Royal College of Psychiatrists' Briefing
The Review of the Mental Health Act | May 2018

Following the publication of the interim report of the Review of the Mental Health Act, this briefing sets out the Royal College of Psychiatrists' priorities and includes an update on the content of the interim report.

Overview

RCPsych welcomes the Review of the Mental Health Act (MHA) as an opportunity to develop a modern legislative framework for medical treatment.

We are pleased that the interim report provides clear recognition that addressing rising rates of detention under the Act and disproportionate impact on some BME groups will require changes in services as well as legislation.

Focus is needed on supporting patients to help prevent them reaching crisis point, including adequate provision of community and early intervention services. And if they are in crisis, patients must receive the highest standards of care.

Many people who have been detained under the Act feel that it fails to protect their rights and dignity and excludes them from decisions about their care. Improving patient care and support given to patients, their families, and their carers, in the least restrictive setting possible, must underpin any recommendations for its reform by the Review.

About the Mental Health Act and the Independent Review

The Mental Health Act 1983 (amended in 2007) determines how people are treated when they are at their most vulnerable during a mental health crisis. The MHA gives psychiatrists legal authority to assess and treat patients, providing mental health care for those who don't recognise the need for treatment, and avoiding criminalising the mentally ill.

Detention rates have risen in recent years. In England, from 2005/06 to 2015/16, the reported number of uses of the MHA to detain people in hospital increased by 40%.[1]

This rising rate and disproportionate application of the Act on the BME community were stated by the Government as reasons for calling the Review. The interim report was published earlier in May and the final report will be out in Autumn 2018, with legislation expected 'soon after'.

The Government Review must look beyond legislative change

The best way to prevent people being detained under the Mental Health Act is to prevent them from reaching a crisis point in the first place.

The recent special CQC report on detentions under the Act provides evidence that declining access to community services is leading to more people reaching mental health crises. The CQC has also explicitly linked the reduction in available psychiatric beds in England to increases in the use of the Mental Health Act.[2] The CQC stresses that 'it is unlikely that reform of mental health legislation on its own will reduce the rate of detention.'[3]

Services which are effective at keeping those with severe mental health services well, have been closing at an alarming rate. People receiving support from rehabilitation mental health services are 8 times more likely to achieve or sustain community living compared to those supported by generic community mental health services. In 2009 there were more than 130 such services in England; by 2015 that number had fallen by a third to just 82.

- **RCPsych wants to see a commitment from the Government to respond to all recommendations of the Independent Review, legislative or otherwise, and ensure parliamentary time to implement any legislative changes.**

Disproportionate rates of detention amongst BME community

Rates of detention across the whole adult population is over four times higher for black people, compared to white people, and around two times higher in the entire BME population.[4] For far too many black men the first time that they see a mental health professional is when one has been called by a police officer.

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[1] http://www.cqc.org.uk/sites/default/files/20180227_mhareport_web.pdf
[2] http://www.cqc.org.uk/sites/default/files/20180123_mhadetentions_report.pdf
[3] http://www.cqc.org.uk/sites/default/files/20180123_mhadetentions_report.pdf
[4] http://digital.nhs.uk/catalogue/PUB30105

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Black British adults have the highest mean score for severity of mental health symptoms (6.7 compared to 5.3 for white British). However, Black adults are the least likely to receive treatment for mental illness (6.5% in contrast to 14.5% white British).[5]

The barriers preventing too many in the BME community getting support need thorough consideration. One way to tackle this may be for NHS Trusts to introduce a Patient and Carers Race Equality Standard and to appoint a cross-government equalities champion, as recommended in the Five Year Forward View for Mental Health and as supported by the interim report. The standard would help ensure that all patients get equal treatment and it would have a focus on why more people from Black and Minority Ethnic Groups are being detained in their area.

Mental health services, however, cannot be seen in a vacuum and we need to look at much wider societal issues which mean that BME households are more likely to live in poorer or over-crowded conditions, increasing the risks of developing mental health problems.

