Cynulliad Cenedlaethol Cymru
Y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon
Ymchwiliad i iechyd meddwl yng nghyd-destun plismona a dalfa'r heddlu
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Ymateb gan Police Federation of England and Wales

National Assembly for Wales
Health, Social Care and Sport Committee
Inquiry into Mental health in Policing and Police Custody

Evidence from Police Federation of England and Wales

Mental health in policing and police custody

#PatientsNotPrisoners

The Police Federation of England & Wales (*The Federation*) welcomes the opportunity to provide evidence to the Health Committee considering '*Mental health in policing and police custody'.*

This issue has long been a matter of significant concern to The Federation, indeed it is fair to state that the current changes that have been brought about have been guided and directed by The Federation, often at a tangent to the policies of Chief Officers and moreso that of the UK Central Government.

The formulation of the *Wales Mental Health Crisis Concordat* was an initiative pressed for and stressed upon Welsh Ministers by The Federation in the lead-up towards the legislative route of the 2010 Wales Mental Health Measure.

The issue of mental health and its relationship with the criminal justice system is consistently being discussed as it is a matter of grave concern to those charged with the responsibility of providing an effective service delivery to the public and/or those who may suffer from a psychiatric disorder or illness.

It has been the policy of The Federation since 1996 to have 'police stations' removed from the definition of a 'place of safety' as defined within the Mental Health Act and ultimately that would be our preferred option. That said, within the scope of the current devolved settlement and fiscal constraints placed upon it, we believe that substantial progress can still be made to benefit the rights and the care of mentally disordered persons who come into contact with the police.

The Federation has previously welcomed the bold move made by the Welsh Assembly in creating separate Wales-only Mental Health legislation, law that we helped shape, and this is illustrative of how serious this issue is taken by the front-line-police and we are fully committed to reviewing those processes and policies that govern this complex issue.

We therefore welcome this short inquiry, and submit advice, based upon evidence that encompasses all of Wales' four police forces, namely North Wales Police, Dyfed Powys Police, Gwent Police and South Wales Police.

We would suggest that this issue is revisited periodically as an issue to be rescrutinised, especially so, as we are advised that it is quite possible that the UK Government will wish to progress a new Mental Health Act, as such, any Act may/may not have Legislative Consent implications upon how S136 is dealt with for those in Police Custody in Wales.

Background

The Police Federation was formed by an Act of Parliament and, in Wales, it represents over 6,500 police officers, or 98% of all uniformed and CID ranks from Constable to Chief Inspector. The Superintendents Association and Association of Chief Police Officers form the remaining 2%. Our membership comes from each of Wales' four police forces. Its National Representatives are elected serving officers.

The Federation was established to protect and promote the 'welfare & efficiency' of police officers and in its discharge of functions as laid down by statute.

The Police have a duty of care to the public. They are essentially discharging their duty 'to preserve life'. That is a principle which is, of course, also underwritten by other emergency services and, indeed, by the NHS itself.

Mental health: prisoners & patients

Nye Bevan 1952: *"The collective principle asserts that no society can legitimately call itself civilized, if a sick person is denied medical aid because of the lack of means"*

Essentially, for the purposes of this short inquiry we are not concerned with patients who have been sectioned under the Mental Health Act and are thereby confined to a place of safety with full medical support in either a specialist medical unit or hospital.

The Federation is primarily concerned with the use of police officers when, as part of their core role, they are used as a first-line-response to a member of the public who comes to their notice and who may, or may not, be

mentally disordered and suffering such crisis, and, thereafter, how they are dealt with and cared for by the NHS and the police.

The Federation believe that it cannot be right, that a person who is 'mentally disordered' (howsoever it is defined) should be detained in a police cell. Custody suites in Wales are neither equipped nor staffed to deal with the specific needs of a person who has mental health issues.

Without question these people are *patients not prisoners*.

Police custody suites are designed as areas to hold prisoners who have allegedly committed criminal acts with a view to ensuring their security, to assist in the gathering of evidence and to facilitate the administration of justice at that early stage, whether through interviewing, charging or releasing.

It is an unfortunate fact that, all too often, those who die in police custody emanate from vulnerable groups, including, it must be said, those suffering mental health crisis. Coroners and human rights groups are then forced to express their concerns retrospectively, with all agreeing that these vulnerable persons should never have been placed in the first place, into a police cell.

This stance is fully supported by The Police Federation, mental health charities, The National Police Chiefs Council, The Superintendents Association and importantly also, The Independent Office for Police Conduct.

Despite this consensus of agreement and the improvement of provision of 'places of safety' in the health care setting, mentally disordered 'patients' are sometimes initially brought into police custody/safety and custody sergeants are then required – by law - to provide what care they can for these people, with little training, and few resources whilst they await an assessment by an appropriately qualified person.

