

# **Guidance Developed by Occupational Therapists for Anyone Supporting Individuals with Criminal Convictions and Mental Health Conditions/Learning Disabilities into Work, Volunteering or Education**

## **Equality Impact Assessment – Results**

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<b>Title of Policy</b>	Guidance Developed by Occupational Therapists for Anyone Supporting Individuals with Criminal Convictions and Mental Health Conditions/Learning Disabilities into Work, Volunteering or Education
<b>Summary of aims and desired outcomes of policy</b>	<p>This guidance has been developed alongside Occupational Therapists to support individuals with criminal convictions and mental health conditions/learning disabilities into work, volunteering or education.</p> <p>The aim of the policy is to provide Allied Health Professionals and those working alongside these individuals with the necessary knowledge, resources and guidance on the disclosure process. By establishing a better understanding of the process, it is hoped that this will create better opportunities for these individuals in order to maximise their potential and help achieve their work/educational related aspirations.</p> <p>This policy will aim to advance equality, eliminate discrimination and foster good relations in relation to people with mental disorders/learning disabilities who are trying to obtain employment/volunteering or educational vacancies.</p>
<b>Directorate : Division : Team</b>	Mental Health & Social Care: Forensic Mental Health Unit: Forensic Mental Health Reform Team

### 1. Executive Summary

Work is a major factor in improving health outcomes and improving quality of life. Both nationally and internationally there is increased recognition of the benefits of work for an individual's health and wellbeing. Often, we see examples of people who have been detained through mental health legislation unable to secure employment. [Towards Work In Forensic Mental Health \(2011\)](#) recommended that further work is required focusing on guidance around disclosure relating to what is disclosed to employers on mental health and previous convictions for Allied Health Professionals (AHPs) nationally. AHPs are uniquely skilled to take the lead and respond to vocational needs of those with forensic mental health issues. We know work is a protective factor in recovery and rehabilitation. This guidance aims to take its users through the challenging landscape to make work, volunteering or education happen.

The guidance itself has very similar aims to that of the equality impact assessment, primarily being;

- To advance equality of opportunity for those with criminal convictions and mental health conditions/learning disabilities in work, volunteering or education
- To eliminate unlawful discrimination and/or stigma against these individuals
- To foster good relations by making the disclosure process clear and allowing links to form between community teams, placement providers, employers etc.

The document creates an opportunity to advance equality by;

- removing or minimising disadvantages to individuals with criminal convictions and mental health conditions/learning disabilities;
- meeting the needs this group of individuals who are distinct from the general population;
- encouraging people who share a protected characteristic to participate in public life; and
- increasing participation in an activity where representation of a protected characteristic is disproportionately low e.g. stigma around people with mental health issues/learning disabilities and criminal convictions.

## **2. Background**

In March 2019, the Minister for Mental Health commissioned an Independent Review into the delivery of Forensic Mental Health Services (“the Review”) chaired by Derek Barron, Director of Care at Erskine. With regards to person-centred practices, the report noted that strong working relationships between statutory and third sector organisations are vital for successful activities and placements. These need to be underpinned by appropriate information sharing protocols as well as highly skilled staff to deliver an appropriately, person-centred experience. Third sector organisations asked for more support to navigate the legislative requirements around disclosure when looking to work with people with a forensic background. Allied Health Professionals identified this as a wider need for anyone supporting someone with mental health issues and criminal convictions. The AHPs shared a draft guidance document with the Scottish Government to fill this gap.

Following this, Recommendation 42 of the report noted that the Scottish Government should re-engage with Allied Health Professionals to finalise their draft guidance aimed at supporting people with criminal convictions and mental health conditions into work, volunteering or education. In response to this, the Scottish Government agreed that placements, work, volunteering and education are essential elements of recovery and rehabilitation. The Scottish Government agreed to engage with forensic mental health services and with AHPs to take forward this recommendation to facilitate the guidance.

### **2.1 Who was involved in the EQIA?**

Policy makers from the Forensic Mental Health Reform Team within the Scottish Government undertook the EQIA on behalf of the AHP Group. We used evidence produced

previously by Scottish Government officials, publications by third sectors, academics and other public bodies. We worked alongside and had discussions with stakeholders, including colleagues in Disclosure Scotland, Recruit with Conviction and those with lived experience.

### **3. The Scope Of The EQIA**

Following Recommendation 42 and the Scottish Government's response, officials have met with the AHP group on a monthly basis since April 2022. As per the SG response, officials have organised and facilitated meetings with the group and have liaised with both internal and external stakeholders in order to update the document.

