

Response to the Mental Health Act White Paper

Centre for Mental Health, April 2021

Introduction

Centre for Mental Health is an independent charity with 35 years of experience delivering life changing research, policy analysis and health economics in mental health. Our work spans themes such as employment, physical health, criminal justice, wellbeing, inequality and multiple disadvantage across the life course. We have a long history of working with national decisionmakers, NHS mental health providers and commissioners, local authorities, mental health and physical health charities and networks of people with lived experience of mental health problems. This short summary document sets out the Centre's position on the proposed reforms of the Mental Health Act (MHA).

Promising foundations

We are broadly supportive of proposed changes which could help set the foundations for mental health services to provide more effective care for people with mental health problems. In our view, the proposals present positive steps in the right direction, with wider reform and investment also required to deliver much needed improvements across the mental health system.

Guiding principles

We agree with the guiding principles suggested by the Independent Review of the MHA (2018): choice and autonomy, least restriction, therapeutic benefit, the person as an individual. These should be embedded in the Act, Code of Practice, and throughout all paperwork and processes surrounding use of the Act. They should be clearly and transparently communicated to people who are subject to the Act, their advocates, Nominated Persons, families and friends.

Decreasing detentions and community treatment orders

We welcome aim to reduce the number of detentions under the MHA. There has been a significant increase in use of the Act over the last ten years. Alongside steps to improve the application of the MHA and tighten the criteria for detention, successful delivery of the NHS Long Term Plan including the enhancement of community mental health services will be vital in preventing future detentions.

We also welcome the Government's commitment to reduce the reliance on community treatment orders (CTOs) when people leave hospital after treatment. CTOs are a coercive power that have been used too often and for too long to restrict people's freedoms. And people from Black communities face a tenfold risk of being placed on them. Limiting the use of CTOs is an important step to ensure they are only ever used when they are genuinely the least restrictive alternative for someone, and for no longer than is demonstrably necessary. If this does not limit the use of CTOs, we agree with the Independent Review that it may be necessary later to debate whether they should exist in law at all.

Addressing racial injustice

We also welcome the ambition to address the disproportionately negative impact of the current legislation on people from racialised communities. The White Paper proposes increased access to culturally appropriate advocacy, a commitment to the Patient and Carer Race Equality Framework and Advancing Mental Health Equalities strategy within the NHS. An equalities focus should be embedded across the wider programme: as a key consideration in the new Statutory Care and Treatment Plan, in investment to modernise the outdated parts of mental health estate, and in the application of the guiding principles. The transparency of decision making, increase in choice and autonomy, and opportunities to challenge decisions should also help to address inequalities. We are keen that progress on addressing these racial justice is backed up by data, accountability across services, and close scrutiny from Department of Health and Social Care.

Broader activities on race equality, informed by an understanding of the determinants of health and the toxicity of racism to mental health, will be necessary to make progress. The ability to influence many of these areas lie outside of the Act and must be pursued elsewhere, for example in the labour market, schools, housing, immigration and criminal justice policies.

The criminal justice system

The white paper sets out important plans to speed up transfers from prison to hospital when people need urgent treatment under the Act. Too often, hospital transfers are delayed for weeks and months because of multiple assessments and complex procedures. The white paper proposes to simplify the process and create a new role to work within prisons and secure services to enable faster transfers. It will be vital that this new role also supports people returning from hospital, including to ensure people get their entitlement to Section 117 Aftercare if they return to prison.

The white paper does not, however, go as far as the 2018 Independent Review in reforming the Mental Health Act within the criminal justice system. It does not, for example, support placing responsibility for hospital discharges with the Tribunal rather than the Secretary of State for Justice. And some of the improvements to the Act for civil patients are not proposed to be extended to those detained through the criminal justice system. While there will be situations where this is appropriate, we need to guard against creating a two-tier system where opportunities to modernise are not taken.

Other proposals

We agree with a number of other specific proposals:

- Increasing access to mental health advocacy, and important safeguard for people's rights, potentially including for informal patients
- Placing Advance Choice Documents in the Act to enable people to make advance decisions about how they would like to be treated when they are unwell
- Replacing the outdated Nearest Relative role with a new Nominated Person
- The creation of the new Statutory Care and Treatment Plan for anyone detained under the Act
- More frequent use of Tribunals and other mechanisms to allow decisions to be reviewed and challenged

Considerations

Children and young people

We welcome that proposals to improve the legislative framework will be available to all children and young people. However, we are concerned that the White Paper does not go far enough in setting out how the reforms will work in practice for this group, with very little information in the White Paper relating to children and young people. There are some important gaps that need to be addressed: for example, the quality of data on rates of formal and informal detentions for children and young people. It is important that proposed changes to the law do not have unintended consequences for children and young people.

Activity, capacity and funding

The reformed MHA will significantly increase levels of activity. This includes more regular Tribunal hearings, increased workload for clinicians (for example in expanding the complexity and work involved in care planning to deliver robust Statutory Care and Treatment Plans), greater responsibility for Approved Mental Health Professionals, and increased access to Independent Mental Health Advocates (IMHAs) including ‘culturally appropriate advocates’. We recognise that this may increase funding requirements to deliver more capacity within the system and to meet the bureaucratic burden of proposed changes.

The impact of an increase in the frequency of formal review processes on people who have been subject to the MHA should also be considered. While important safeguards for individual’s rights and access to effective care, these processes can be stressful and anxiety inducing. It is therefore vital that they are implemented with the guiding principles in mind and do not become ‘tick-box’ exercises delivered in the interests of compliancy rather than the interests of patients.

The White Paper makes clear that proposals are subject to funding decisions: it is imperative that these additional elements are appropriately resourced. This includes capital spending, where the recently allocated £400m to eradicate dormitory accommodation is a welcome start. But it is a long way from closing the gap, and will leave many people in inadequate accommodation. Repairs and upgrades to the older and more dilapidated parts of the mental health estate also require funding. Multi-year investment in recruitment, training, and an increase in learning infrastructure will be critical. Government is currently falling behind on targets to increase the mental health workforce. Recruitment must be able to offset the number of people who retire from practice and provide the increase in workforce needed to prevent the use of the Act through improved community services and to secure the rights of people who are detained or placed on CTOs.

Need for wider reform

Legislative reform is long overdue and badly needed. Alone, however, it will not address all the problems in the mental health system. More needs to be done to ensure that people living with enduring mental health problems receive the support they need to stay well and live more independently. Improvements in social care will require increased investment and a sustainable funding settlement. This must be a key part of the Government’s proposals to reform social care. The reform of NHS commissioning and delivery presented in the Health and Care White Paper must ensure that mental health services – including those provided outside of the NHS – are adequately considered in Integrated Care Systems, and that these systems bring us closer to parity of esteem for mental health, not further away. Public mental health should be included as

a priority within the new Office for Health Promotion, and the Public Health Grant must be lifted up from years of austerity cuts. And the Government must distance itself from the conclusions of the recent Commission on Race and Ethnic Disparities, acknowledge the effects of institutional racism, and take urgent steps to address the injustices that occur daily in people's lives.