Significant issues remain that would benefit from the attention of the Interdepartmental Group over the next few years.

1. **Progressing the regional forensic intensive care rehabilitation units**
   The lack of modern, regional forensic mental health service as envisaged in *A Vision for Change* continues to result in a lack of appropriate mental health support for people involved in the criminal justice system. In his Judgment in D.P.P. v. B[10], Justice Sheehan noted in 2011 that the Central Mental Hospital is the only designated centre under the Criminal Law (Insanity) Act 2006. The fact that the CMH continues to be the only designated centre in the country means that prisoners from distant prisons must be transferred to Dublin for treatment, removing them from proximity to any social supports they may have, such as family and friends. The human rights principle of community-based treatment must apply to prisoners as to any other patients and

[6] See NICE guidance on Anti-Social Personality Disorder at http://publications.nice.org.uk/antisocial-personality-disorder-cg77/introduction

[7] Black, D.W., Gunter, T., Allen, J., Blum, N., Arndt, S., Wenman, G. and Sieleni, B. (2007) 'Borderlinepersonalitydisorder in male and female offenders newly committed to prison', *Comprehensive Psychiatry* 48:5:400-405.

[8] See *A Vision for Change,* page 162.
[9] Niall Hunter, 01/06/2006.
[10] D.P.P. v. B. [2011] IECCC 1 at [5.18].

this includes having inpatient treatment within a reasonable distance of one's own community. There is an urgent need to establish other designated centres to enable a wider range of options for treating individuals within the criminal justice system.

Recommendation: The Interdepartmental Group should work to progress completion of the regional forensic intensive care units envisaged in *A Vision for Change*.

2. Lack of services for people with a personality disorder

A Vision for Change acknowledges that problems arising from borderline and other personality disorders often lead to individuals coming to the attention of forensic and substance abuse services. The high prevalence of people with a personality disorder within the prison service highlights the gap in appropriate therapeutic programmes to enable people to learn to live in the community without falling foul of the criminal justice system. This issue also impacts on homeless services, which often end up being the service of last resort for people with a personality disorder who are living in the community. Both homeless and prison services are trying to help people with a personality disorder without adequate back-up from professionals who are expert in effective therapeutic care. Meanwhile, people with a personality disorder are not getting the type of therapeutic programme that would enable them to learn how to cope with daily life in the community.

Recent thinking on the amenability of personality disorders to treatment has changed and it is now recognised that people with difficulties with their behaviour and thinking can benefit from appropriate therapy, particularly Dialectical Behavioural Therapy for people with Borderline Personality Disorder.[11] In the UK, the National Institute for Clinical Excellence (NICE) has seen fit to develop clinical guidance on both Anti-Social Personality Disorder and Borderline Personality Disorder. The guidance prepared by NICE advises that various therapeutic interventions, including group-based cognitive and behavioural therapy interventions as well as treatments for co-existing conditions such as depression, anxiety and problematic alcohol and drug use, can be effective for people with a personality disorder.[12] In the Irish context there is no specific clinical guidance nor is Mental Health Reform aware of any general policy on providing treatment to people with personality disorders within the prison system, though we understand that there is a programme for individuals with violent offending behaviour in Wheatfield prison.

Recommendation: The Interdepartmental Group should consider and make recommendations on how people with a diagnosable personality disorder who come in contact with the prison system can be offered effective mental health treatment and how continuity of care can be provided upon discharge from prison.

3. The need for seamless care between mental health and addiction services

[11] See MIND UK 'Understanding personality disorders' available at http://www.mind.org.uk/help/diagnoses_and_conditions/personality_disorders

[12] See, for example, the NICE guideline for Anti-Social Behavioural Disorder available at http://www.nice.org.uk/CG77

The prevalence statistics above demonstrate that there is likely to be a significant proportion of people with poor mental health who also have difficulties with problematic drug and/or alcohol use. Individuals with a dual diagnosis should be able to receive treatment that recognises the interplay between these related conditions and addresses their needs in a holistic way. Mental Health Reform has received reports of difficulties with getting adequate mental health services for people with problematic drug and/or alcohol use by homeless sector staff. In the context of the prison system it is equally as important to ensure that there is an effective working relationship between the addiction, psychological and mental health services.

Recommendation: The Interdepartmental Group should take action to ensure access to mental health treatment for people with co-occurring poor mental health and problematic drug or alcohol use within the criminal justice system.

4. The need for a wider court diversion system

There have been calls for a statutory basis for court diversion for many years and this was also recommended by the Expert Group that prepared *A Vision for Change.* While the 2010 amendment to the Criminal Law (Insanity) Act 2006 enables court diversion in the case of individuals who are considered unfit to be tried, it does not enable such diversion where the individual is considered fit to be tried. Most people with poor mental health continue to retain mental capacity while unwell and therefore the current situation continues to exclude many individuals who may be better served by receiving mental health treatment than undergoing a custodial sentence of any duration. Therefore there continues to be a need for legislation to enable court diversion of individuals who would benefit from mental health treatment to receive that treatment in the community instead of having a custodial sentence.

In addition, the current non-statutory diversion system operates primarily in Cloverhill prison. It is our understanding that individuals in need of assessment may be transferred from other prisons around the country to Cloverhill, however the equivalent capacity does not exist around the country for follow-up care as exists through Cloverhill. Also, the operation of court diversion may require the psychiatrist involved in the scheme to attend court to provide evidence. While this is relatively straightforward for individuals attending court in Dublin it may not be possible for individuals whose court appearance occurs outside Dublin. There is, therefore, a need for a truly nationwide court diversion system that works effectively with local courts and community mental health teams.

Recommendation: The Interdepartmental Group should progress legislation to underpin court diversion of individuals who have poor mental health and whose fitness to be tried is not in question.

Recommendation: The Interdepartmental Group should work to increase the existing court diversion service so that it is effectively available nationwide.

5. Mental health care in the community for ex-prisoners

Community mental health services have a duty to meet the mental health needs of all members of the community including ex-prisoners. Clearly it is counter-productive for society to have individuals who receive mental health treatment in prison discharged without adequate follow-up. Yet under the constrained resource situation currently in community mental health services it might be tempting to prioritise certain individuals for care in such a way that effectively deprives others from accessing services. It has been reported to Mental Health Reform that it can be difficult to get adequate community mental health support for individuals being discharged from prison. As a result, people in need of such support may find it difficult to get adequate housing where the housing agency requires that the individual have mental health support. This gap in service delivery would benefit from consideration by the Interdepartmental Group so that clear guidance is given to community mental health services about their duty to provide services to ex-prisoners and that the mental health services' assessment of resource needs takes into account support for ex-prisoners.

Recommendation: The Interdepartmental Group should develop guidance for community mental health services and should ensure adequate access to these services by people being discharged from prison into the community.

About Mental Health Reform

Mental Health Reform is the national coalition of organisations working to improve mental health services and achieve implementation of the Government's mental health policy *A Vision for Change* in Ireland. Mental Health Reform works with its members through education, campaigning and support to help bring about structural and cultural changes in mental health services.

Mental Health Reform is available to discuss the above recommendations and answer any questions that would assist the Interdepartmental Group. Please contact Dr. Shari McDaid, Policy Officer at 01 612 1422 or via e-mail at smcdaid@mentalhealthreform.ie.