

Mental Health Bill: Second reading debate briefing

Monday 25th November 2024

This briefing from the Children and Young People's Mental Health Coalition sets out our key concerns and recommendations regarding the Mental Health Bill and its impact on children and young people.

Summary

- The new Mental Health Bill provides a crucial opportunity to strengthen safeguards and improve treatment for those in mental health hospitals, particularly for those aged under 18.
- The Children and Young People's Mental Health Coalition has been working to raise the profile of children and young people in the modernisation of the Mental Health Act 1983.
- In 2023/24 there were **997 detentions** of under 18s under the Mental Health Act. It is estimated that around **31%** of under 18s are admitted informally.
- Both the Independent Review and the Joint Committee on the Mental Health Bill highlighted the unique needs of children and young people and put forward recommendations to strengthen safeguards for their care and treatment.
- Children and young people are often subject to poor quality care in mental health hospitals and are at higher risk of being placed far from home or in inappropriate environments, as well as experiencing high levels of restraint.
- We believe that existing provisions in the Bill can be enhanced to better support and protect children and young people. This includes:
 - Extending advance decisions to those aged under 18
 - Statutory Care and Treatment plans to be made available for all informal patients aged under 18
 - Further consideration to how the Nominated Person works with practice for under 18s, particularly in relation to parental responsibility
 - Strengthening duties to provide community mental health services for children and young people with learning disabilities and autism.
- Additional safeguards also need to be added to the Bill, as recommended in line with the Independent Review and the Joint Committee. This includes:
 - A statutory framework for assessing capacity for under 16s
 - Strengthened protections for children and young people placed in inappropriate environments, such as adult wards.

Why is it important to recognise children and young people in the Bill?

In 2023/24, there were **997 detentions** of under 18s under the Mental Health Act.¹ A significant number of children and young people are also admitted to mental health settings informally. NHS Digital do not publish data on the number of young people admitted informally so it is impossible to track total numbers of young people in hospital or to identify

trends. However, a report by the Children’s Commissioner in 2020 suggested that **31% of under 18s were admitted informally.**²

There is no minimum age limit in the Mental Health Act meaning that provisions apply to children and young people as well as adults. The Independent Review of the Mental Health Act highlighted the particular needs of children and young people, not only because of differences in age and vulnerability, but also in their ability to make decisions. The review recommended that safeguards should be strengthened for children and young people.

The Joint Committee on the draft Mental Health Bill further recognised the unique needs of children and young people and stated that the Bill will be ‘a crucial opportunity for the Government to strengthen the rights and protections for children and young people under the Mental Health Act.’³

Poor experiences of care

Research shows that children and young people’s experiences of inpatient care are consistently poor. A survey conducted by Mind on children and young people’s experiences of care in mental health hospitals found that **69% of young people** surveyed said that their experiences in hospital had not been positive.⁴ Insights gathered by the Children’s Commissioner for England further highlight how children and young people within inpatient settings can find them frightening places to be, separated from their friends and families, and often seeing and experiencing high levels of restraint.

What is more, the Darzi Review highlighted the dramatic increase in the use of restrictive interventions for children under 18 in inpatient settings over the last four years. The number of restrictive intervention types per 1000 bed days increased from around 100 in 2020 to close to 400 in 2023.⁵

It is therefore crucial that the Mental Health Bill protects the rights of all children in mental health inpatient care, that children and young people receive appropriate care and support, and that consideration is given to how the Mental Health Bill will align with legislation such as the Children Act 1989 and 2004.

How can existing provisions be enhanced for children and young people?

The Bill aims to introduce more choice, accountability and oversight in how the Mental Health Act is used. We believe the following changes are needed to the existing provisions in the Bill to strengthen safeguards for children and young people.

1. Advance Decisions

The Bill will give legal weight to Advance Decisions within the Mental Health Act. This means that adults will be able to record their advance refusal to a particular treatment in the event they lose capacity. An advance decision will have the same effect as a capacitous refusal of treatment and will ensure that the individual can access enhanced safeguards before that treatment can be given¹. Whilst Advance Choice Documents (in which advance decisions can be recorded) will be available to people of all ages, the Bill does not permit under 18s to

¹ Making an advance decision does not give an absolute right to refuse that treatment under the Mental Health Act. It will simply enable access to enhanced safeguards and if those safeguards are followed correctly, treatment can still be given,

make advance decisions. As such, someone under 18 could say in their Advance Choice Document that they refused a particular treatment they did not want in the future, but this would have limited weight. Specifically, it would mean that if the child or young person lacked capacity or competence to consent to treatment when it was offered, their advance refusal would not give them access to the enhanced treatment safeguards available to adults. This means that rather than being on an equal footing, children and young people would be disadvantaged compared with adults.

Recommendation: The Mental Health Bill should extend advance decisions to children and young people aged under 18.

2. Statutory Care and Treatment Plans

The Bill introduces new Statutory Care and Treatment Plans for all patients admitted formally. Whilst the introduction of Care and Treatment Plans is welcome, this will only be for formal patients. Under 18s are more likely to be admitted on an informal basis than adults so it is crucial they are able to access the safeguards associated with Statutory Care and Treatment Plans regardless of the legal status of their admission. We therefore believe that a duty to prepare Care and Treatment Plans for under 18s should be included in the Mental Health Bill.

Recommendation: Care and Treatment Plans for informal patients aged under 18 should be included in the Mental Health Bill.

