MHB021 – Plattform

Senedd Cymru | Welsh Parliament

Bil arfaethedig – Datblygu'r Bil Safonau Gofal Iechyd Meddwl (Cymru) | Proposed Development of the Mental Health Standards of Care (Wales) Bill

Ymateb gan: Oliver Townsend, Pennaeth Cysylltiadau a Newid, Platfform| Evidence from: Oliver Townsend, Head of Connections and Change, Platfform

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Enshrining overarching principles in legislation

Question 1: Do you think there is a need for this legislation? Can you provide reasons for your answer.

We agree that this legislation is important, and there is a clear need for it. However, we do agree with the WHO/UN Guidance on mental health legislation and practice[1] which recommends avoiding specific mental health law in favour of cross-governmental whole-society legislation. We would want to see wider reform to mental health laws in the UK as an intermediate response to the challenges facing people in our mental health system – whilst continuing to raise awareness of the social determinants of our mental health, and the importance of tackling those.

Crucially, our mental health system remains largely based on 19th-century approaches rooted as far back as the Idiot Act 1886, which saw difference as something to be corrected and removed. These approaches were further modernised somewhat in successive mental health reforms throughout the 20th century, but the underlying assumptions that mental health difference (or psychosocial disability as per WHO/UN Guidance above) is something to fear, control and 'fix', have remained largely unchallenged. Comparing the development of mental health legislation and policy to the development in the field of learning disability makes this difference starkly apparent. In the field of learning disability, moves in the 80s and 90s to community-based, personcentred services have resulted in widespread repatriation from hospitals and other institutions. Whilst far from perfect, there is a lot that the mental health system can learn from the learning disability sector, especially in Wales.

[1] https://www.who.int/publications/i/item/9789240080737

Our mental health system does not offer adequate legal apparatus to protect people's rights within the system. Although the "least restrictive" principle is part of the Mental Health Act 1983 Code of Practice for Wales[2], it is currently framed as a recommended principle, not a mandatory one (i.e, practitioners "should", rather than "must", follow a least restrictive principle).

Restrictive practice is harmful, carries a high degree of risk to life, does not respect human rights, and is by its nature, most often used without consent.

Evidence shows that restrictive practice is used against specific groups more than others, such as with black men[3]. This disparity is just one example of why we believe there needs to be more robust legal protections in place for people in the mental health system in Wales.

We also consulted with our Power Up project, which works with young people across Cardiff and the Vale of Glamorgan. This project aims to hear the voices and experiences of young people, and gather those together to make changes in our system. As part of this work, the Power Up team has previously talked to children and young people about their experiences of mental health and wellbeing, and what good support would look like. Throughout this response, we have included their views on the draft Bill.

Overall, the Power Up participants stated: "Children and young people have

repeatedly said to us that they would like people to 'listen', be more 'understanding' and 'be there for you' in regard to support. The proposals suggested by this bill and the principles behind it should enable children and young people to be better supported with their mental health and wellbeing.

Question 2: Do you agree or disagree with the overarching principles that the Bill seeks to enshrine?

We agree that the overarching principles in the Bill are positive. We are particularly encouraged to see the inclusion of the least restrictive principle, as well as the principle of 'therapeutic benefit'. Choice and autonomy is also crucial, if we are to see a mental health system that is truly person-centred and committed to reducing harm.

[2] mental-health-act-1983-code-of-practice-mental-health-act-1983-for-wales-review-revised-2016.pdf (gov.wales)

[3] The relationship between ethnic background and the use of restrictive practices to manage incidents of violence or aggression in psychiatric inpatient settings - PMC (nih.gov)

One point we need to clarify is that choice and autonomy must be defined as "free and *informed* choice and autonomy". This requires a major shift of culture in our healthcare system, move away from an outdated and narrow biomedical view and commitment to sharing knowledge about the efficacy, limitations and side-effects of widespread mental health interventions (e.g, work must be undertaken to challenge the incorrect, oversimplified "chemical imbalance"[4] theory that is still held as fact by c.80%[5] of the public).

Specific changes to existing legislation

A. Nearest Relative and Nominated Person

Question 3: Do you agree or disagree with the proposal to replace the Nearest Relative (NR) provisions in the Mental Health Act 1983 with a new role of Nominated Person?

Can you provide reasons for your answer.

We agree with this proposal. There are specific groups for which a

Nominated Person would be more appropriate than a Nearest Relative. Whether this is young people in the care system, LGBTQ+ people, or others with different, challenging or complex relationships with family, there needs to be a space for choice. It also allows people to choose someone they trust when they have no family.

Overall, we would raise a caution. This change should not be considered a fix to a clear imbalance within the existing legislation. One specific example of this is with Section 29 (3) of the Mental Health Act 1983, which allows for replacement of a Nearest Relative for "unreasonably" objecting to an application. This test of reasonableness effectively locks a power imbalance into the system, because it is rare for NRs to also be trained medical or mental health professionals.

