

MNP 94 1/55/4

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Date: 9 May 1995

Judges of the Crown Court
The Circuit Administrator
The Courts Administrator
The Chief Clerk to the Crown Court
The Clerk to the Justices (with a copy
for Chairman of the Bench)
The Clerk to the Magistrates' Court's
Committee
The Chief Officer of Police
The Chief Probation Officer
The Secretary to the Probation Committee
The Governor, HM Prison
The Head of Health Care, HM Prison

cc. Lords of Appeal in Ordinary
Judges of the Supreme Court of
Judicature
High Court Judges of the Queen's
Bench and Family Divisions
Director of Public Prosecutions
Clerk to the Police Authority
HM Inspectors of Constabulary
Area Manager, HM Prison Service

Dear Sir/Madam

HOME OFFICE CIRCULAR NO 12/95

MENTALLY DISORDERED OFFENDERS: INTER-AGENCY WORKING

This Circular supplements Home Office Circular 66/90, about the provision within the criminal justice system and the health and social services for mentally disordered suspects or offenders, which was issued in September 1990.

2. That Circular was sent to those working in the criminal justice system and copied to those in the health and social services. It set out the existing powers available for dealing with cases involving mentally disordered offenders. It also encouraged inter-agency co-operation so as to make the most effective use of available resources and so as to ensure that those suffering from mental disorder receive care and treatment from the health and social services whether or not proceedings are brought.

Aims of this Circular

3. Providing advice is only one aspect of promoting inter-agency working and the Home Office and the Department of Health have also recognised the need to support the response of local agencies to the advice in Circular 66/90 by making funding available for practical schemes (listed at paragraph 7). Since the issue of that Circular, a wide range of initiatives, both central and local, have been undertaken. The purpose of this new Circular is to provide information about some of these developments which you may find helpful in reviewing arrangements in your area and in considering what more might be done to promote effective inter-agency working. It also describes the key elements of effective local co-operation and action in relation to mentally disordered offenders which have emerged from the work done so far. And it encloses a booklet, produced jointly by the Home Office and Department of Health, containing examples of good practice around the country.

Central Initiatives

4. The major development in this field has been the completion of the work of the joint Department of Health/Home Office review of services for mentally disordered offenders (the Reed review). Reports of the working groups on psychopathic disorder and the provision of high security care were published in July 1994. A National Advisory Committee has been set up to consider issues arising from the recommendations of the review and to advise the Department of Health and the Home Office on these and other matters to do with mentally disordered offenders.

5. The Health of the Nation White Paper identified mental illness as one of five key areas, emphasising the need for close co-operation between all the local agencies concerned to ensure that mentally disordered offenders who need specialist health and social care receive this as soon as possible. The NHS planning and priorities guidance for 1994/95 has identified services for mentally disordered offenders as a "first order" Ministerial priority and made clear that future service development should follow the direction set by the Reed review. The corresponding guidance for 1995/96 (Executive letter (94)55) includes improving the performance of the NHS for people with severe mental illness as one of the medium term priorities for the service, and defines meeting the needs of mentally disordered offenders as one of the criteria for success in achieving this.

6. In Wales, mental health services were given high profile with the issue in 1989 of a Mental Illness Strategy, and in 1993 by the Protocol for Investment in Health Gain –Mental Health. Welsh health policy on mentally disordered offenders was shaped by the report of the all-Wales Advisory Group on Forensic Psychiatry, which led to the current investment programme to develop medium secure facilities in Wales.

Funded initiatives

7. A great deal of progress has been made locally within existing resources but, to try to increase awareness and encourage the growth of inter-agency working and local action, the Home Office has also provided funding for:

- ◆ NACRO to run pilot projects in three areas, and to apply the lessons in other targeted areas (jointly funded with the Mental Health Foundation).
- ◆ the promotion of a panel assessment scheme by the Hertfordshire Care Trust.
- ◆ an annual grant to the Mental Health Foundation to fund innovative action projects.
- ◆ the Mental Health Foundation to run regional conferences to encourage action plans to develop services.
- ◆ a contribution towards the costs of mental health assessment schemes at magistrates' courts.

Local Initiatives

8. The findings of a survey of the Probation Service, clerks to the justices and prison medical officers conducted in early 1992 to assess the extent of progress since the issue of Home Office Circular 66/90, together with information gained in response to questions included by HM Inspectors of Constabulary in police force inspections, have indicated that less than two years after the issue of the Circular, a high degree of inter-agency contact and co-operation had already developed. At that stage we were aware of the existence of some 60 local schemes, and of others being planned, representing a significant achievement and an encouraging basis for future progress. We believe there are now at least 100 such schemes in operation.

