

Edinburgh Carers Council



for those supporting people with mental health difficulties

Understanding Mental Health and the Criminal Justice System



Who is a carer?

A carer may be a family member, partner or friend who supports or cares for a person with mental health difficulties. Carers may or may not live with the person they support, and they may or may not carry out physical tasks. The Mental Health (Care and Treatment) (Scotland) Act 2003 defines a carer as:

- (s329) ***“an individual (other than a paid or voluntary worker) who provides, on a regular basis, a substantial amount of care for, and support to, the person; and includes, in the case where the person is in hospital, an individual who, before the person was admitted to hospital, provided on a regular basis, a substantial amount of care for, and support to, the person”***
- regardless of diagnosis, living situation, etc.

This booklet is for you if you are caring for someone with mental health difficulties who:

- has been arrested as a suspect involved in a criminal act,
- has been charged and is appearing in court,
- has been referred to forensic mental health services for assessment or treatment of their mental health.

This booklet has been written to help you understand how the criminal justice system works and where you can go for help.

Although we talk about 'your relative' throughout this booklet, the information equally applies to a friend or partner who is a person's main carer.

What happens when my relative commits an offence when unwell?

If your relative has committed a crime but has a mental disorder, he/she may be taken out of the criminal justice system and moved to the health-care system instead. This can happen at the time of arrest, during court proceedings or during a prison sentence. By mental disorder we mean any mental illness; personality disorder; or learning disability as defined by The Mental Health (Care and Treatment) (Scotland) Act 2003.

Forensic Mental Health Services specialise in the assessment and treatment of people with mental disorders involved with legal or court proceedings, or who have offended. They are not part of the prison service. Your relative's mental disorder may be assessed as being a factor contributing to their offending behaviour. Therefore, the ethos of services is one of care and treatment which manages any identified risk, rather than punishment and containment. Not everyone treated within forensic mental health services will have committed an offence but they may need specialist care and treatment that is not available in other mental health facilities.

What laws will my relative come under?

The Criminal Procedure (Scotland) Act 1995

This Act gives courts the powers to ensure that people receive care and treatment in relation to their mental health as set out in The Mental Health (Care and Treatment) (Scotland) Act 2003. The courts can use this law at any stage of criminal justice proceedings; from when a person is first arrested and charged, to the time the court makes its final decision about someone's case.

The Mental Health (Care and Treatment) (Scotland) Act 2003

This act has a set of principles which anyone giving care and treatment under the Act to your relative has to follow. These include, ensuring:

- a person's past and present wishes about their care and treatment are taken into account,
- the views of their "Named Person", carer or welfare attorney are taken into account,
- any action taken will ensure the maximum benefit for the person,
- any restrictions on a person's freedom are the minimum necessary in the circumstances.

A Carer's experience...

"My introduction to the criminal justice system and forensic mental health services was a frightening journey into the unknown. I had only a very vague idea of what would happen if my son was involved in any criminal activity and like most carers, had hoped that this kind of situation would not have arisen if adequate care and support was in place.

Had I been better prepared with even some basic knowledge of the procedures involved, I might have been better able to support my son, and perhaps even help to prevent an unnecessary stay in prison. It was like being in a maze and taking all the wrong turns before making any progress....Ignorance is not bliss, and any information and guidance in this unexpected situation would have been welcomed. I would advise all carers to be armed with knowledge of how the system works, as we need to be strong and confident to help our loved ones-and not distressed and frazzled as I was."

What happens when my relative commits a crime?

Contact with the police...

At time of arrest

If someone is suspected of being involved with a criminal act, they may be formally detained by the police under section 14 of the Criminal Procedure (Scotland) Act 1995. If they are detained under this law, they are in the custody of the police and will be taken to a police station to:

- record the process,
- have fingerprints or other impressions taken,
- then be interviewed about the crime they are suspected of being involved in. People who are detained can be held for up to six hours, after which they must be charged with an offence (where they may be arrested afterwards), or released.

During the detention process

People are asked questions about their health, any special needs they might have and if they would like a lawyer or any other 'reasonably named person' to be told that they are detained. This can be a relative, carer or friend.

If your relative appears to need additional support in an interview, they will arrange for an "Appropriate Adult" to be present. This will be an independent person with specialist training who will support your relative during the police interview. Their role is to help the person understand the questions the police ask, so they are able to answer them.

If a person appears to need any medical attention; this is dealt with prior to any police process taking place, usually by taking the person to A&E.

If they are charged

There are three options that the police can take.
Your relative can be:

1. Released on Undertaking – they will be released on bail and formally given a date to appear at court sometimes with conditions attached. If these conditions are broken, a person will be arrested and may be dealt with as a 'custody case'.