3. Learning disabilities and autism

As of September 2024, there were 200 under 18s in inpatient units that are autistic or have a learning disability.⁶ The Bill makes welcome provisions to prevent the lengthy, harmful and unjustifiable detentions of people with learning disabilities and autism under the Mental Health Act and to improve the care provided.

The aim of raising the threshold for inpatient admissions for children and young people under section 3 of the Mental Health Act is broadly positive, however, this cannot be done in isolation and at a time when waiting times and thresholds for mental health support across early intervention, targeted support and clinical access are high. In particular, for some children and young people, including those with learning disabilities and autism, the absence of high quality alternative community provision may mean that Tier 4 support will continue to be the only option for care and treatment in moments of crisis.

Many of the provisions included in the Bill also depend heavily on high-quality community care being in place. We believe the Bill should be amended to include a specific requirement on local authorities and ICBs to work together to develop and deliver services to support children and families, in order to prevent crisis and admission to inpatient care.

Finally, the proposals to place Dynamic Support Registers and Care Education and Treatment Reviews on a statutory basis is a welcome step. Given that the measures were first introduced by the NHS Long Term Plan and have not led to a clear and sustained reduction in the numbers of children and young people with learning disability and autistic young people detained under the Act, the Mental Health Bill is an important opportunity to

strengthen their requirements and deliver improved support for children and young people.

Recommendation: The duty on local authorities and ICBs to ensure they can meet the needs of those with learning disabilities and autism should be expanded to include a specific requirement to deliver community based services for children, young people and their families.

4. Nominated person

We welcome the provisions to introduce the new nominated person (NP) role to replace the nearest relative. The NP is an important safeguard and will have significant powers, including the power to discharge a patient. A child or young person will be able to appoint someone other than one of their parents (or person with parental responsibility) to act as their NP. Further consideration will therefore need to be given to how this might operate in practice and whether additional safeguards are required whilst maintaining under 18s right to choose.

What additional safeguards need to be added to the Bill?

In addition to the changes outlined, we believe the Mental Health Bill should be amended to include the following provisions for children and young people. These are in line with recommendations put forward by both the Independent Review and the Joint Committee.

1. A framework for assessing capacity for under 16s

Many of the safeguards set out in the Mental Health Bill rely heavily on consent, capacity and competence to make decisions. For those aged 16 and above, the test for assessing capacity is set out in the Mental Capacity Act 2005. However, there is no test for determining whether an under 16 year old can make a decision about their care.

This is of huge importance because unless those aged under 16 demonstrate that they are able to make the particular decision, they are assumed to be unable to do so. Accordingly, without a framework 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 decision-making framework will impact on determining whether an under 16 year old can exercise their right to choose a Nominated Person (or terminate their nomination) and to access enhanced safeguards around treatment. It will also be a crucial factor in determining whether or not they can consent to informal admission.

Recommendation: The Mental Health Bill should be amended to include a framework for assessing capacity for under 16s.

2. Strengthening protections for young people in inappropriate settings

We are concerned that children and young people are still inappropriately placed in settings out of area and on adult wards, yet the Bill does not contain adequate safeguards to address this. 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.

Recommendations: The Mental Health Bill should be amended to include a:

- Statutory provision against children aged under 16 being placed on adult wards.
- Duty to notify the local authority when a child or young person is placed on an adult ward or out of area, or if an admission lasts more than 28 days.
- Duty for the CQC to be notified 24 hours after an under 18 year old is placed on an adult ward.

Questions to Government

- Will the Government commit to extending Statutory Care and Treatment plans for informal patients aged under 18?
- What are the Government's plans to ensure high-quality community care is in place for children and young people in order to prevent admission to inpatient settings?
- Will the Government commit to strengthening safeguards for children and young people through a) introducing a framework for assessing capacity for under 16s and b) enhancing protections for children placed in inappropriate environments?
- How will the Government ensure the voices of children and young people are listened to and considered in the reform process?

About the Children and Young People's Mental Health Coalition

The Children and Young People's Mental Health Coalition is a collaborative network of over 350 organisations and individuals dedicated to advocating for and influencing policy in relation to the mental health needs of babies, children, and young people. Our coalition consists of diverse stakeholders, including mental health organisations, youth support services, educational institutions, and concerned individuals, all united by a shared commitment to improving the well-being of children. **For more information**, please contact Charlotte Rainer on charlotte.rainer@cypmhc.org.uk

¹ NHS Digital (2024) Mental Health Act Statistics: <https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-act-statistics-annual-figures>

² Children's Commissioner (2020) Who are they? Where are they? 2020. <https://assets.childrenscommissioner.gov.uk/wpuploads/2020/11/cco-who-are-they-where-are-they-2020.pdf>

³ 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/>

⁴ Mind (2023) Our rights, our voices. Young people's views on fixing the Mental Health Act and inpatient care. Mind. Available from: https://www.mind.org.uk/media/yrid3hl/our-rights-our-voices-report_final1.pdf?v=3

⁵ Darzi, A. (2024) Independent investigation of the NHS in England. Available from: <https://assets.publishing.service.gov.uk/media/66f42ae630536cb92748271f/Lord-Darzi-Independent-Investigation-of-the-National-Health-Service-in-England-Updated-25-September.pdf>

⁶ National Autistic Society (2024). Number of autistic people in mental health hospitals: latest data. Available from: <https://www.autism.org.uk/what-we-do/news/number-of-autistic-people-in-mental-health-ho-24>