

Oral Evidence to the Ad Hoc Joint Committee on the Mental Capacity Bill Clauses 137 - 159 of the Mental Capacity Bill

12th October 2015

Parts 9 and 10 of the Bill relate to policing and justice and will apply to all age groups. While this is welcome as it does not assume a lack of capacity in all under 16s, NICCY has concerns that the care and treatment of young people in the justice system will be determined by the civil provisions of the Bill which will be capacity based and governed either by the Mental Capacity Bill or by the retained and amended Mental Health (Northern Ireland) Order depending on the age of the young person which may not always be easy to ascertain.

Part 9 of the Bill provides a power for the PSNI to remove a person from a public place to a place of safety. **Clause 137** details the circumstances within which such a removal can be made. **Clause 143** provides a welcome power to transfer a young person from one place of safety to another within a maximum 24 hour detention period where discharge is not suitable and there is appropriate care or treatment available in the new place of safety and where this is in the best interests of the young person.

In order for the police to use the power to remove a person to a 'place of safety' certain conditions need to be met. One of these is outlined in **clause 137(2)(c)**. This is,

*"...because of an impairment of or disturbance in the functioning of the mind or brain (temporary or permanent, and however caused), the person is **unable to make a decision** for himself or herself as to whether he or she should be taken to a place of safety"*.

While this test is not identical to the test for 'lacks capacity' at **clause 3** of the Bill it is worth noting that under **clause 158** of the Bill, the definition of 'unable to make a decision' is stated as the same as the test for 'lacks capacity', a test which only applies to those over the age of 16.

Despite the obvious similarities in the two tests, the place of safety test will be applied to everyone, regardless of age and the test for 'lacks capacity' will not due, according to the DHSSPS, to difficulties in assessing capacity in under 16s because of their developmental immaturity. The fact that the very similar 'place of safety test' can and will be applied to under 16s raises significant questions about the rationale for the exclusion of under 16s from the scope of the civil provisions of the Bill.

Clause 158 provides a definition of a 'place of safety' and includes both a hospital and a police station. NICCY does not believe that a police station is a suitable place of safety for a young person. The use of a police station as a 'place of safety' is entirely inappropriate and in the case of an extremely vulnerable, mentally ill young person implies that a criminal justice response is appropriate and necessary, which it is not. We want to see police stations being removed from the definition of a 'place of safety' for children and young people.

As this new definition and associated power will apply to all age groups, the use of the JJC as a place of safety will cease. This is a welcome development which should be replicated across other pieces of criminal justice legislation including the Police and Criminal Evidence Northern Ireland Order 1998.