#### **3.1 What is the aim of the policy and the desired outcomes?**

With regards to the Equality Impact Assessment, the guidance document itself aims to promote equality and enhance opportunity through positive disclosure whilst trying to reduce stigma around those with convictions. The main goal of the document is to ultimately help make the disclosure process clear which in turn will help individuals obtain placements/work/ education and enhance their vocational skills, whilst trying to reduce stigma around those with convictions and mental health disorders/learning disabilities. It was clear to the group during all meetings that exclusivity, equality and creating better opportunities for individuals with mental health disorders/learning disabilities was always kept at the forefront when updating and making any changes. Due to this, it has been imperative over the years that it is Occupational Therapists that sit on the group, as they have lived experience of working alongside these individuals and are the main AHPs that help people into work/volunteering/education.

This document aims to help those with these protected characteristics have a more equal opportunity in obtaining work, volunteering or educational placements. There is a known stigma against forensic patients and this document aims to provide more guidance on disclosure and also provide case studies as examples.

#### **3.2 Who will it affect?**

The guidance will positively affect individuals with criminal convictions and mental health conditions/learning disabilities by creating more opportunity for them to get into work, volunteering and education through positive disclosure. It will also affect those who work alongside these individuals, primarily AHPs such as Occupational Therapists by making the disclosure process more clear and providing guidance and useful resources for them to support those individuals.

#### **3.3 What might prevent outcomes being achieved?**

The only issue that the group were concerned about was ensuring that the document was accessible and easy to use. The document can be used by AHPs, however, we also wanted to ensure that it made sense for anyone to read. Due to this, we have included a glossary of

terms for any acronyms, and links to webpages that provide further information on the different sections.

For inclusive communication and making sure that we share information in a way that everyone can understand, especially those who have communication support needs, we have formatted the document to the Scottish Government/APS Group specifications. An easy read version of the document will be published which will make the written format easier to understand by using simple, jargon free language and shorter sentences.

### **3.4 Ownership of the Document**

One of the main discussion points was where the document would sit. The group agreed that the document would need to be held somewhere that was accessible and easy for users to find so that it could be used to its full potential and help as many people as possible into these roles. The idea was proposed by the group to host it on the Scottish Government website, as the progress of it sits under The Review, however, officials were keen that the AHP Leads held ownership and responsibility for updating the document.

It is key that the AHP group owns the document as they have the best understanding of this subject area and work with disclosure often. They are also more aware of any changes in legislation or protocols which may affect individuals applying for placements/work/education. As they work front line, they have the experience of real case studies and can contribute more meaningfully to the document and will use it in real time.

### **3.5 Learning Disability**

The group had discussions about whether or not to include people with learning disabilities in this document. During discussions, it was felt that it was important to make this document as inclusive as possible. Furthermore, Occupational Therapists in the group noted that some patients have both learning disabilities and mental disorders.

The Complex Care Team reviewed section 6 of the document which covers Disability Under the Equality Act (2010). The team felt that it was important for equality and inclusivity to add in an example/case study of an individual with a learning disability (LD) as all the existing case studies were for individuals with mental disorders only. A member of the working group who is an Occupational Therapist liaised with their LD specialist colleague and put together a case study which was added to the document. It is hoped that this will help provide a useful example for those with a LD or working alongside them.

The Complex care team noted that there are definitive tools which assist in the assessment and identification of learning disability and Health Boards will use a variety of these. Individuals may have a learning disability, a mental illness and criminal offences making their need for input from AHPs, RNLDs and third sector organisations all the more paramount. Further comment from the team suggested including a definition of a learning disability as used in Scotland. This has been taken from the Scottish Governments 'The Key's to Life Policy'.

The group also considered other protected characteristics when creating the guidance to ensure that the document was as inclusive as possible to those with protected characteristics. Section 6 of the document provides more information on Protected Groups, highlighting that it is against the law to discriminate against anyone with a protected characteristic, not just those with a learning disability. It also covers direct and indirect discrimination, harassment and victimisation. Section 4 of the document covers the Protecting Vulnerable Groups (PVG) scheme and provides more information on disclosure for those working with children and protected adults.

### **3.6 Disclosure Scotland**

To ensure that information on applying for disclosure was accurate and to allow as many people as possible to understand the process and be able to obtain vocational roles, officials and colleagues from the AHP Leads Group felt it was imperative to have Disclosure Scotland look at the document.

