

# Mental Health Bill

## Second Reading Briefing, House of Lords Monday 25<sup>th</sup> November 2024

This briefing highlights Centre for Mental Health's key concerns and recommendations regarding the Mental Health Bill. We [welcome its introduction](#) as a vital step toward reforming the Mental Health Act 1983, with the aim of strengthening rights, reducing inequalities, and improving mental health outcomes for everyone.

### Summary:

- Centre for Mental Health welcomes the introduction of the Mental Health Bill to improve the care and treatment of people detained without their consent if they are considered a risk to themselves or others.
- The current Mental Health Act, over 40 years old, disproportionately impacts Black and racialised communities, autistic people and people with learning disabilities and those facing financial inequality. For example, **Black people are 3.5 times more likely to be detained under the Act** and seven times more likely to be placed on a Community Treatment Order for treatment within the community<sup>i</sup>. It is outdated, it is discriminatory, and it gives too little regard to people's rights and dignity. A modernised Act could ensure people have better safeguards for their rights and dignity and more of a say in how they are treated.
- The proposed bill introduces a number of measures we welcome such as the tightening of the criteria for detention and compulsory treatment, the introduction of statutory Care and Treatment Plans, Advanced Choice Documents, automatic referrals to advocacy support on an opt-out basis, which now extends to informal patients. The bill also seeks to limit detention for people with learning disabilities and autistic people who do not have a co-occurring mental health condition.
- While the bill represents significant progress, further amendments are needed to address critical gaps in mental health support and ensure robust protection of rights as it moves through Parliament. Priorities include establishing a statutory mental health commissioner, tightening criteria for Community Treatment Orders with a view to review and potentially phase out their use, clarifying detention conditions, and bolstering safeguards for children, young people, and housing rights. Additionally, the Government should consider implementing a right to a mental health assessment, similar to the approach in Wales.

### ***A mental health commissioner***

The Joint Committee on the draft Mental Health Bill recommended the creation of a statutory Mental Health Commissioner to oversee the reforms and monitor outcomes.

We explored what this might look like, similarly to the existing Children's Commissioner role, earlier this year in our briefing<sup>ii</sup>. We found that this role exists in many countries, with a wide range of different functions and constitutions. In addition to overseeing the reforms to

the Mental Health Act (MHA), a commissioner could play a wider strategic role holding Government accountable and embed a 'mental health in all policies' approach across government departments. Given the context of the English health and care system, we conclude that a Mental Health Commission here would need to be:

- Enshrined in statute, to give it sufficient powers and independence, including access to data and information, and flexibility to explore a wide range of topics
- Set up with a clear purpose, working strategically across government to promote mental health and advocate for people with mental health needs
- Complementary to existing bodies, such as the Care Quality Commission, with clear distinctions in function and effective working relationships

A Mental Health Commissioner would benefit the public by providing a constant presence for mental health within government and in the public sphere more generally.

**Recommendation:** We would welcome amendments to the bill to create this new statutory role to champion mental health across government and speak up for people with mental illness.

### ***Community treatment orders (CTOs)***

The Bill makes some important changes to better regulate the use of CTOs, but it stops short of adopting all of the Independent Review's recommendations. For example, it allows CTOs to continue indefinitely, rather than placing a time limit on each CTO, with the option to make a new one if it is still needed. We believe this is essential to prevent CTOs from being renewed without proof that they continue to be necessary and proportionate.

The Independent Review also recommended that a CTO should only be used where a patient has a history of disengaging with community services following discharge from hospital. This would ensure that the powers are only used where it can be demonstrated that there is a necessity to use them to keep the person safe when they are discharged.

Finally, we would like to see the bill or the Code stipulate that IMHA must be made available proactively to people on CTOs. Most IMHA services are currently hospital-based, leaving people on CTOs with little access to this vital safeguard.

We note that there remains no persuasive evidence about the benefits of CTOs, and would suggest that they are reviewed within five years of this legislation being enacted, with a view to repealing or further amending these powers if they continue to show no benefits or to be disproportionately used on Black people.

**Recommendation:** The Government should adopt the recommendations from the Independent Review on CTOs in full and commit to a review of their use. As part of this, they should reassess and tighten the criteria for CTOs and consider alternative approaches with the view to phasing them out within five years if progress is not made.

### ***Conditions for detention***

The bill does not include the Independent Review's recommendation that conditions for detention include a consideration of how soon a person's safety (or that of others) is at risk. We are concerned that this could widen the scope for the use of detention if a person is

judged to pose a risk at any point in the future. We would welcome a recognition that these risks should be in the near future in order for detention to be justified.

The Bill introduces more distinctions than is the case now between Parts 2 and 3 of the Act. This is due to the different purposes of the two parts, with the latter applying to people in the criminal justice system. But this divergence will have consequences – once again, with racialised communities bearing the brunt of these measures given the disproportionate use of secure care particularly for Black men. If the decision is taken to proceed with not reforming Part 3 in similar ways to Part 2, robust safeguards are needed to ensure it does not become over-used.

**Recommendations:**

- The Government should consider the recommendations made by the Independent Review on how soon a person's safety (or that of others) may be at risk when determining conditions for detention.
- The Government should consider the implications of the increased distinctions between Parts 2 and 3 of the Act and outline how they seek to mitigate potential disparities for those in the criminal justice system.