2. Released on Summons – they will be released and told that they will be reported to the Procurator Fiscal (as a 'summary case') who will consider what action should be taken. The Procurator Fiscal will write to your relative to inform them of their decision.

3. Dealt with as custody case – they will be held at a police station until they appear in court, the next 'lawful' day. This is usually what happens in serious cases or where there is a real risk of the person re-offending, harming others or interfering with a case.

What can I do to help my relative?

At any stage, you can alert the police, the courts, lawyers and health care and prison staff to concerns about someone's mental health, care and treatment. This is important when a person is vulnerable, may present a risk to themselves or others, or where there are concerns about medication. A referral can then be made to psychiatric services.

If the person you care for is admitted to a psychiatric hospital, such as The Royal Edinburgh Hospital, your position as a carer remains unchanged. In this situation good communication between yourself and staff is vital. You may be able to provide information on the circumstances leading up to the admission and in turn you should expect to receive information and support.

The hospital staff can provide you with information about hospital services, visiting family facilities, etc. They should give you and the person you care for details of independent advocacy services. Advocacy can help you in, for example, becoming or acting in your role as a named person. If the person you care for has made an Advance Statement it is important that hospital staff are made aware of it.

Carers may wish to keep in touch with healthcare and legal professionals and leave their contact details with a request that they be kept up to date.

Getting support for yourself

To find yourself in the position of supporting someone in a new situation you may know little of, can be a frightening and isolating experience. There is help available including information, advocacy and support see - **'Support For You'** section later in booklet (page 29).

If you are a witness, the police will take a statement from you about what you have seen or experienced - unless the witness' evidence is crucial (for example, if someone in custody and a report has to be prepared for the Procurator Fiscal for the next day) the police can be flexible about obtaining a statement. If another party such an interpreter or appropriate adult is required, one will be arranged.

If you have been a victim of a crime, statements will also be taken from you as above but depending on what the circumstances are, you may be referred to your local victim support scheme:

<http://www.victimsupportsc.org.uk/page/victims.cfm>

If you need to talk about your situation and the impact it is having on you, you can refer yourself to a counselling service. North East Edinburgh Counselling Service have list of counselling services in the Edinburgh area, including those that are free of charge or by voluntary donation and private practices, you can download a copy from:

www.neecscounselling.org.uk/id9.html

or call **0131 557 4478**

More specialised services are available via a referral through your GP for example, The Edinburgh Traumatic Stress Centre (Rivers Centre), which is based at the Royal Edinburgh Hospital **0131 537 6874/6629**. Services offered include a variety of psychotherapies. Most work is with individuals but couples and family work can be offered.

Going to Court...

There are 3 stages.

1. Pre-conviction stage: the person accused of an offence makes a plea of guilty or not guilty. If there is any doubt about a person's fitness to plead, an assessment will be made.

2. Post-conviction: pre-sentencing stage: unless acquitted, reports may be requested to help the Court make a final decision in sentencing the person.

Lawyers and others can arrange for a psychiatric report to be carried out. This is paid for by the person or organisation requesting it. A person must be aware that the report can be given to the court and other professionals involved and consent to this.

If consent is not given, there are options which will be open to the court and medical professionals to ensure that an assessment can be made. An assessment can help determine if a person:

- is fit to stand trial,
- has specific care and treatment needs in relation to his/her mental health, and which could have contributed to their offending behaviour,
- how he/she can receive the most effective care.

3. Sentencing stage: the court determines what should happen to the person considering all the circumstances of the offence. Possible outcomes may include acquittal or conviction which can be followed with various psychiatric options i.e. an order for them to attend hospital/community mental health team for treatment.

The care and treatment your relative receives within forensic services should be related to his/her mental disorder and based on a clear assessment of risk. They have the right to the same recovery-focused care planning as other people with a mental health difficulty. Your relative should not be discriminated against because of their offending behaviour.

Please contact us for further details and easy-read information of these options available to the courts
0131 270 6087.

Helpful information about going to court

The Scottish Court Service have some useful information under the 'Coming to Court' section on their website:

<http://www.scotcourts.gov.uk/>

The Crown Office and Procurator Fiscal Service also have some good information about going to court and being a witness or victim of crime – particularly under the 'Victims of Crime' section on the front page of their website:

<http://www.copfs.gov.uk/Victims>

The Citizens Advice Bureaux run a specialist advice service for people visiting Edinburgh Sheriff Court, Chambers Street: **0131 247 2865**.

If you do not have access to a computer, you can ask Edinburgh Carers Council **0131 270 6087** to send you the information you need.

Who is responsible for my relative's care?