Disclosure Scotland had not previously been involved with earlier versions of the document. They were sent the document to review and the group met with Disclosure Scotland's customer engagement manager to discuss the document at length before actioning any comments/feedback. The meeting was extremely beneficial in providing comments along with feedback and Disclosure Scotland colleagues provided additional information and training resources which will help more people be able to understand and apply for disclosure. They also provided links for AHP/Occupational Therapist teams to contact them for training sessions which it is hoped in turn will help more people understand disclosure and open up more opportunities and help people obtain more roles/placements – creating more opportunities and equality in the workplace.

### **3.7 Lived Experience**

A member of the group had discussions with an individual with lived experience currently working with Recruit with Conviction. They provided very useful comments on the document with regards to the uncertainties relating to people with Compulsion Order with Restriction Order (COROs). Their view was that whilst on their Orders, disclosure would apply. However, there was some confusion with regards to the Management of Offenders (Scotland) Bill. Due to this, further clarity was needed within the body of the document of disclosure when subject to CORO and when this is considered spent. Due to this insight from someone with lived experience, this query was passed on to legal colleagues to provide more steer on this.

Following discussions with SGLD regarding this, it was discovered that there was an error on the SG webpage version of the *Guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974*. Officials were then able to alert the appropriate team so that this error can be amended, which will hopefully avoid users of the document experiencing any confusion regarding this type of disclosure.

### **3.8 Case Studies**

There are several case studies included in the document. These examples have come from real life scenarios provided by people with lived experience who have been through the disclosure process. We have been given consent for these to be used in the document. There were initial concerns from SGLD with regards to the data protection of these individuals as the examples contained special category data (e.g. health information such as medical diagnoses) and criminal conviction data which could be potentially identifiable information. Officials have since spoken with the Data Protection team and have removed all potentially identifiable information from the examples and completely anonymised these.

Officials and those in the working group believe that these case studies are extremely beneficial to those using the document as they provide real examples which may be useful to individuals in a similar situation. Data protection colleagues advised that when the potentially identifiable information is removed and the examples are anonymised it is then ultimately the decision of the Information Asset Officer whether or not these should be included in the document.

### **3.9 Sense Checks**

Since the document was last reviewed, there have been substantial changes in some of the legislations in the guidance e.g. the addition of the Management of Offenders Act 2019 and the updated Data Protection Act 2018. It was vital to ensure that all legislation within the document was accurate for users and so the guidance was reviewed and then sent on to colleagues within Scottish Government to be sense checked for comments/feedback and to open up any necessary discussions.

- The Restricted Patient team have checked section 9 of the document, which covers Restricted Patients, the Memorandum of Procedures and Acquittal on the Grounds of Mental Disorder.
- Community Justice colleagues have provided advice on MAPPA in section 9.2.
- The Criminal Law, Practice & Licensing Unit have checked section 3 which covers the Rehabilitation of Offenders Act 1974 and Management of Offenders (Scotland) Act 2019.
- The Data Protection Team have reviewed section 7 which covers Disclosure and Data Protection Legislation.

All of these teams provided very useful edits and comments which have contributed to improving the document, making it more accurate and beneficial for those who will be using the document.

### **3.10 Legal Checks**

The Scottish Government Legal Directorate have reviewed the document. They have provided very useful feedback and helped provide a lot of clarity on certain sections of the document.

From their comments we have ensured that it is clear that this document is intended as general guidance only. It is not legal advice and must not be regarded as such. Anyone in doubt should seek their own legal advice. This has been noted on every page of the guidance.

#### **4. Key Findings**

- Equality affects every part of the AHP Disclosure Guidance Document.
- The overall aim of this policy is to advance equality, eliminate discrimination and foster good relations in relation to people with mental disorders/learning disabilities who are trying to obtain employment/volunteering or educational vacancies through positive disclosure.
- Therefore, the impact of this guidance will hopefully be positive as it aims to help broaden access for these underrepresented/stigmatised groups.

#### **5. Recommendations and Conclusion**

The process of the development of this guidance, which included considering evidence for this Equality Impact Assessment, shaped the way in which this document has been updated. The guidance aims to be as inclusive as possible to those with protected characteristics, in particular those who have mental health disorders/learning disabilities.

It is hoped that this guidance will create a better understanding of the disclosure process which will help Allied Health Professionals that work alongside these individuals and support them into employment, education or volunteer work.

As legislations change, the document will need to be updated accordingly. The plan is to review the document every 2 years, with the first review being May 2025. We will take account of any changes in legislations and equalities considerations when developing any future actions.





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Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-80525-832-2 (web only)

Published by The Scottish Government, June 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1288842(06/23)

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