

Briefing for MPs: The Mental Health Bill

The introduction of a Mental Health Bill to reform the Mental Health Act 1983 provides a rare opportunity to improve how people experiencing mental health crises are treated by the law. If enacted and implemented successfully, the Bill has the potential to improve mental health care for people of all ages, including children and young people.

The Children and Young People's Mental Health Coalition has formed a working group of experts to help inform our work on the reform of the Mental Health Act. This includes Article 39, the British Psychological Society, Centre for Mental Health, Carers Trust, *Just Equality*, Mind, Our Time, the National Children's Bureau, the NSPCC, Voiceability, and YoungMinds.

This briefing outlines the main concerns raised by our working group in relation to the impact of the reforms on children and young people. If you require any further information, please get in touch with Charlotte.Rainer@cypmhc.org.uk.

What does the Mental Health Bill mean for children and young people?

The Reforming the Mental Health Act White Paper stated that all reforms to the mental health legislative framework will be applicable to children and young people. Whilst we welcome the recognition from the Government that children's rights will be upheld and protected, we are concerned that the draft Bill misses an opportunity to strengthen safeguards for under 18s, both those that are detained and those who are admitted informally.

- **Competence test for under-16s**

Many of the safeguards set out in the draft Mental Health Bill rely heavily on consent, capacity and competence to make decisions. This is a particularly complex area for under-16s, with the Independent Review highlighting that there is no consistent approach to establishing competence for under-16s. The Review recommended that there should be a single approach to establishing whether children are able to make their own decisions.

We have been calling for **a statutory test for determining decision-making for under 16s to be included on the face of the Mental Health Bill**. We are concerned that without a statutory test in place, children and young people aged under 16 will not benefit fully from the rights and safeguards included in the Bill. For example, a lack of a competency test will impact a young person's ability to choose or terminate a Nominated Person, to access enhanced safeguards around enhanced treatment, and whether or not they are able to consent to informal admission.

The Joint Committee on the draft Mental Health Bill has also recognised that a test to determine children's decision making ability is necessary and recommended that the government consult on the introduction of a statutory test for competency, or 'child capacity' for under 16s (Joint Committee, 2022). We believe that any consultation should address how to introduce such a test, not if a test should be introduced.

- **Safeguards for children and young people admitted informally**

A significant number of children and young people are admitted to mental health settings informally. Research from the office of the Children's Commissioner suggests that around one third of inpatients aged under 18 are informal, that is on the basis of their own or parental consent (Children's Commissioner, 2020). Many children and young people who are informal patients are often unaware of their rights and often do not feel like their voices are listened to. Access to an advocate is therefore crucial in helping children and young people who are informal patients navigate a complex system.

The draft Mental Bill introduced a new 'opt out' advocacy scheme for detained patients, however, informal patients will not be captured by this new system meaning that informal patients will still be required to ask for support from an advocate. The lack of access to advocacy for informal patients has been a longstanding concern and we are worried that children and young people admitted informally will continue to experience problems accessing an advocate under this new system. **We believe that the Bill should commit to extending advocacy on an opt-out basis for informal patients. At the very least, it must be extended to all children admitted on an informal basis - particularly as they are the only group who can be admitted informally without their own consent.**

It is also crucial that informal patients have the same safeguards as those detained under the Act. Advocates have previously raised concerns that children who are informal patients are often under exactly the same conditions as those detained, without access to safeguards that children formally detained have. One way the Bill could achieve this is by putting Care and Treatment Plans for informal patients on the face of the Bill. The White Paper committed to putting care and treatment plans for under 18 year olds who are informal patients on a statutory footing, but the duty to provide one will not be in the amended Act and it is not yet clear what this statutory footing will be.

- **Children and young people in inappropriate settings**

We are concerned that children and young people are still being inappropriately placed in settings out of area and on adult wards, and that the draft Bill does not contain adequate safeguards to address this. This is an area where it is difficult to find reliable and relevant data, making assessment of the problem challenging. The 2022 CQC report on the state of health and care found that there 249 admissions of under 18s to adult psychiatric wards over the course of 2021/22, an increase of 30% from the previous year (Care Quality Commission, 2022). Most of these admissions were under the Mental Health Act and were due to a lack of age-appropriate alternatives.

It is imperative that the **Mental Health Bill strengthens safeguards against children and young people being placed in inappropriate settings.** For example, the Code of Practice states that under 16s should not be admitted to an adult ward, and we believe this safeguard should be strengthened and should be set out in legislation. The Joint Committee has further recommended stronger procedural requirements where inappropriate placements are considered, including a requirement that such a placement is demonstrably in the child's best interests.

- **Commissioning community alternatives**

The changes made in the draft Mental Health Bill cannot be seen in isolation from the rest of the mental health system. There have been concerns that increasing demand for children's mental health services is pushing children and young people into unsafe environments due to the lack of specialist services in place to support their needs (Care Quality Commission, 2022).

There is growing consensus that in the majority of cases, it is better for a child or young person to receive treatment at home or in their community. Work is already under way in some areas to increase the use of community-based alternatives, and we believe these examples need to be expanded and built on across the country. For example, NHS England's New Care Models (NCM) Programme aims to improve outcomes for people in acute care (Centre for Mental Health, 2020). Six pilot sites focused on children and young people who are being treated for their mental health out of area, with their primary aim being to prevent children from having to travel long distances to hospital by providing the necessary care and support locally. By investing in local services, each of the six sites achieved reductions in overall spending, as well as a significant expansion in community-based care with comprehensive offers of support.

An evaluation of this programme by Centre for Mental Health found that it enabled areas to make significant changes in expenditure (Centre for Mental Health, 2020). They achieved overall reductions of between £1.1m and £4.1m for 2017/18; a total of £15.3m that can be reinvested in local services. This change was driven by reductions in out of area bed days and lengths of stays in hospital, by varying degrees.

To strengthen the use of community based alternatives, **we believe the Mental Health Bill could include a duty on Integrated Care Boards relating to commissioning of services that seeks to ensure the needs of under-18s can be met without detaining them under the Mental Health Act.**

If you would like more information, please get in touch with Charlotte Rainer, Coalition Lead at the Children and Young People's Mental Health Coalition on charlotte.rainer@cypmhc.org.uk

References:

Care Quality Commission (2022) The state of health care and adult social care in England 2021/22. Available from: <https://www.cqc.org.uk/publication/state-care-202122/concern#cyp>

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