HEALTH AND SPORT COMMITTEE

RCN Scotland submission on the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill

The Royal College of Nursing (RCN) is the world's largest professional organisation and trade union for nursing staff, with members in the NHS, independent and third sectors. RCN Scotland promotes patient and nursing interests by campaigning on issues that affect members, shaping national health policies, representing members on practice and employment issues and development opportunities. With around 40,000 members in Scotland, the RCN is the voice of nursing.

RCN Scotland welcomes the Bill which will increase equity of access to healthcare services for people who have been hurt by rape and sexual crime. RCN Fellow and Chair of the RCN Nursing in Justice and Forensic Health Care Forum, Jess Davidson, sits on the workforce and training sub-group of the CMO taskforce as well as the expert group set up to develop the role of Nurse Sexual Offence Examiners in Scotland.

Registered nurses currently assist in sexual assault examinations as a corroborating health care professional, if forensically trained. The consistency of this approach is variable across Scotland, but the creation of the HIS Standards and best practice aims to have this rolled out and supported countrywide as it has been positively evaluated. Nursing roles in forensic examination consist of trainee ANP, Senior Charge Nurse, Clinical Forensic Nurses, Sexual Assault Nurse Practitioners and Gender Based Violence nurses with a history in sexual health nursing. Work is underway to provide accredited education for nurses in Scotland so that they can demonstrate the competencies and academic rigour underpinning advanced forensic practice and the potential ability to give skilled witness in Scottish Courts. The theory behind this is to expand and develop the role of the forensic nurse to be in line with other developed countries, providing an assured and sustainable workforce and build the evidence base for future practice. Advanced practice is described by Mantzoukas and Watkinson (2007) as having several generic features, which translate as the use of knowledge in practice, critical thinking and analytical skills, clinical judgement, professional leadership and clinical inquiry, coaching and mentoring skills, research and practice change. Conceptual clarity is essential to developing advanced nurse practice (Hamric 2005).

1. **What are the key advantages and disadvantages of placing the examination of victims of sexual offences (and harmful sexual behaviour by children under the age of 12) by health boards on a statutory basis?**

We strongly support the provision of a clear statutory duty for health boards to provide forensic medical examinations to victims. Setting out in legislation that the responsibility for the delivery and continuous improvement of these services lies with health boards, should provide equity of access to high quality, clinically-led services that address an individual's healthcare needs in a holistic way.

The 2017 Healthcare Improvement Scotland (HIS) Standards set out how forensic medical examinations should be delivered by health boards and emphasise that these services must be person-centred and take a trauma-informed approach. A duty on health boards to provide these services makes clear what is expected of providers and lets individuals know what they are entitled to, with a consistent approach across Scotland. Clarifying where responsibility lies should also support multi agency working.

Placing the responsibility for the provision of examinations on health boards will also ensure that clinicians undertaking these examinations can refer to other specialities without barriers. Accepting the incidence of rape and sexual assault as a volume crime, which causes levels of complexity for the complainant/patient and clinician, Occam's Razor approach allows us to know that a person will most likely be experiencing an acute trauma, with potential healthcare needs that can be bet by onward referral. i.e. mental health, child protection, dental trauma and maxilla facial trauma to suggest a few instances. Having the full services of the NHS available to the referring clinician can help provide equivalence and equity of health care for complainants of rape and sexual assault.

For example, a complainant complaining of throat pain following assault is referred to ENT who visualise and record a blunt force trauma resulting in documentation of injury and also appropriate health care response such as mitigating infection risk and providing assurance for the recovery of the individual by diagnostics which serve to reduce anxiety.

2. **What are the key benefits of providing forensic examination on a self-referral basis (whereby victims can undergo a forensic medical examination without first having reported the incident to the police)? What problems may arise from this process?**

RCN Scotland welcomes the provisions in the Bill to provide forensic medical examination on a self-referral basis. Giving victims of sexual crime the ability to self-refer for a forensic medical examination increases choice and control for victims and should encourage more people to come forward by enabling them to access trauma-informed healthcare services without first having to make a police report. Health boards will be enabled to collect and retain potentially crucial evidence to support any future police investigation. We strongly agree that a victim should have a right to access a forensic medical examination, appropriate healthcare and person-centred support, whether or not they have reported the crime to the police.

Patients who have been traumatised have conveyed the importance of trust and equity between patient and provider and that the provider be experienced, knowledgeable and non-judgemental (Reeves and Humphries 2018). Positive relationship building, respect and safety are the key elements that counteract shame and mistrust in patients (Muzik et al 2013). Giving the opportunity for people to self-refer to a health care service following rape further demonstrates the provision of equitable health care. People can be diffident in reporting immediately to police for reasons of trauma, culture, gender, religion, safety, and fear. Some will approach on a number of occasions before making a disclosure of sexual assault. If we can accept that the complainant/patient already knows what has happened to them, the provision of self-referral services is an endorsement of the veracity of trauma-informed and person centred care in Scotland.

