



King's Speech 2023: Debate briefing

The reform of the Mental Health Act 1983

This is a joint briefing by Centre for Mental Health and the Children and Young People's Mental Health Coalition on the reform of the Mental Health Act to inform the Kings Speech debates. It is deeply disappointing that a new Mental Health Bill to reform the Mental Health Act was not brought forward as part of the Kings Speech. Alongside the loss of the ten-year mental health plan earlier this year, the promise to reform the Mental Health Act is yet another commitment abandoned by the Government. Many across the mental health sector are now incredibly concerned that mental health is no longer a political priority.

Key points

- A new Mental Health Bill to reform the Mental Health Act 1983 was not introduced as part of the 2023 Kings Speech. This is despite it being a manifesto commitment for the Government in both 2017 and 2019.
- Over 53,000 people were detained under the Mental Health Act in 2021/22. People from racialised communities were almost 5 times as likely as white people to be detained under the Mental Health Act.
- The 2018 Independent Review of the Mental Health Act found that the Act does not always work as well as it should for people and set out clear recommendations for modernisation.
- Inequalities in the disproportionate use of detentions, high levels of restraint – particularly experienced by children and young people – and the removal of patient autonomy are just some of the problems with the Act in its current form.
- Significant work has already taken place to facilitate reforming the Act; a white paper was published in 2021 and a draft Mental Health Bill was introduced in 2022, which underwent pre-legislative scrutiny earlier this year.
- Reforming the Act would provide a vital opportunity to enhance patient rights, to strengthen safeguards for those admitted to mental health hospitals, and to re-balance the system to one that prioritises and promotes patient voice and choice in their treatment.
- Work to improve mental health care cannot stall. A lack of legislation does not prevent the Government from taking action to ensure that sufficient resources are made available so that all those that need mental health support get high quality and compassionate care, when and where they need it.

The case for reform

It has long been recognised that the Mental Health Act 1983 is no longer fit for purpose, and the number of people detained under the Act remains high. In 2021/22, **53,331** people were detained under the Mental Health Act (NHS Digital, 2022). It is important to note that

this figure reflects the number of recorded and formal detentions, so it is likely the overall national totals will be higher.

Significant inequalities exist in the disproportionate use of detentions. Data from NHS Digital shows that amongst ethnic groups, known detention rates for the 'Black or Black British' group were **over four times** those of the White group (NHS Digital, 2022). Rates of Community Treatment Orders have also continued to increase for Black people, rising to **over 11 times** the rate for white patients (Ibid).

Inequalities in the disproportionate use of detentions under the Mental Health Act first emerge in childhood. Evidence shows that that Black and mixed-race children accounted for 36% of young people detained in acute mental health services despite making up 11% of the population (based on unpublished data from NHS Benchmarking). Conversely, young Black people make up just 5% of those accessing community-based child and adolescent mental health services (Centre for Mental Health, 2022).

Experiences of care within mental health hospitals are also often poor. There has been a series of safety concerns raised recently in relation to patient safety within mental health inpatient settings, which led to a ministerial rapid review of inpatient settings (Department of Health and Social Care, 2023). Recent insights gathered by the Children's Commissioner for England shows how children and young people within mental health inpatient settings can find them frightening places to be, separated from their friends and families, and often seeing and experiencing high levels of restraint (Children's Commissioner, 2023).

Furthermore, children and young people are at much higher risk of being placed in inappropriate settings. The 2022 CQC report on the state of health and care found that there were 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 (Joint Committee, 2023).

The Independent Review of the Act in 2018, led by Sir Simon Wessely, further highlighted issues with the Act failing patients by disempowering them, excluding them from decisions about their care and treatment, and not protecting and supporting patients' ability to make decisions about their own care (Department of Health and Social Care, 2018).

The reform process so far

The Independent Review set out clear recommendations to modernise the Act and to address disparities in how the Act is used to detain people from racialised communities (Department of Health and Social Care, 2018). Following the review, the 2019 Conservative Manifesto pledged to 'legislate so that patients suffering from mental health conditions have greater control over their treatment and receive the dignity and respect they deserve' (Conservative Party, 2019).