9. Bids for funding to assist in court-based schemes have indicated a continuing increase in local inter-agency activity and the development of new schemes. Over 140 bids from all parts of England and Wales have been received and the Home Office is assisting some 50 schemes during 1994/94. 96 multi-agency schemes have been funded or part-funded by the Department of Health between 1992 and 1994.

Importance of inter-agency arrangements

10. The full and timely **sharing of information** (subject to any over-riding requirements of confidentiality) by all agencies having contact with mentally disordered offenders – in the criminal justice system, in health services, in social services and in the independent sector – is essential if each agency is to discharge its responsibilities effectively and to take sound decisions where health, liberty and the safety of the public are all at stake. Information about an offender's past and current psychiatric state is necessary to enable the criminal justice agencies and the courts to take decisions about charging, prosecution, remand and disposal following conviction.

11. Health and social services agencies need to know about and to understand a mentally disordered person's past and current offending behaviour so that effective assessment, treatment and care can be provided. As well as the sharing of information, **active co-operation** between all agencies in securing access to resources and facilities, in monitoring success and resolving problems is also essential.

When to charge and prosecute

12. Provided sufficient evidence exists, the decision whether to charge must be guided by what is in the public interest. The existence of mental disorder should never be the only factor considered and the police must not feel inhibited from charging where other factors indicate prosecution is necessary in the public interest. It is essential to take account of the circumstances and gravity of the offence and what is known of the person's previous contacts with the criminal justice system and psychiatric and social care services.

13. Once the police have charged the individual, the papers are passed to the Crown Prosecution Service. The CPS is required to review each case to see whether it should continue through the courts. That review is an objective assessment of all the available evidence, and material about the public interest. The tests which the CPS uses in deciding whether to continue a prosecution are set out in the Code for Crown Prosecutors. First, there must be enough evidence to provide a realistic prospect of conviction. This means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

14. If there is enough evidence, the CPS goes on to consider whether a prosecution is needed in the public interest. In cases of any seriousness, a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. The existence of mental disorder at the time of the offence or the possible detrimental effect of prosecution on a person's mental health are factors tending against prosecution. But it is important for the decision of the CPS to be taken in context. The needs of the defendant must be balanced against the needs of society; if the offence is serious, it remains likely that a prosecution will be needed in the public interest.

15. Where proceedings are instituted, the powers available to courts and the Home Secretary's power to transfer remand and sentenced prisoners to hospital on medical advice can help to ensure that mentally disordered people receive treatment and care while their cases are being dealt with by the criminal justice system.

16. Inter-agency arrangements should therefore aim to ensure that where offences have allegedly been committed by mentally disordered people, the question of public safety and any relevant information about the person's history are taken fully into account in deciding whether to charge; and that where criminal proceedings are instituted, the treatment and care needs of individuals are properly met.

Key elements

17. Clear key elements have emerged from local and central initiatives which it is recommended should be reflected in inter-agency arrangements if they are to be effective. These are:

- ◆ local services (including specific schemes or projects) should be planned and developed on the basis of clearly assessed local needs;
- ◆ from the outset, there must be agreed and clearly defined participation by all local criminal justice and health and social services interests, and involvement by those at a level high enough to determine policy and commit resources;
- ◆ it is essential that each agency develops an understanding of the framework, ethos, priorities and constraints with which the other agencies operate;
- ◆ arrangements should aim, through co-operation, to maximise the use of existing available resources;
- ◆ a system of recording information both within and between agencies ~~will~~ be set up to monitor the effectiveness of arrangements;
- ◆ arrangements should be built into local plans and not be dependent on specific individuals;
- ◆ training needs of participants should be identified and means to meet ~~these~~ devised, wherever possible jointly with colleagues in other relevant agencies; and
- ◆ a nominated lead agency can provide a vital co-ordinating role; inter-agency groups are likely to benefit from agreeing a local co-ordinator from one of the participating agencies. (The choice will be dependent on local circumstances.)

18. Events since the issue of Circular 66/90, including the Report of the Inquiry into the Care and Treatment of Christopher Clunis (available from HMSO), have identified a broad range of issues which need to be considered by all interested parties at local level. Enclosed with this Circular is a booklet produced jointly by the Home Office and Department of Health containing examples of good practice and information about inter-agency initiatives. You are asked to consider this additional advice and to look again at existing local arrangements for responding to mentally disordered people who offend to decide what further action should to be taken, in co-operation with other agencies, to ensure that the health and social care needs of individuals are met while having proper regard for public safety.