It is important that the structure and framework for self-referral is clearly set out in legislation, regulations and guidance to ensure that what will be a new service for most health boards, is consistently delivered across Scotland. It is vital that the correct governance arrangements, high standards and robust inspection regimes are in place to ensure that any evidence collected during forensic medical examinations under the self-referral model support any future court proceedings.

The legislative framework and guidance must ensure that individuals with a learning disability or other cognitive impairment, or who are deaf or sensory impaired, have their specific needs met when accessing a forensic medical examination.

3. Are there any issues with the proposal to restrict self-referral to people over 16 years old?

We disagree with the proposal to restrict access to self-referral services to those over 16 years old. Enabling a child under 16 to self-refer provides another route for that child to seek help and receive trauma-informed care and support immediately. While the policy memorandum states that this proposal does not preclude a young person from seeking access to healthcare ahead of a police report, enabling them to self-refer for a forensic medical examination may encourage more young people to come forward.

If people under 16 were able to self-refer then the framework would need to be different to the adult framework, to reflect that fact that it would remain the case that health professionals would still be duty bound to report what has happened to the relevant authorities in line with existing child protection guidance and clinical practice. Yet despite this important difference, we are of the view that enabling victims under 16 to self-refer without first making a police report would have many of the same benefits as introducing this right for adults. They would be able to seek help in a person-centred, trauma-informed environment and have their healthcare needs met. Healthcare professionals would be required to involve the police but the young person would receive support throughout this process. We therefore believe that restricting access to people over 16 would be a mistake and a missed opportunity.

Drawing from the experiences and testimony of girls in the Rotheram/Rochdale gang grooming and exploitation cases has provided anecdotal and qualitative testimony from those involved who found it a complex and confusing landscape where their exploitation was ignored for reasons of attachment and described as 'love' by some. The victims were criminalised and marginalised and often, because of their status as 'children,' they did not have anywhere to turn to. This has provided us with intelligence from victims to build in to new services at the outset, to future proof delivery and the sophistication and expert understanding of sexual exploitation for our populations.

4. Are there any issues with the health board storing and retaining evidence gathered during self-referred forensic examinations?

This is a complex issue and it is vital that there are very clear policies regulating the collection and retention of evidence, as well as a robust inspection regime. Such policies will need to address ethical as well as practical governance issues and must ensure that a consistent, evidence-based approach is followed. There will also be cost implications for boards to ensure that samples are appropriately and securely transported and stored.

We support the formation of a sub-group under the CMO taskforce to consider these complex issues and develop the necessary guidance and regulations. Given the complexity of these issues, we support the provision in the Bill which requires regulations regarding the retention period to be subject to the affirmative procedure.

5. Do you have any other comments to make on the Bill?

1. Ensuring that forensic medical examinations are available locally in a timely manner will require an increase in the workforce, particularly if these changes result in an increase in demand for these services. Future workforce planning will be central to the success of

the self-referral model and the RCN has been at the forefront of promoting advanced practice development for nurses that work in the field of sexual offences and forensic examination. Jess Davidson, RCN Fellow and Chair of the RCN Nursing in Justice and Forensic Health Care Forum, sits on the CMO Taskforce's workforce and training sub-group as well as the expert group set up to take forward recommendation 6 of the HMICS report to develop the role of Nurse Sexual Offence Examiners in Scotland.

The driving principle for supporting this development and innovation in Scotland, is to provide equity and equivalence of healthcare and examination for all people who have been hurt by rape and sexual crime. Timely access to suitably qualified, experienced and skilled professionals should be a right for all citizens in Scotland following rape or sexual assault. Providing expert nurses to undertake this work will improve access and support the provision of trauma informed and person centred care, as enshrined in the 2017 HIS Standards.

Equity of access to healthcare can be challenging for those who live in rural and island communities. It has been a driving ethical imperative for the CMO taskforce to provide solutions to this access so that complainants can receive timely and confidential examinations, where possible, within their own community. Providing a workforce of suitably trained nurses to do the examination role is part of the solution to providing a consistent and evidence based service, as specialist nurses can be part of a 24/7 workforce within the Health Boards.

A vital part of this development is to provide the evidence base to stakeholders that supports Nurse Sexual Offence Examiners being accepted to present expert witness evidence and reports to Scottish Courts. The RCN is of the view that the proposed test of change is key to this evidence base. The proposal will allow two suitably qualified nurses to work as principle examiners over a period of 18 months and for those cases to be tested in Scottish Courts underpinned by robust preceptorship from CMO approved Medical examiners, governance and supervision.

The process to date has been an exemplar of transparent and high level engagement with a wide range of stakeholders to build the case for change. The RCN is committed to the principle of building a highly competent, qualified and expert nursing workforce that can undertake forensic examination and be part of the team that ensures all people in Scotland have access to the right care, at the right time following the trauma of rape and sexual assault.

2. The Scottish Government must also take action to increase awareness of these changes amongst both the public and professionals. The introduction of self-referral will only benefit victims if they, or someone they confide in, are aware of this option. In addition to increasing awareness of the changes provided for in the Bill, the Scottish Government and health boards must ensure that information about these services is available locally so that an individual is able to easily find out where to go to access a forensic medical examination.