***Children and young people and a framework for assessing capacity***

In partnership with the Children and Young People's Mental Health Coalition<sup>iii</sup>, we have also been advocating for a stronger focus on the needs and experiences of children and young people. One key improvement to the new Bill would be the inclusion of a framework to assess competency for those under 16, which would help clarify the rights and decision-making processes for clinicians, children, and their carers. This would ensure more transparency and consistency in how decisions are made for younger patients.

We welcome the Bill's introduction of Advance Choice Documents, which empower patients to outline their treatment preferences. However, it is vital that children and young people under 18 have the same opportunity to benefit from this provision as adults. The Government's White Paper on the Mental Health Bill pledged to extend these documents to children and young people in full. It is crucial that this commitment is upheld in the current Bill.

**Recommendations:**

- The bill should be amended to include a statutory framework to assess capacity for under 16s.
- Advanced decisions should be extended to children and young people aged under 18.

***Housing rights while in hospital***

We would also like to see provision for people's housing rights while they are detained in hospital. Too many people are made homeless when they are in hospital, for example because they lose their tenancies. We would like to see the new Act require health and local authorities to take affirmative steps to protect people's housing rights and ensure no one is

either discharged homeless or stuck in hospital for too long because accommodation isn't available for them.

**Recommendation:** The bill should require health and local authorities to protect housing rights, preventing discharges into homelessness or prolonged hospital stays due to unavailable accommodation.

### ***Prison transfers***

We warmly welcome the bill's provisions relating to prison transfers. It must be made clear, ideally in the bill or if not in the Code of Practice, that responsibility for locating beds and facilitating admissions lies with NHS England (and its equivalent in Wales).

**Recommendation:** The bill should designate NHS England as responsible for locating beds and facilitating admissions for individuals transferred from prison, ensuring timely and effective care.

### ***Right to assessment***

The Mental Health Act in Wales includes an additional Measure giving people a right to a mental health assessment if they request help. In 2023, there were 75,816 requests for an assessment, of which 13,248 were for children and young people. Of those requests, 70.8% of adults and 73.2% of children were assessed within 28 days, and 68% of those assessed had started therapeutic interventions within 28 days of that<sup>v</sup>. We believe that an equivalent to the Measure would benefit patients in England and may help to direct resources to meeting people's needs more quickly and equitably.

**Recommendation:** The bill should introduce a provision equivalent to the Welsh Measure, granting individuals in England the right to request a mental health assessment.

### ***Wider changes needed***

Reforming the Mental Health Act is a crucial step, but it is not the only necessary change to build a truly effective and inclusive mental health support system for everyone.

The upcoming 10-year NHS health plan should include a strong focus on investing in high-quality community services for people experiencing mental health problems. This must be supported by adequate funding, both for the provision of services and the urgent updating of the mental health estate, and a well-defined workforce strategy to ensure that people receive coordinated, timely, and compassionate care across all settings. Specifically, we need:

- **Revenue funding** to ensure the continued expansion of mental health services, especially in community settings, and to end the use of out-of-area hospital admissions.
- **Capital funding** to invest in modernised facilities for mental health care, including alternatives to hospital admissions, supported housing, and digital services.
- **A workforce plan** that includes social care and the voluntary and community sector, not just the NHS. The mental health workforce spans all three, yet current plans exclude those outside the NHS.
- A long-term commitment to the **Patient and Carer Race Equality Framework** must also be made. The vital work of changing systems to address racism in mental

health care must be sustained for as long as it is needed and until Black people's experiences are on a par with those of the white population. The PCREF was an important recommendation of the Independent Review. The Government should commit to report annually on the differential experiences of people from racialised and minoritised backgrounds of the Mental Health Act, including data at ICB level to ensure the NHS both nationally and locally is accountable for bringing about reductions in these disparities.

### Questions to government:

- Will the Government consider establishing an independent Mental Health Commissioner through the bill?
- Will the Government revisit the Independent Review's recommendations on Community Treatment Orders and detention conditions to prevent unjust detentions?
- How will the Government address potential disparities between the use of Part 2 and Part 3 of the Act, particularly for individuals from Black communities?
- What measures are being implemented to ensure the Mental Health Bill effectively serves children and young people?
- How is the Government ensuring that the broader mental health and social care services are equipped to meet the needs of people with mental health difficulties, learning disabilities, and autistic people in the community?

### About Centre for Mental Health

Centre for Mental Health is an independent charity. We take the lead in challenging injustices in policies, systems and society, so that everyone can have better mental health. By building research evidence to create fairer mental health policy, we are pursuing equality, social justice and good mental health for all. **For more information contact Kadra Abdinasir, Associate Director of Policy, on [Kadra.Abdinasir@centreformentalhealth.org.uk](mailto:Kadra.Abdinasir@centreformentalhealth.org.uk).**

<sup>i</sup> NHS Digital (2024) Mental Health Act Statistics, Annual Figures, 2023-24. Available from: <https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-act-statistics-annual-figures/2023-24-annual-figures/community-treatment-orders#top>

<sup>ii</sup> Bell, A and Wilton, J (2023) A mental health commissioner for England. Available from: <https://www.centreformentalhealth.org.uk/publications/a-mental-health-commissioner-for-england/>

<sup>iii</sup> CYPMHC (2024) What does a new Mental Health Bill mean for children and young people? Available from: <https://cypmhc.org.uk/what-does-a-new-mental-health-bill-mean-for-children-and-young-people/>

<sup>iv</sup> StatsWales (n.d.) Welsh Measure Part 1: Local Primary Mental Health Support Services <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Mental-Health/Mental-Health-Measure/Part-1>