

## Mental Health Bill: Second reading debate briefing

***Monday 19th May 2025***

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.
- The Government has set out their intention to use other mechanisms outside of the Mental Health Bill to improve safeguards for children and young people. This includes revising the Mental Health Act Code of Practice and the development of a new model of specialised mental health services for children and young people.
- However, we are concerned that this will risk a massive gap in rights for children and young people and misses a crucial opportunity to address the longstanding neglect of the specific needs of children and young people within mental health legislation. Children and young people admitted informally will also be particularly disadvantaged by this approach.
- We welcome further clarification from the Government regarding their plans to use the new service specification for specialised mental health services for children and young people to achieve change. We are concerned that no funding is forthcoming, and their legal status is unclear.
- We believe that existing provisions in the Bill can be enhanced to better support and protect children and young people. This includes:
  - Strengthening protections for children and young people placed in inappropriate settings
  - Extending amendments related to the Nominated Person to include 16 and 17 year olds
  - Introducing a decision-making test for under 16s.

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

Children and young people can enter inpatient mental health care either through being detained under the Mental Health Act or through being admitted informally.

In 2023/24, there were **997 detentions** of under 18s under the Mental Health Act.<sup>1</sup>

A significant number of children and young people are also admitted to mental health settings informally, on the basis of their own consent or that of their parents. 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**.<sup>2</sup>

### 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.<sup>3</sup> 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.<sup>4</sup>

### Inequalities in care

Inequalities in the disproportionate use of detentions under the Mental Health Act also first emerge in childhood. An article by The Independent highlighted that Black and mixed-race children accounted for **36%** of young people detained in acute mental health services despite making up only 11% of the population (based on unpublished data from NHS Benchmarking).

Black children are also less likely to be admitted informally than their white peers - **around 1 in 10** Black children are admitted informally compared to just over **1 in 3** white children. However, Black children are more likely to be held in secure wards or psychiatric intensive care units.<sup>5</sup>

What is more, as of September 2024, **there were 200 under 18s** in inpatients units that are autistic or have a learning disability, 78% of whom were detained under the Mental Health Act.<sup>6</sup>

Between 2012 and 2022, there was also a **65%** increase in the number of children and young people being admitted to general acute medical wards in hospitals in England because of a mental health concern.<sup>7</sup>

It is therefore crucial that the Mental Health Bill protects the rights of all children in mental health inpatient care, and that children and young people receive appropriate care and support.

## What is the current position on children and young people in Bill?

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. Both the Joint Committee on the draft Mental Health Bill and the Joint Committee on Human Rights have further recognised the need for specific considerations for children and young people under the Mental Health Act and have called for strengthened protections to be put in place.<sup>89</sup>

Whilst the Government has consistently stated the importance of getting the Mental Health Bill right for children and young people, we are concerned that proposals in this area rely heavily on mechanisms outside of legislation.

Throughout the passage of the Bill in the House of Lords, the Government made clear that the many of the reforms relating to children and young people will be addressed in the Mental Health Act Code of Practice and the new model of specialised children and young people's mental health services being developed by NHS England.

We understand that the proposed model of specialised care seeks to transform and expand community services to make sure that there are community alternatives and to reduce the need for admission and dependency on in-patient beds. This will be supported by an updated service specification, which will clearly set out the standards of care expected children and young people's specialist mental health services. It is this service specification that the Government intends to use to address provisions for children and young people, but it is not clear when this will be publicised, what its legal status will be and what body will be responsible for its effective implementation when NHS England is abolished.

We are unsure why children and young people are being placed on a different footing compared to adults, despite them being a uniquely vulnerable group. We are concerned that leaving issues relating to children and young people to the Code of Practice and the new model of specialised care will put this group at a further disadvantage. This is because:

- The courts have made clear that codes of practice, such as the Mental Health Act Code, should reflect the law (set out in legislation and case law) and cannot create law.
- The MHA Code can only provide guidance. Although any departure from the Code would need to be justified, the Code cannot impose duties or require those undertaking functions under the Act to follow it.
- The proposed model of specialised services for children and young people has not yet received investment to be implemented, and there are still no guarantees on when funding will be forthcoming.
- Service specifications do not also hold the equivalent statutory requirement as legislation or the MHA Code of Practice.
- Service specifications are not accessible documents or designed to be read by members of the public so confining important reforms to them will make it harder for children and young people and their families to know what they should expect

We question how Mental Health Act reform for children and young people will be effective if many of the changes for children and young people sit outside legislation. What is more,

children and young people who are admitted informally are largely outside the scope of the Mental Health Act and Bill so will be particularly disadvantaged by this approach.

## **Where does the Bill need to go further for children and young people?**

We believe the following changes are needed to the existing provisions in the Bill to strengthen safeguards for children and young people.

### **1. 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. In 2023/24, the Care Quality Commission were notified of **120 instances** where children and young people aged under 18 were admitted to adult wards. Admission to adult wards and in settings far from home can cause further harm to children and young people's mental health and can be detrimental to their recovery.