Our Power Up project participants said: "We agree with the Welsh

Government's proposal to change the Nearest Relative to a Nominated Person. Young people have commented on being 'judged' or 'let down' because of their existing mental health problems therefore it is not surprising that that they have said they appreciate people supporting them 'respecting boundaries and

[4] ps04_19---antidepressants-and-depression.pdf (rcpsych.ac.uk)

[5] The Australian public's beliefs about the causes of depression: associated factors and changes over 16 years - PubMed (nih.gov)

requests' as well as being 'understanding'. Young people would prefer to have someone they 'trust' and 'know really well' to support them and be a 'representative to who I am'."

They continued: "Establishing a nominated person would make mental health support more person-centred, as young people would be able to choose a trusted individual who understands them, shares their views and has their best interests at heart, to be in charge of their care and advocate for them when they cannot. Whilst this may in some cases be their nearest relative, being their 'nearest relative' does not guarantee they are the most suited person for the role."

"Currently, if a care-experienced young person is detained, then the local authority automatically becomes their nearest relative, who may not be who the young person would have chosen to represent them if they had the option. Young people with nearest relatives who have language barriers or other additional needs may struggle to have their views well communicated and represented."

"In instances such as estrangement or experiences of abuse, choosing who is their nominated person would decrease distress and harm to the young person and ensure they are not giving power over them to people they do not trust."

"Young people have talked to us about the importance of being able to 'control who knows about you' when accessing and receiving support, for example, 'LGBTQIA+ individuals may not be out to everyone'. Again, the 'nearest relative' may not be the best person for the role hence why it is so important for young people to be able to choose who it is."

"Enforcing this change would meets the UN Convention on the Rights of the child in terms of respecting the views of the child (article 12) and freedom of expression (article 13), by allowing young people to have who they want as an advocate for their care."

B. Changing the criteria for detention, ensuring the prospect for therapeutic benefit

Question 4: Do you agree or disagree with the proposal to change in the criteria for detention to ensure that people can only be detained if they pose a risk of serious harm either to themselves or to others?

Can you provide reasons for your answer.

We would agree with this change. Whilst we believe that detaining people for treatment is the least effective of options, that are situations that require this level of response given the nature and limitations of our current legislation and systems. By shifting the legal criteria to that of "serious" harm to themselves or others, it means that people's choices are more likely to be respected, and that use of powers of detention are reserved for high levels of risk. This would be the first step towards restoring choice and autonomy to people within the mental health system by acknowledging that except in situations of high risk, no treatment should be mandated against their will.

We would encourage the adoption of the language contained in the initial UK Government consultation on the Mental Health Act reform, namely that an individual is only detained if there is "substantial likelihood" of "significant harm". We believe this raises the threshold higher for the use of coercive powers – although we would want to see a clear definition of these terms in the draft legislation.

We do want to raise a further caution – that we need to explore what options would then exist to support people in crisis or high levels of distress who need support, but do not meet the threshold for detention, or to whom detention would be harmful rather than therapeutic and would benefit from holistic and relationally (trauma) informed community treatment options. On that basis, we would encourage implementation of this Bill to be at a future date that provides services and communities time to develop support networks for people who will not meet a new threshold.

Our Power Up project participants said: "We encourage the Welsh Government to implement the change in criteria for detention, hopefully making it less frequent."

They continued: "When discussing things about support that they did not like, young people mentioned 'rude CAMHS workers' and 'having to stay in hospital'. Young people also commented on the value of providing the 'right support for

that person'; with one young person remarking that they did not know someone who 'has benefitted from therapy'.

"Therefore, it is imperative to consider support on an individual basis and reevaluate whether detention is the best option for a young person."

"Detention is a distressing and traumatic experience for both the individual and their loved ones and so limiting its use to a last resort measure and for the shortest possible time is a positive step. If time in hospital receiving treatment is necessary, then it is better for the individuals to voluntarily admit themselves, meaning they maintain more autonomy and less restriction."

"By limiting detention to rare occurrences, this would meet article 37 of UN Convention on the Rights of the child, children's right to not be subject to inhumane treatment and detention."

Question 5: Do you agree or disagree with the proposal to change in the [6]criteria that there must be reasonable prospect of therapeutic benefit to the patient?

Can you provide reasons for your answer.