Whilst it is a welcome development that mental health services now identify places of safety that police can immediately transport individuals to for assessment, experience shows that police resources are required to stay with that individual until a mental health assessment has been conducted by the relevant professional. This can take a many hours to arrange and complete, which involves police officers remaining with the patient, thereby impacting upon their operational availability and effectiveness.

When an individual, is thought to be suffering from a mental health crisis but also displaying the influences of alcohol, drugs, or a combination of both he/she may be detained in a police cell until 'sober' as these substances may affect the assessment process. That, of course, may take

many hours, stretches police resources, places the staff within the custody suite under increased risk of legal jeopardy and, most importantly, places the detained person at a continued, avoidable, high-risk.

The custody-safety route

Any person brought into a custody suite by a police officer, for either a crime or their own safety, has to satisfy basic criteria of law. This is to establish that their continued detention is both lawful and necessary. Such criteria may include:

- Available evidence of wrong-doing;
- The legal necessity for their detention;
- The ultimate purpose of their detention (gathering further evidence, questioning/assessment etc).

Essentially the circumstances are considered by the Custody Sergeant as required by the Police and Criminal Evidence Act, 1984 (PACE) which was initiated to rightly, strengthen and formalise the rights of those detained in police custody and to provide suitable safeguards for their well-being. That Sergeant will also consider the further needs of the investigation as well as those of the prisoner.

PACE states that a person detained under sect 136 must be assessed *'as soon as possible'* by approved social worker and registered practitioner.

In reality, they are initially assessed by a police appointed medical professional who conducts a general health assessment, then calls on the mental health services if they believe there is an issue.

Some custody suites are routinely visited by mental health care professionals, but this does not provide a meaningful 24/7 service, to provide assessment under the Act and is more about looking at all persons in custody at the relevant time, to identify anyone who may already be known to the mental health services.

If the prisoner is the subject of a criminal enquiry then, clearly, that 'crime' needs to be investigated. However, for those deemed (in lay terms) to be mentally ill, a doctor is called to asses that person.

There are advisory guidelines, but no statutory 'timescales' for how long a 'prisoner' can be detained without them seeing - on first referral by the police – to a doctor or any other qualified medical staff, such as a nurse. It is at this stage that those detained are at their most vulnerable; and indeed there are deaths in police custody attributable.

The holding of a person in such a condition may last for many hours awaiting either the attendance of a doctor to carry out a basic assessment or for the 'prisoner' to be suitably free of any intoxicant to enable the assessment to take place. The timeliness of such an assessment may, of course, be further hampered by the need to obtain the services of a language translator.

> Mental Health Act, Section 3.16 states that *"It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under the Mental Health Act 1983, section 136, be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and a registered medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed, examined and suitable arrangements made for their treatment or care, they can no longer be detained under section 136. A detainee must be immediately discharged from detention under section 136 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act"*

It is a fact, that police resources are not suitably equipped to deal with mentally disordered prisoners – including children - who may need care as opposed to simple restraint. We have 'police cells' as opposed to 'secure units' and police officers or contracted civilian detention officers, as opposed to 'medically trained personnel'. Access to medically trained personnel is, of course, available but such prisoners could, currently, be taken to any custody suite in Wales, often across wide rural areas, with no guarantee of permanent or *ad hoc*, medical staff being in attendance.

Inquiry Objectives

The Federation will give advice in respect of the areas being considered by the Committee.

Whether there are sufficient services (i.e. health and social care services) available to support police officers in Wales to divert people with mental health problems away from police custody.

Whilst we recognise that there have been improvements in identifying health care settings as places of safety to allow S.136 assessments to be conducted, we still have significant concerns that police resources are required to facilitate those assessments, tying officers up for significant periods of time, for what is essentially a healthcare issue. This is neither costed, scrutinised or audited.

Of no less concern is our observation that the police service routinely receive inappropriate calls for service, to conduct welfare checks on individuals who

are being managed by mental health services, either in a care or community setting.

Anecdotally, we can give numerous examples of patients being allowed home-leave from a mental health unit, failing to return to the relevant unit and the police being requested to conduct welfare checks and/or return the individual to the unit.

Similarly, we receive calls for service when patients are allowed to leave a unit having intimated to staff that they are intent on self-harming.

Often, these misplaced calls for service to the police from mental health teams, or other care settings, are the direct result of working practices within mental health units or staffing issues related to their working hours.

The number of people arrested under Section 136 of the Mental Health Act 1983, and the extent to which police custody is being used as a place of safety for people in mental health crisis.