Forensic Mental Health Services in Scotland are provided by NHS Health Boards. They deliver care and treatment to meet a person's individual needs and within a setting that offers a level of security which matches the level of assessed risk to themselves or others.

Low secure and community services are provided on a local level. Each Health Board area has its own services and links with local mental health teams. For more information about forensic mental health services: **www.forensicnetwork.scot.nhs.uk**

There are services provided on a regional and national level for medium and high secure care:

North of Scotland Region: NHS Grampian, NHS Tayside and NHS Highlands and Islands. A Medium Secure Unit Rohallion Clinic at Murray Royal Hospital is due to open in 2011.

South & East of Scotland Regions: NHS Lothian, NHS Fife and NHS Forth Valley. The Orchard Clinic is the regional medium secure unit in Edinburgh.

West of Scotland Region: NHS Glasgow and Clyde, NHS Lanarkshire, NHS Ayrshire & Arran and NHS Dumfries and Galloway. The Rowanbank Clinic is the regional medium secure unit.

The State Hospital

The State Hospital Board for Scotland provides high secure care at a national level and takes people from all over Scotland. More information can be found at the State Hospital website: www.tsh.scot.nhs.uk

The Mental Health Tribunal

The Mental Health Tribunal for Scotland is an independent organisation whose role is to make decisions about an individual's care and treatment if they are subject to compulsory powers under the Mental Health Act; including whether orders should be extended, cancelled or changed in some way. These orders may have initially been put into place at time of assessment and/or sentencing.

Each hearing will have a panel of three members from a legal, medical and general interest background. Your relative and their solicitor, you as the 'named person' or carer, or others in these roles, and advocacy worker will be invited to attend the hearing. In addition, a person's responsible medical officer and mental health officer will be asked to attend. Everyone will be invited to contribute their views to the hearing to enable the panel to make their decision. A Named Person can have legal representation at a Tribunal hearing and can apply for financial help under the 'Advice and Assistance Scheme' as well as expenses to attend the hearing.

The Role of Named Person

People with mental health difficulties are able to choose a named person to support them and to protect their interests if they have to be treated under The Mental Health Act. If no-one is chosen by the person, then their primary carer will automatically become their named person. If there is no primary carer, the person's nearest relative will be their named person. The named person has a number of rights under the Act including:

- the right to refuse to be a named person,
- to request a needs assessment of the person cared for,
- to be told when a short-term detention or an application for a compulsory treatment order (CTO) is being considered,

- to be given copies of records or information, including the record made if treatment has been given which conflicts with the service users Advanced Statement,
- to make applications or appeals to the Mental Health Tribunal for Scotland and to speak and give evidence at a hearing, and other important matters,
- to apply to the Tribunal to have a Compulsion order (with or without Restriction Order), a Hospital Direction or a transfer for Treatment Direction cancelled or changed in some way (within certain time periods),
- the right to appeal on behalf of service user against detention in conditions of excessive security.

Edinburgh Carers Council can provide information and advocacy support for you if you are undertaking this role.

Carers Rights

If you are a carer, but not a 'named person', you also have rights as outlined in Mental Health (Care and Treatment) Scotland Act 2003 (*and in related legislation and guidance*) including the:

- right to be included on your relative's Care Plan (*Care Programme Approach Guidance*),
- right to be given general information about the condition your relative, though not specific information if they do not consent (*Data Protection Act 1998, Care Programme Approach Guidance*),
- right to be given copy of your relative's care plan if (a) they consent or (b) issues of duty of care or risk override their objections (*Care Programme Approach Guidance*),

- right to be identified in your relative's Advance Statement, and given support and information to ensure that this is adhered to,
- right to be informed of your relative's detention, and the nearest relative's right to discharge the patient, before application under Section 2 – application for assessment.

The Act also requires that the 'primary carer' has the right to be notified by hospital management when the person they support is going to be transferred to another hospital in Scotland under the Act. Unless this transfer is urgent (in which case they should be notified as soon as possible after the transfer) they have the right to be informed at least seven days beforehand.

Your rights as a carer as described in the Adults with Incapacity (Scotland) Act 2000 include, the:

- right to be consulted by professionals in assessing someone's capacity, (though occasionally this will be impossible, such as in an emergency),
- right to be involved in determining what is in the best interests of your relative, if they lack the mental capacity to make a decision,
- right to be named as attorney in your relative's Power of Attorney,
- right (as a third party) to apply for an independent assessment of whether your relative has justly been deprived of their liberty from the Court of Protection,
- if you are your relative's legal welfare **guardian** or **attorney**, right to informed if a short-term detention certificate or community treatment order under the Mental Health (Care and Treatment) (Scotland) Act is being considered.

