

Mental Health Bill: Provisions for children and young people

Committee Stage briefing

Tuesday 14th January 2025

The Mental Health Bill provides a crucial opportunity to improve care and 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. This committee stage briefing sets out key amendments to the Bill that we believe will improve provision and support for children and young people.

It is vital that the Mental Health Bill strengthens safeguards for under 18 year olds, both those that are detained and those who 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. However, we are concerned that little consideration has been given to how the provisions in the Bill apply to under-18s and that the Bill does not go far enough to improve care for children and young people.

We believe that more needs to be done to ensure that the Bill works for children and young people, alongside enhancing and strengthening safeguards for this group. We therefore support the following amendments to the Mental Health Bill:

- Introducing a decision-making test for under 16s
- Extending care and treatment plans to informal patients aged under 18
- Extending advocacy on an opt-out basis to informal patients aged under 18
- Strengthening safeguards against young people being placed in adult wards
- Extending commissioning duties to provide community support to all children and young people

Guaranteeing safeguards for children and young people

Children and young people who are detained under the Mental Health Act 1983 should be guaranteed the same safeguards as adults. However, the Bill in its current form means that children and young people could potentially be excluded from some of the safeguards set out in the Bill and therefore be at a disadvantage compared to adults. The Bill presents a crucial opportunity to maximise choice and autonomy, and this must apply equally for children and young people.

Decision-making for under-16s

Amendment – Lord Meston

After Clause 50, insert the following new Clause -

“Determination of ability to decide for persons under 16

(1) For the purposes of this Act and the Mental Health Act 1983, a person aged under 16 (referred to in this section as a child) is able to make the relevant decision if they can—

- (a) understand the information relevant to the decision;
- (b) retain the information;
- (c) use or weight that information as part of the process of making the decision;
- (d) communicate their decisions (whether by talking, using sign language or any other means).

(2) Where a child is able to decide in accordance with paragraph (1) above, that child will be competent for the purpose of this Act.

(3) A child is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(4) A person determining a child’s ability to decide under this section must—

- (a) have due regard to Article 12 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”), and
- (b) must be able to show reasonable grounds for their belief that the child is or is not able to make the relevant decision.

(5) When considered by any appropriate court or tribunal, any question whether a child is able to make the relevant decision within the meaning of this Act must be decided on the balance of probabilities.” Member’s explanatory statement

Explanatory statement: This amendment inserts a test for determining a child’s ability to make decisions (competence) under the Mental Health Act.

Why is this necessary?

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.

The Independent Review of the Mental Health Act recognised the lack of clarity consistency in establishing competence for under 16s and for this reason, made the recommendation

that there should be a statutory test for competence in respect of decisions made under the Mental Health Act. However, this recommendation has not been accepted by the Government and no test to determine decision making ability for under-16s has been included in the Mental Health Bill.

We are concerned that without a test to determine decision making ability, children under 16 will not be able to benefit fully from the rights and safeguards included in the Bill. We are therefore supportive of the amendment put forward by Lord Meston to insert a test for determining an under 16's ability to make decisions under the Mental Health Act.

Improving safeguards for informal patients

A significant number of children and young people are admitted to mental health settings informally, that is on the basis of their own or parental consent. Research from the Children's Commissioner for England suggests that around one third of inpatients aged under 18 are informal,¹ however, 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.

Concerns have previously been raised that children and young people who are informal patients are often under exactly the same conditions as those detained, without access to safeguards that children formally detained have. Many children and young people who are informal patients are also often unaware of their rights and often do not feel that their voices are listened to.²

We believe it is crucial that informal patients aged under 18 have the same safeguards as those detained under the Act. There are two key provisions in the Mental Health Bill that can be strengthened to improve care for children and young people admitted informally:

- Extending care and treatment plans to informal patients aged under 18
- Extending advocacy on an opt-out basis to informal patients aged under 18

Extending Care and Treatment plans to informal patients aged under-18

Amendment – Baroness Watkins

Clause 20, page 29, line 3, at end insert— “(d) is a qualifying informal patient as defined in section 130CA who is under 18

Explanatory statement: This amendment seeks to ensure that care and treatment plans must be provided to qualifying informal patients as defined in section 130CA of the Mental Health Act 1983 (inserted by Schedule 3 of this Bill) who are under 18.

Why is this necessary?

Clause 20 of the Bill introduces new Statutory Care and Treatment Plans for all patients admitted formally. The purpose of these plans is to help ensure that all patients detained

formally under the Mental Health Act have a personalised strategy in place for their care to help them achieve recovery and their discharge from the Act.³

The 'Reforming the Mental Health Act White Paper' committed to putting care and treatment plans for under 18 year olds who are informal patients on a statutory footing, but this has not been addressed in the Mental Health Bill and it is still not clear how this will be achieved, nor when. We believe it is crucial that under 18s are able to access the safeguards associated with Statutory Care and Treatment Plans regardless of the legal status of their admission.

Extending advocacy to informal patients aged under-18

Amendment – Baroness Tyler

Schedule 3, page 86, line 29 - after "patient" insert "or English qualifying informal patient under 18"

Schedule 3, page 87, line 2, after "patient" insert "or English qualifying informal patient under 18"

Explanatory statement: This extends the provision of opt out advocacy services in England to informal inpatients under 18.

