



Centre for Public Policy and Management

Response to the Consultation Paper on the Mental Health Law Research Programme

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1. This response has been prepared by members of the Centre for Public Policy and Management at The Robert Gordon University. David McArdle, Lisa King and Sarah Christie are lawyers; Professor Paul Spicker is Director of the CPPM, and has undertaken research and user consultations with psychiatric patients and people with mental incapacities.

2. The Consultation Programme makes reference to other on-going research which impinges on this topic, but does not refer to the Scottish Law Commission's recent *Discussion Paper on Insanity and Diminished Responsibility*¹. This points to the need for integration across the various disciplines which meet on this issue. The Commission's discussion paper notes that a key issue in their research was to "... decide how well the proposed constituent elements of insanity ... lend themselves to definitions which can be understood and used across the various disciplines which have to apply them"². They argue for using a single definition which will serve lawyers, psychiatrists, psychologists and other mental health professionals equally, and avoid situation where terms are used loosely or interchangeably so as to cause confusion. The programme of research needs to take account of these issues.

Q5 What do you feel are the most important issues for research in relation to people with mental disorder in the criminal justice system?

3. The Scottish Law Commission seek to revise the definitions of insanity used in a criminal context. They propose to re-classify insanity in terms of mental disorder, which they define as a condition which robs the accused of the ability to appreciate the nature of his conduct, or which prevents him from conforming his

conduct to the requirements of the law³. Research into the operation of mental health law needs to consider the definition of mental disorder, and how this can be aligned with such reforms as are proposed in other areas.

4. There are also issues relating to people who are suffering from mental illness which, because of the difference between legal and medical definitions, is not accepted as mental illness within the terms of the Act. These people may require medical attention while undergoing the judicial process or in prison. Research issues relate to prevalence, the problems posed for the criminal justice system, and policy and service responses.

Q7. Which aspects of the general framework of rights, duties and powers provided by the Act do you think are the most important subjects for research?

5. The programme of research needs to take account of current developments in the understanding of and response to mental disorder. There has been a movement away from the ancient understanding of mental disorder as a dichotomous concept., represented most markedly in the Adults with Incapacity (Scotland) Act 2000. Capacity and disorder may be partial, and people who are impaired in one respect are not necessarily incapacitated in others. In the context of health care and treatment, there are circumstances in which it is necessary to the rights of users, facilitation and empowerment and care with control.

6. In addition, the general framework gives rise to some very important health and safety issues and these will require detailed consideration.⁴ The Health and Safety at Work etc Act 1974 and attendant Regulations place employers under a general duty to ensure the health,

¹ Scottish Law Commission, *Insanity and Diminished Responsibility (Discussion Paper No. 122)*, Edinburgh, HMSO, 2003.

² *Ibid.*, para 1.16.

³ *ibid.*, para 2.58.

⁴ V Craig and K. Miller 2000, *An Introduction to the Law of Health and Safety in Scotland*. Edinburgh: W. Green.

safety and welfare of persons at work, but also to protect the public from risks associated with work activities. In the context of mental health care and treatment particularly pertinent areas for research would include what consultation mechanisms should be used, what format the risk assessments should take, and how an appropriate health and safety statement should be drafted and implemented.

Q9. Do you feel that any vital issues have been missed from the research programme as outlined?

7. *Racial equality issues.* The research programme needs to take into account the provisions relating to equality and diversity as outlined in the Race Relations (Amendment) Act 2000.⁵ This is important not only in terms of how ethnic minority clients are treated within the mental health service, but also with regard to what steps are taken to monitor race equality issues within the service *qua* employer, and to address any issues that may arise. Further information on these matters is available from the Commission for Racial Equality website (www.cre.gov.uk) and other public- and voluntary-sector organisations

8. *Ethics.* Researchers working in mental health have to take into account important ethical limitations on their field of action. It is sometimes the case that social research can be undertaken without the participation of the subjects, and it is common to examine conditions by asking families, carers or professionals about the circumstances. But there is a contrary ethical argument for research as a form of empowerment, offering people the opportunity to voice their concerns; this has been particularly influential in studies of learning disability⁶ and mental illness⁷.

In procedural terms, all research relating to the health services also needs to be approved by local ethical committees. However, the scrutiny of research by local ethical research committees currently applies only in relation to health services research. Much of the research done in this field falls outside the remit of the health service. We think that prior to any research in this field, there need to be clear ethical guidelines established, and accepted procedures developed which will safeguard the position of respondents while ensuring that they are able to have a voice in decision making processes.

The Centre for Public Policy and Management

9. The Centre for Public Policy and Management (CPPM) is one of Scotland's leading multi-disciplinary

⁵ H. Hill, 2001 *Guide to the Race Relations (Amendment) Act 2000*. Oxford: Oxford University Press.

⁶ P Ramcharan, G Roberts, G Grant, J Borland (eds) 1997, *Empowerment in Everyday Life*, London: Jessica Kingsley.

⁷ A Rogers, D Pilgrim, R Lacey, 1993, *Experiencing psychiatry: users' views of services*, Basingstoke: Macmillan.

research centres, conducting applied policy research. The staff attached to the centre have backgrounds in policy analysis, social administration, management, planning, law, economics and social research. The work of the CPPM is based on the application of a range of academic knowledge and professional expertise to the practical problems of public sector, voluntary and independent agencies. Recent and current research work has been undertaken for the Great Northern Partnership, Scottish Enterprise Grampian, Aberdeen City Council, Dundee City Council and the European Social Fund. The work includes research, consultancy and evaluation. The CPPM's website can be consulted on <http://www.rgu.ac.uk/publicpolicy/cppm/>.

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