Carers Information Strategy 2008-2011

The purpose of the carers information strategy is to ensure carers are well informed and supported in their caring role by healthcare staff and other agencies that work with the NHS.

The strategy says that staff should:

- identify carers,
- treat carers as key partners in care,
- seek carers views when planning care packages or discharging people home from hospital,
- be aware of carers' rights to an independent assessment and inform carers of this right,
- refer carers to appropriate local support agencies.

Support For You

Advocacy

Advocacy is offered to carers, i.e. families and friends of people using forensic mental health services. This can be in the community or in a hospital setting. Advocacy for carers can be helpful at any time, including;

- when your relative is first charged with an offence,
- prior to and in court for trial diet,
- prior to and in court for sentencing,
- while in the community on a treatment or probation order,
- while detained in hospital pre-sentencing and post-sentencing,
- at time of discharge from hospital setting.

Edinburgh Carers Council advocacy service is offered for carers in Lothian, Borders and Fife who support patients being treated on IPCU wards in acute hospitals as well as the medium secure forensic facility at the Orchard Clinic, Royal Edinburgh Hospital **0131 270 6087**.

How advocacy can help

Advocacy can help you in many ways. An advocacy worker can help you look over information, to explore your rights and options you have around a particular issue. If you are finding it difficult to tell professional staff of your concerns, or point of view or unsure of who to ask about something, you can have support to do this.

Carers groups

For relatives, friends and carers supporting someone who is/has been in a secure setting.

North Region

Tayside Forensic Voices Carers Support Group

Contact: Ivan Carnegie
Tayside Forensic Voices

01738 587160

e. ijcarnegie@aol.com

South and East Regions

The Orchard Clinic Carers Group

Contact: Andrea Ridley
Edinburgh Carers' Council

0131 270 6087 / 6089

e. andrea@edinburghcarerscouncil.co.uk

West Region

Contact: Caroline Peddie
Service & Carer Coordinatator
Rowanbank Clinic

0141 232 6477

e. caroline.peddie2@nhs.net

The State Hospital

Contact: Tom Corrie
Carer Co-ordinator

01555 840293

e. Tom.Corrie@tsh.scot.nhs.uk

Legal advice

Mental health specific lawyers

Criminal Law

The Patients Advocacy Service at The State Hospital has produced a booklet which lists solicitors who have experience of representing people with mental health disorders in criminal proceedings.

For a copy please contact:

Patients' Advocacy Service

The State Hospital

110 Lampits Road

Carstairs

Lanark ML11 8RP

01555 842 078

e. advocacy@tsh.scot.nhs.uk

Civil Law

Legal Services Agency Mental Health Legal Representation Project (Edinburgh & Lothians)

provides a free legal advice service to people with mental health difficulties, their families and carers. They can provide representation with cases of civil law, organising finances and mental health tribunals.

3rd Floor Princes House

5 Shandwick Place

Edinburgh EH2 4RG

0131 228 9993

e. Isaedin@lsa.org.uk

www.lsa.org.uk

Other law firms are available to provide legal representation.

Their details can be found at the Law Society for Scotland

www.lawscot.org.uk

If you are unhappy about your relative's treatment

NHS Services: complaints procedure

Information, including a copy of the leaflet entitled 'Making a complaint about the NHS' can be found on the NHS Lothian website at:

www.nhsllothian.scot.nhs.uk (click on 'Your Rights')

For complaints about community, mental health and primary care services

0131 537 9522 or 0131 537 9523

Independent Advice and Support Service (IASS)

IASS is part of Scottish Citizens Advice Service and offers independent support and guidance to people wanting to raise comments or complaints about any NHS service.

Patients, carers and relatives can obtain support by contacting their local Citizen Advice Bureau.

www.cas.org.uk/healthcomplaints.aspx

Call Edinburgh Central Bureau advice line

0131 557 1500 to find your local office.

The Mental Welfare Commission

The MWC is an independent body who can provide information and advice. They can make investigations and inquiries into someone's care and treatment if there is a serious concern about their rights and welfare.

The Secretary

Mental welfare Commission

Thistle House

91 Haymarket Terrace

Edinburgh EH12 5HE

Advice Line: 0800 389 6809

e. enquiries@mwscot.org.uk

www.mwscot.org.uk

The Mental Health Tribunal Scotland

First floor

Bothwell House

Hamilton Business Park

Caird Park

Hamilton ML3 0QA

01698 390000

Every effort has been made to ensure information was accurate at time of print. We welcome any feedback or comment regarding its content. March 2010.

Copies of information relating to anything in this booklet are available free of cost from Edinburgh Carers Council.

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