Available data will show that this number has remained constant and certainly so since 2017 and irrespective of whether or not such people in crisis are detained, it is a fact, that in the main, NHS and Social Services as public services use the police as its backstop, often releasing people back into the public domain, having been given advice to seek medical care from say a GP, only for them to once again – and often shortly thereafter – be re-arrested under s136.

Whether local authorities and health services are meeting their duties and complying fully with legislative requirements to provide appropriate places of safety to which the police may take people detained under section 136 of the Mental Health Act 1983.

The availability of places of safety, in a health care setting, has improved but the ability to conduct the relevant assessment has not. This results in police resources being required to remain with the patient often for protracted periods, so whilst the setting may be more appropriate, the demands on the police service remain the same.

The Federation remains deeply concerned that 'reception areas' are not always fit for purpose to safely accommodate patients who are essentially still in the care/custody of police officers, which causes significant safety issues for those accompanying officers and we believe that these areas should be subject to statutory inspection.

We note that there is a *Nurse Staffing Levels (Wales) Act* which places a legal duty on Health Boards and NHS Trusts in Wales to ensure they employ enough nurses to provide sensitive patient care in certain settings and specifically an appropriate number of nurses are on shift in adult care

settings. We submit that if necessary, this could be a piece of legislation which could be extended to cover mental health units and would be welcomed.

Adherence to the Code of Practice to the Mental Health Act 1983 which requires that people detained under that Act should always be conveyed to hospital in the manner most likely to protect their dignity and privacy – taking account of any risks (i.e. by ambulance which should be made available in a timely way, as opposed to police transport).

There is a significant shortage of ambulance resilience. The police experience this on a daily basis, often using highly unsuitable police vehicles to transport acutely injured persons to A&E Units. Despite some twelve years of advising The Welsh Government on this issue, we are no further forward in having this matter resolved.

As such, varied police vehicles are being used to take patients to hospitals which often thereafter have to be taken-out-of-service, from their core role, due to bodily fluids being present. That aside, the transportation of mentally disordered persons creates its own problems. It may well be inappropriate to allow such a prisoner to be unaccompanied in the 'rear cage' of a police van, as may be the case for criminal prisoners, but, due to the uncertainty of the person's psychiatric condition, transporting the person even in the rear of a police car has inherent dangers.

It is by no means unusual for 'prisoners/patients' to attempt to escape, to attack the escorting officers or to interfere with the driver in a bid to force the vehicle to crash. In such circumstances, police restraint techniques, including hand-cuffing, will have to be used which may well differ from those used by psychiatric professionals and which may not be in the best interests of a person who requires medical care, as opposed to simple restraint.

Undoubtedly, cases exist where those suffering from a mental disorder have been released from police custody only to then harm themselves, or others within their own family, or wider public community. The Police have a duty of care to not only those they detain, but also to those that they interact, or have contact with. It is therefore vital, that appropriate safeguards are put in place to allow them to do just that.

We have found that transport can be made available, but during this time it does not detract away from the fact that the person is still in police custody.

How effectively police forces in Wales work with partners (such as health or social care services) to safeguard vulnerable people in police custody, and how well the

police themselves identify and respond to vulnerable people detained in custody, specifically those arrested under section 136 of the Mental Health Act 1983.

The Police service forms part of a public service delivery mechanism and have minimal training in this regard. Where medical care is provided in a police environment, this is *ad hoc* and there are no statutory levels set on how long a doctor should be given to arrive to assess a patient, or a time limit set for the transportation to a medical unit. The Royal College of Psychiatrists guidance states a period of 3 hours to attend a detained person, we believe that is wholly insufficient, as during this time, a person who is deemed mentally ill is in the sole legal and medical care of a Custody Sargeant, who it must be remembered is also dealing with often a very busy, noisy, violent custody suite area, holding criminals arrested for varied alleged crimes.

It should be noted that, in the current public services environment, the police service is unable to effectively hold other partner agency service providers to account, for unnecessary or inappropriate calls for service, which are due to the service failure of that partner agency.

The effectiveness of multi-agency care planning for people with mental health problems when leaving custody, specifically for those detained in police custody under section 136 of the Mental Health Act 1983 to help to prevent repeat detentions.

The Police Federation are unable to comment on this question, it being outside of their remit. Our only observation being that the police service regularly and routinely receive repeated calls for service involving individuals who are already known to or under the care mental health services.

Whether effective joint working arrangements are in place, with a specific focus on implementation of the Mental Health Crisis Care Concordat, including whether the Welsh Government is providing sufficient oversight and leadership.

The Concordat is not law, it therefore succeeds only where compliance through mutual understanding exists. In parallel with front-line policing, it is neither costed, measured or scrutinised by The National Assembly for Wales.