Significant work has since taken place reform the Act; a white paper was published in 2021 and a draft Mental Health Bill was introduced in 2022, which underwent pre-legislative scrutiny earlier this year. Many individuals, as well as officials and organisations from across

the mental health sector, have worked extensively on it. The draft Bill contained many welcome proposals, including:

- Changing the detention criteria to tighten the decision-making process about who can be detained in what circumstances (for civil patients).
- Significantly reducing the use of community treatment orders – whilst being disappointed that the draft bill does not go as far in this regard as the Independent Review recommended.
- Ensuring anyone needing a transfer from prison to hospital is admitted within 28 days of a need being identified – not, as is still the case today, many weeks and sometimes months.
- The aspiration to prevent those with autism and learning disabilities being admitted to mental health inpatient units when there is no clinical need.

The Reforming the Mental Health Act White Paper further stated that all reforms to the mental health legislative framework will be applicable to children and young people, and the Government committed to ensure that children's rights were protected and upheld during the reform process.

What further change is needed?

In light of no new legislation being brought forward, we would welcome clarification from Government on how they plan to address urgent issues with the use of the Mental Health Act and the care of those placed in mental health hospitals, including:

- The disproportionate use of detentions across racialised communities.
- Strengthening safeguards and support for autistic people and those with learning disabilities.
- The rise in children and young people being placed in inappropriate placements and adult wards.
- How competence for under-16s will be established to support them in making decisions about their care and treatment.
- The gaps in data collection and published on the experiences of children and young people as mental health inpatients.
- How the four principles recommended by the Independent Review will be incorporated into care and treatment going forward.
- Ensuring that a sufficient supply of culturally competent advocacy services is available in all areas to all communities.
- Requiring that no one is discharged from hospital to homelessness.
- Further limiting the use and scope of community treatment orders, for example by raising the threshold for the use of a CTO and placing a two-year limit on each order.
- Introducing an equivalent of the Welsh Mental Health Measure in England.
- Following the Right Care Right Person policy paper, how sufficient resources will be made available to the NHS to support the influx of calls being steered away from the police.

A lack of legislation, however, does not prevent the Government from acting now to secure better mental health care for all those who need it. A successful mental health system relies

enormously on sufficient and effective service provision, a strong workforce and sustainable investment. In the immediate term, the Government should set out how it plans to improve mental health care and treatment, and the investment that will be made to support this.

In the long-term, a shift towards the increased use of community-based provision should be accelerated. There is growing consensus that in the majority of cases, it is better for someone 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.

Questions

- Does the Minister agree that the reform of the Mental Health Act is long overdue and that too many people are failed by the legislation in its current form?
- What steps is the Government taking to improve mental health care and to increase investment in this?
- Will the Government clarify how it will address urgent issues with the current use of the Act, such as the disproportionate use of detentions used against racialised communities?
- When will the Government issue its response to the Joint Committee on the Draft Mental Health Bill's report?

If you require any further information, please get in touch with 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>

Centre for Mental Health (2022) *Shifting the Dial: Evaluating a community programme to promote young Black men's mental health*. Available from: https://www.centreformentalhealth.org.uk/sites/default/files/publication/download/CentreforMentalHealth_ShiftingTheDial_PDF.pdf

Children's Commissioner (2023) Children's mental health services 2021/22. Available from: <https://assets.childrenscommissioner.gov.uk/wpuploads/2023/03/Childrens-Mental-HealthServices-2021-2022-1.pdf>

Conservative Party (2019) *Conservative Party Manifesto*. Available from: <https://www.conservatives.com/our-plan/conservative-party-manifesto-2019>

Department of Health and Social Care (2023) *Rapid review into data on mental health inpatient settings: final report and recommendations*. Available from: <https://www.gov.uk/government/publications/rapid-review-into-data-on-mental-health-inpatient-settings-final-report-and-recommendations/rapid-review-into-data-on-mental-health-inpatient-settings-final-report-and-recommendations>

Department of Health and Social Care (2018) *Modernising the Mental Health Act – final report from the independent review*. Available from: <https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review>

Joint Committee on the draft Mental Health Bill (2022). *Draft Mental Health Bill 2022*. Available from: <https://committees.parliament.uk/publications/33599/documents/182904/default/>

NHS Digital (2022) *Mental Health Act Statistics, Annual Figures, 2021-22*. Available from: <https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-act-statistics-annual-figures/2021-22-annual-figures>