19. The following is a summary of the main aspects covered in the booklet as they concern those working in the criminal justice system. It is of the greatest importance

that each of these issues is considered not only as it affects the part of the criminal justice system immediately concerned but is also examined in consultation with all other relevant local agencies so that the wider implications are understood and taken fully into account in developing any new arrangements, which should reflect the key elements set out in paragraph 17 of this Circular.

1. **Chief Officers of Police** are asked:

- (a) to develop arrangements for the examination by psychiatrists or other mental health professionals of detained persons, including cases under section 136 of the Mental Health Act 1983;
- (b) to consider setting up mental health assessment schemes at selected police stations;
- (c) to appoint a co-ordinator to develop force policy and practice, in relation to mentally disordered suspects and offenders, including provision of information and training for officers; and to develop effective contacts with other local services and agencies;
- (d) to contribute to any strategic discussion of local arrangements for mentally disordered offenders and to co-operate with any local inter-agency schemes such as those based at court;
- (e) to ensure that force policy on deciding when to charge reflects the need to safeguard the public as well as to meet the health and social care needs of individuals;
- (f) to review record keeping arrangements and provision of information for the Crown Prosecution Service where prosecution is needed in the public interest.
- (g) to bring to the attention of police surgeons information about force policy and practice, in particular, arrangements for psychiatric assessment of detained persons and any mental health assessment schemes at police stations.

2. **Chief Probation Officers** are asked:

- (a) to review arrangements for co-operation and joint planning of services with local health authorities and social services departments and other agencies, including voluntary organisations, to ensure that
 - i. alternatives to prison custody are available so that the court can consider these options before and after conviction;
 - ii. where prosecution is not necessary in the public interest, other effective courses of action are available; and

- iii. the needs of mentally disordered offenders are considered when partnership plans are drawn up;
 - (b) to ensure, where defendants who might benefit from psychiatric assessment are identified, that the court receives appropriate information about the person's condition and the available treatment services;
 - (c) to facilitate access to accommodation to help avoid prison custody having to be used in default of more appropriate accommodation;
 - (d) to advise the court on possible options other than imprisonment, both in general and in individual cases in the pre-sentence report.
3. **Magistrates and Judges** are asked:
- (a) when making decisions on remands or imprisonment, to bear in mind that custody is inefficient as a means solely to obtain medical reports or to meet treatment needs; and
 - (b) to bear in mind that where bail is requested, mentally disordered people have the same right to bail as everyone else.
4. **Clerks to the Justices** are asked:
- to consider, in consultation with other local services and agencies, developing mental health assessment schemes based at magistrates' courts.
5. **Prison Medical Officers** are asked:
- to sustain and develop arrangements for identifying and transferring to hospital prisoners needing psychiatric in-patient treatment, with especial regard to remand prisoners.

Health and Social Services

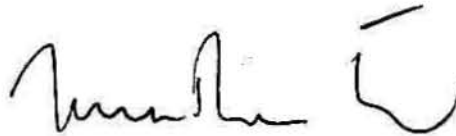
20. Requirements for health and social services have already been set out in England in 'The Health of the Nation' White Paper (CM 1986, 1992) and in NHS Management Executive Letter (93)54, and in Wales in the Mental Illness Strategy; the Health Gain Protocol, and the Forensic Psychiatry Group report. Guidance on the discharge of mentally disordered people and their continuing care in the community was issued to health authorities and local authorities in May 1994 (HSG(94)27/LASSL(94)4). In October 1994, the Department of Health issued, for consultation in England, a draft Guide to Arrangements for Inter-Agency Working for the Care and Protection of Severely Mentally Ill People.

Legal Representatives

21. Legal representatives acting in the defence of mentally disordered suspects have an important role to play in the implementation of effective inter-agency arrangements and helping to ensure that the treatment and care needs of mentally disordered people are met. Where possible, legal representatives should be involved in local schemes. The enclosed booklet contains advice about this role, which has been prepared in conjunction with the Law Society's Mental Health and Disability Sub-Committee.

22. Any enquiries about this Circular should be addressed to Miss Lyndel Grover or Mr Mike Sullivan, C3 Division, Home Office, Queen Anne's Gate, London SW1H 9AT (0171 273 3908 or 2394).

Yours faithfully

A handwritten signature in black ink, appearing to read 'J M Potts', with a stylized flourish at the end.

J M Potts
C3 Division