Whilst the Bill goes some way in improving reporting requirements when a child is placed in an adult ward, we are concerned that this does not go far enough. The Bill includes an amendment for the Secretary of State to review the current notification period to the Care Quality Commission (CQC) regarding the inpatient admission of a child or young person, as well as strengthening monitoring arrangements on ICBs, although it does not commit the Secretary of State to making any changes to strengthen protections. This is also an area where the Government is relying on the Code of Practice by committing to set out guidance in the updated Code to determine whether a placement is in a child's best interests.

However, the Bill does still not contain adequate safeguards to address this issue. We believe that the Bill should be strengthened to ensure that any admission is in the child's best interests and that procedural safeguards for admission are codified in law.

**Recommendation:** The Mental Health Bill should be amended to strengthen safeguards to ensure that admission to an adult ward or out of area only happens in the best interests of the child, and that they receive age appropriate care.

### **2. Nominated Person**

The Bill replaces the role of the Nearest Relative with the Nominated Person (NP). The new Nominated Person provision will apply to all children and young people aged under 18, and they will be able to appoint someone other than one of their parents (or others with parental responsibility) to act as their NP. Where a patient lacks competence or capacity to choose a Nominated Person, an Approved Mental Health Professional (AMHP) can appoint someone on their behalf.

The Bill goes some way in recognising that multiple people in a child or young person's life might hold parental responsibility and seeks to provide clarity to AMHPs on who to appoint when they are doing so on a child/young person's behalf. In the House of Lords, two amendments were introduced to the Bill to ensure:

- AMHPS must appoint local authorities as the NP for children and young people subject to a care order.
- AMHPS must appoint in accordance with orders made under the Children Act 1989 (i.e. appoint a special guardian when a family court has appointed one, and/or or the person(s) named in a 'lives with' child arrangement order is in place) or a person

with parental responsibility. However, these provisions only extend to those aged under 16.

The Government has also committed to establishing an expert taskforce to support the development of the code of practice on the nominated person appointment process for children and young people.

Whilst we welcome the progress that has been made in addressing this issue and providing clarity to AMHPs, we believe that the requirement to appoint a special guardian or a person named in a 'lives with' child arrangement order or a person with parental responsibility should be extended to also cover 16 and 17 year olds to ensure there are no safeguarding risks to young people and that Family Court orders are respected.

**Recommendation:** The requirement for the AMHP to appoint a Nominated Person in accordance with orders made under the Children Act 1989 should be extended to include those aged 16 and 17.

### **3. A decision-making test for under-16s**

Many of the safeguards set out in the Mental Health Bill rely heavily on consent, capacity and competence to make decisions. There is broad agreement that professionals need more clarity on how to decide a child's competence in relation to mental health 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 test in place, children and young people aged under 16 will not benefit fully from the rights and safeguards included in the Bill.

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. An amendment was tabled by Lord Meston at both Committee and Report stages to achieve this, which received cross-party support. However, the Government has stated that the assessment of a child's competence should be left to guidance in the Code of Practice.

We consider that such a test should be on the face of the Bill, not left to guidance in the Code of Practice as the Government suggests. The absence of a statutory test to determine whether a child is able to make the decision in question is a serious and significant omission. We are concerned that without this, children under 16 will not be able to benefit fully from the rights and safeguards included in the Bill.

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

## Questions to Government

- How will the Government ensure the voices of children and young people are listened to and considered in the reform process?
- Will the Government set out their plans to implement the new model of specialised mental health services for children and young people in light of the abolition of NHS England?
- Can the Government clarify what provisions for children and young people relating to the reform of the Mental Health 1983 will be included in the new model of specialised mental health services for children and young people and the updated service specification?
- 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?
- What are the Government's plans to reform the mental health system so that children and young people can access early support in the community?

## 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 370 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](mailto:charlotte.rainer@cypmhc.org.uk)

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

<sup>2</sup> 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>

<sup>3</sup> 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/yridl3hl/our-rights-our-voices-report\\_final1.pdf?v=3](https://www.mind.org.uk/media/yridl3hl/our-rights-our-voices-report_final1.pdf?v=3)

<sup>4</sup> <https://www.childrenscommissioner.gov.uk/resource/29751/>

<sup>5</sup> Children's Commissioner (2020) Who are they? Where are they? 2020. Available from: <https://assets.childrenscommissioner.gov.uk/wpuploads/2020/11/cco-who-are-they-where-are-they-2020.pdf>

<sup>6</sup> 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>

<sup>7</sup> UCL (2025). Significant rise in mental health admissions for young people in last decade. Available from: [https://www.ucl.ac.uk/news/headlines/2025/jan/significant-rise-mental-health-admissions-young-people-last-decade#:~:text=There%20was%20a%2065%25%20increase,Street%20Institute%20of%20Child%20Health\).](https://www.ucl.ac.uk/news/headlines/2025/jan/significant-rise-mental-health-admissions-young-people-last-decade#:~:text=There%20was%20a%2065%25%20increase,Street%20Institute%20of%20Child%20Health).)

<sup>8</sup> 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/>

<sup>9</sup> <https://committees.parliament.uk/publications/47831/documents/249874/default/>