It states:

"As partners we agree to work together and to intervene early, if possible, to reduce the likelihood of people presenting a risk of harm to themselves or others because of a mental health condition deteriorating to such a crisis point".

We believe the Concordat should be revisited and aspects of it drawn into statutory legislative clauses in as much as albeit it is an important statement

it should be drawn down into law, so as to place upon public bodies levels of service agreements.

For example, it should be noted that for those detained for 'their own safety' in police custody there are no timescales for any assessments to be made by the NHS. The Federation submit that this requires statutory guidelines for those brought into a police station for their own safety. The same exists on ambulance transportation to a mental health unit.

The interpretation of such 'mentally disordered persons' clearly includes persons who are suffering *any disorder* or *disability* of the mind. It is the Federation's view, therefore, that this is a human right and, as such, any person brought to the attention of the police who may/or may not be 'mentally disordered' should be given the same rights.

Similarly, in order to transport such persons – who are in legal terms now classified as

'prisoners' - for assessment to, say, a hospital, may require the use of police vehicles which have never been designed or adapted for such use and the journey distances may well cover many miles, and hours of travel, particularly in the rural areas of Wales.

Inevitably, the use of such transportation requires that at least two police officers will be taken from their normal core duties, to escort the person 'in safety' (a lay term). This could and, indeed, has been, entirely in vain where the staff at the hospital or psychiatric unit then refuse to assess the individual on the grounds of intoxication. In such cases, the prisoner is returned to the custody suite and kept in detention until an assessment can be completed.

A large number of those subsequently assessed are then released with no further formal action being taken. This is often due to the fact that they <u>may</u> previously have used alcohol to excess, illicit or prescribed drugs or a combination of each or that they no longer appear to form a threat to either themselves or a member of the public.

In such cases, that person may be advised by the doctor to attend at a psychiatric clinic as a voluntary patient. The police will have no legal reason to detain this person further and they will then be released back into the public domain with at that stage no further police contact (this figure stands at about 83%) or importantly the person will have no support from the authorities, unless it is voluntarily sought. All too often, that person will, at some stage - and often very soon thereafter - come back to the attention of the police and, once again, be taken back into police custody.

It must also be advised that where some 'voluntary agreements' exist, between Health Authorities and the Police, these have in the past assisted in dealing with some humanity with the mentally ill/disordered. However, The Federation firmly believe that *statutory protection* for the mentally ill is now more appropriate not only in terms off clarity in public service delivery terms, but to ensure clarity also in legal terms. The financial constraints both within the Health service and the police service has made the up-keep of such 'voluntary arrangements' almost impossible with no control, measures or configured management possible.

Death in custody/police contact

Whenever a person dies in either police custody, or following *any* police contact (up to fourteen days thereafter), the Independent Office of Police Complaints have a statutory duty to investigate the circumstances. This could result in the officers engaged within the custody suite, as well as those responsible for conveying the person there, or who have, or may have had contact, being placed under formal investigation where their every action, whether routine or otherwise, will be scrutinised with finite detail. This process creates excessive stress and deep anxiety in officers, who are simply attempting to do a professional job in difficult circumstances and with very limited, or no other professional resources.

Further advice: There are a myriad of sources that the PFEW will have to access and analyse to get statistics to cover the areas we have identified, and indeed a protracted period of time to collate such information, as such this advice is currently unavailable in the timescale allocated to this 'short-inquiry'. If the Committee is happy to do so PFEW can provide such figures at a later date. This submission has been submitted in English only.

The recommendations of the Police Federation

- That *designated* custody suites have the permanent attendance of a fully trained NHS nurse where officers in each police force can, if absolutely necessary, take a person for their own safety.

- It is accepted that if a person is *arrested for a criminal offence* and there are concerns that there may be mental health issues and that a police surgeon attends to examine. However, if a person is *arrested under section 136,* the assessment should be carried out by the appropriate people in the appropriate place, being a hospital or secure unit and not a police cell.

- That statutory limits are set which require a doctor, trained in assessments of mental health and a social worker to attend a designated custody suite within one hour of arrival.

- That transportation of any person brought to the attention of the police and who is to be taken from a designated custody suite to a hospital or specialist unit, is to be transported by ambulance only and for statutory time limit of 30 minutes set from being seen by a doctor.

- The Mental Health Crisis Care Concordat should be drawn down into law, so as to place upon public bodies levels of service agreements.

- Reception areas at places-of-safety are not always fit for purpose to safely accommodate patients in the 'care/custody' of accompanying police, which causes safety issues for those accompanying officers and that such areas should be subject to statutory inspection to facilitate patient/officer safety.