We absolutely agree with this proposal. There is little point detaining someone against their will, as it often adds to their distress and there are incidences of people being more harmed by a forced or compulsory admission[7]. Additionally, it is critical to restore patient trust and safety in an overwhelmed and traumatised mental health system. At Platfform, we are concerned that access to mental health systems alone is not enough, we must look at the impact of those systems on people. There is substantial evidence of the harm caused by

[6] . We disagree with this proposal. It is not possible to conduct an appropriate assessment of someone in an acute state of distress virtually nor is it appropriate that anything other than a full and proper assessment is given due to the nature of the purpose of the SOAD. To uphold patient dignity a second opinion appointed doctor must have access to the total sum of circumstances to make an informed decision. It is not possible to make an informed decision without being with the patient and allowing the patient the time and opportunity to make themselves known to the SOAD who will often not have a prior relationship to the patient. Full and proper opportunity for the patient to make known their views, opinions and wishes should be allowed to ensure dignity, respect and uphold as best possible their human rights. There must remain a fundamental right, that must be met without exception, to request face-to-face assessment to ensure that option remains available despite funding and capacity pressures. However, we would be accepting of the right of individuals to request virtual provision if this decision has been made freely and following the principles of informed choice.

[7] Independent Review of the Mental Health Act - GOV.UK (www.gov.uk)

traumatised and traumatising services, being forced onto people who have already been exposed to trauma and abuse.

We would also encourage this Bill to take the opportunity to incorporate into legal guidance, both the Trauma Informed Wales Framework[8], but also the Welsh Government's Reducing Restrictive Practices Framework.[9] These two frameworks together have the potential to provide structure and support to services that are often overwhelmed by demand and complexity.

C. Remote (Virtual) assessment

Question 6: Do you agree or disagree with the proposal to introduce remote

(virtual) assessment under 'specific provisions' relating to Second Opinion Appointed Doctors (SOADs), and Independent Mental Health Advocates (IMHA)?

Can you provide reasons for your answer.

Our Power Up project participants said, regarding overall assessments, not specifically SOAD assessments: "Young people have stated that they like doing things 'online' including 'online sessions' and the significance of talking in a 'comfortable space like at home' and receiving support in a 'safe space'."

They continued: "Offering virtual assessments gives more choice and influence over support to a young person, as they could now be assessed more comfortably without professionals entering their 'safe space'. It would also allow young people to possibly be assessed quicker (as individuals do not have to travel to do the assessment), meaning they could receive the support they need in a timelier manner."

"However, in-person assessments should take precedence, with the worry that assessing people virtually would be 'a given', which could lead to potential indicators and needs being missed online."

"All children have the right to first-rate healthcare in order to have the best possible health (article 24 of UNCRC). Providing good quality assessments both online and in person would help to attain this."

[8] Trauma-Informed-Wales-Framework.pdf (traumaframeworkcymru.com)
[9] Reducing restrictive practices framework | GOV.WALES

D. Amendments to the Mental Health (Wales) Measure 2010

Question 7: Do you agree or disagree with the proposal to amend the Measure to ensure that there is no age limit upon those who can request a re-assessment of their mental health?

Can you provide reasons for your answer.

Yes, we fully agree with this proposal.

Our Power Up project participants said: “Finally, we concur with the amendments to the Mental Health (Wales) Measure 2010, that will enable individuals to request a re-assessment of their mental health regardless of age and for this ability to be given to select people.

They continued: “Young people have told us that in order to make the world better place for their wellbeing, they would like ‘healthcare professionals to listen’, which includes instances when young people decline support or disagree with the opinions of professionals.”

“For young people whose nearest relative is not someone they would have likely chosen and were perhaps assessed/sectioned against their wishes; removing the age limit for requesting a reassessment grants them more choice (like their adult counterparts) and opportunity to challenge their detention.”

“Amending the Mental Health (Wales) Measure 2010 would align with children’s right to a review of treatment in care (article 25 of the UNCRC). Young people should be able to have a regular review of their treatment, the way they are cared for and wider circumstances, including their mental health (which is the reason why they were detained in the first place).”

Question 8: Do you agree or disagree with the proposal to amend the Measure to extend the ability to request a re-assessment to people specified by the patient?

Can you provide reasons for your answer.

Yes, we fully agree with this proposal.

General Views

Question 9: Do you have any views about how the impact the proposals would have across different population groups?

We have articulated above the negative impacts of the current mental health system on minoritised communities, and this is one of the reasons we need change to our mental health legislation.

Question 10: Do you have any views about the impact the proposals would have on children's rights?

We have included above the voices of young people from our Power Up project, which articulate the impacts these changes might have from their perspective.

Question 11: Do you have any general views on the proposal, not covered by any of the previous questions contained in the consultation?

We want to reiterate our support for these changes – but to include the caveat that these changes must be the start of a journey across Wales to tackle the widespread use of restrictive practice, to make free and informed choice more common, and to ensure we are not tied to an out-dated, over-simplified medicalised approach in our Welsh mental health system. If we can change these default approaches, we would be making a significant positive difference for people in crisis and positions of vulnerability across Wales.