Why is this necessary?

The Mental Health Bill introduces 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. It has been noted that often young informal patients do not understand their rights and feel an underlying threat that if they in some way 'break the rules', they will be sectioned.⁴ Access to an advocate is therefore crucial in helping children and young people who are informal patients navigate a complex system.

Children and young people in appropriate 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 Mental Health Bill does not contain adequate safeguards to address this. In 2021/22, there was a **32% rise** in the number of people under 18 being admitted to adult wards (260 admissions in 2021/22 compared to 197 in 2020/21). Figures show that the number of notifications has dropped by **25%** and are now similar to 2020/21 figures at **196 notifications**.⁵

When young people are placed on adult wards they are denied the opportunity for peer support, to socialise with peers their own age, have limited access to educational opportunities and are around staff who are used to treating and tailoring care for adults not younger patients.⁶ Research conducted by Article 39 highlights the negative experiences of

young people placed on adult wards, with young people reporting how they found the environment 'terrifying' as a child and expectations to 'to behave like an adult.'⁷

The Joint Committee recommended stronger procedural requirements where inappropriate placements are considered need to be put in place, including a requirement that such a placement is demonstrably in the child's best interests. It is imperative that the Mental Health Bill strengthens safeguards against children and young people being placed in inappropriate settings. We therefore support amendments that seek to do this.

Improving care in the community

We welcome the provisions included in the Mental Health Bill to prevent the lengthy and harmful detentions of people with learning disabilities and autism under the Mental Health Act and to improve the care provided. Inequalities in the disproportionate detention of those with learning disabilities and autism begins in childhood. As of September 2024, there were **200 under 18s** in inpatients units who are autistic or have a learning disability, 78% of whom were detained under the Mental Health Act.⁸

The Bill presents an opportunity to end these inequalities through improving care in the community and intervening at an early stage. We believe current provisions in the Bill should be strengthened to ensure effective and sufficient community support is in place for both those with learning and disabilities and autism, as well as all children and young people.

Extending commissioning duties to all children and young people

Amendments – Baroness Tyler

Clause 4, page 8, line 21, at end insert—

"(ba) the person is under 18 years old and satisfies the conditions in (b)(i) and (b)(ii)."

Explanatory statement: The amendment inserts a new subsection that extends the duty on integrated care boards to establish and maintain a register for those at risk of detention to all children and young people under the age of 18.

Clause 4, page 9, line 22, at end insert—

"(c) seek to ensure that the needs of children and young people can be met without detaining them under Part 2 of this Act."

Clause 4, page 9, line 28, at end insert—

"(c) seek to ensure that the needs of children and young people can be met without detaining them under Part 2 of this Act."

Explanatory statement: This amendment extends the duty on integrated care boards and local authorities to exercise their commissioning functions in a way that seeks to ensure that children and young people's needs can be met without detaining them.

Why is this necessary?

The Bill has been introduced at a time when waiting times and thresholds for mental health support for children and young people across early intervention, targeted support and clinical access services are worryingly high. Consequently, too many children and young people are left to reach crisis point. Evidence shows that the number of children referred to emergency mental healthcare in England has increased by more than 50% in three years.⁹

Children's mental health support has also historically been woefully underfunded, and there has been a lack of clear accountability to ensure effective community provision is in place for this group. We therefore believe that adding all children and young people to the new commissioning duty placed on local authorities and ICBs in the Bill is crucial to ensure that their needs can be met at an early stage in the community, preventing crisis and later admission to mental health inpatient care.

Strengthening duties to provide community support

The provisions included in the Mental Health Bill rely massively on having strong, effective community services in place. However, we share concerns with partners from across the sector that community provision is not currently sufficient to support the changes set out in the Bill. The new duties placed on local authorities and Integrated Care Boards (ICBs) to ensure an 'adequate supply' of community support are too weak, and no accountability measures have been put in place to ensure this duty is being fulfilled. We therefore support amendments to the Bill that strengthen commissioning duties on local authorities and ICBs, as well setting out a requirement for the Government to table a costed plan to support the development of effective community provision.

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

References

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- ² Children’s Commissioner (2023) Children’s Mental Health Services 2021-22. Available from: <https://assets.childrenscommissioner.gov.uk/wpuploads/2023/03/Childrens-Mental-Health-Services-2021-2022-1.pdf>
- ³ Mental Health Bill explanatory notes: <https://bills.parliament.uk/publications/56784/documents/5315>
- ⁴ Article 39, A safe space? The rights of children in mental health inpatient care, November 2020
- ⁵ Care Quality Commission (2024) Monitoring the Mental Health Act in 2022/23. Available from: <https://www.cqc.org.uk/publications/monitoring-mental-health-act/2022-2023/children-young-people#:~:text=Last%20year%2C%20we%20reported%20a,21%20figures%20at%20196%20notification>
- ⁶ Ibid.
- ⁷ Article 39, A safe space? The rights of children in mental health inpatient care, November 2020
- ⁸ 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>
- ⁹ <https://www.theguardian.com/society/2024/feb/07/childrens-emergency-mental-health-referrals-in-england-soar-by-53>