- **RCPsych wants to see the introduction of a Patient and Carers Race Equality Standard and a cross-government equalities champion appointed without delay.**

Treatment in the community under the MHA

Community Treatment Orders (CTOs), introduced by 2007 amendments to the MHA, allow patients to be discharged into the community, subject to some conditions, and with an ability for services to recall patients to hospital if their health deteriorates.

CTOs are generally applied to patients who have been compulsorily detained in the past, have limited insight into their illness, and who are judged to be at high risk of relapse. They can be an important tool to help clinicians plan the care of some patients and manage risk while trying to treat patients in the least restrictive setting possible.

When surveyed by the Mental Health Alliance, patients, carers and practitioners recognised the need for the option to apply some conditions to some patient discharges to keep people safe and well.[6] But there are concerns which are recognised by us as well as the interim report that they do not reduce readmissions as intended and the impact they can have on the therapeutic relationship between patient and doctor.

- **RCPsych hopes that the Review recommends amending CTOs as they can provide an essential benefit to patients when used correctly.**

Nearest Relative

Under the Act, the designated "Nearest Relative" of mental health patients play an important role. They can refer patients to hospital, they are consulted about applications for admission for treatment and they can make applications to the Mental Health Review Tribunal.

Currently there is a proscribed a list of people in strict order who will be appointed as a patient's Nearest Relative, regardless of their relationship. This is outdated, inappropriate, and can be harmful to patients' recovery if that relationship is a distressing one. If the patient is unhappy with the person who is appointed it is a very long complicated process to change this person.

86% of all respondents to the Mental Health Alliance survey said that allowing people to specify someone close to them who should be involved in decisions about their care was 'very important'.[7]

RCPsych are pleased that the Review is considering changing these rules so that patients can choose a "nominated person". We would also like the nominated person to be given further rights, such as having more information shared with them about the patient's treatment and further involvement in their care planning.

We are aware that this change could pose some safeguarding issues, if a patient chooses someone inappropriate and so the review should consider what safeguards could be put in place to mitigate this, including ensuring all patients have independent advocates.

- **RCPsych would like to see the current 'nearest relative' system replaced with a system where patients chose a 'nominated person'.**

Advocacy

Patients are entitled to the support of independent mental health advocates to help them obtain information, understand, and exercise their rights relating to detention and treatment appeals.

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[5] https://digital.nhs.uk/catalogue/PUB21748

[6] https://gallery.mailchimp.com/31bb9e4c3daebe4cfa82162e6/files/4ebc92e7-7259-4c1c-9055-c9b50b7fda61/A_mental_health_act_fit_for_tomorrow.pdf

[7] http://www.mentalhealthalliance.org.uk/news/A_Mental_Health_Act_Fit_For_Tomorrow.pdf

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In England, only patients who are detained under the Act can access support from advocates, whereas in Wales they are available to informal in-patients and people on CTOs.

The CQC, and others, have highlighted concern that many patients detained under the Mental Health Act have not been informed of their rights to advocacy services for several years now and have called on the Review to improve this.

The Review states advocacy is *"seen as an impactful safeguard by many service users, but provision is currently patchy, standards are variable, and the role of different types of advocates is confusing".* The Review intends to consider further the availability and suitability of advocacy services, especially in terms of being culturally appropriate as some communities have problems in accessing and benefitting from advocates; whether the right to advocacy should be extended to more people; and, whether there should be streamlining of standards and training for advocates.

- **RCPsych would like to see patients' rights to access support from advocates strengthened, similarly to the Welsh model, to ensure the most vulnerable patients can benefit.**

Advance decisions

An advance decision, or advance care plan, allows patients to spell out their preference for treatments they would or would not accept if they ever lost the capacity to make a decision.

Advance care planning strengthens patients' participation in their treatment and can lead to them feeling more empowered about their future care and treatment. Currently patients and clinicians often report feeling like they have very little involvement in their own care.

The Interim Report states that the Review will consider further whether service users have enough say in MHA decisions, and if not, how this could be increased, or other safeguards provided and how different people involved in preparing and delivering care plans could be supported to collaborate more

- **RCPsych believes it is important that advanced care planning is used more frequently. We also think practical support for forming Advance Care Plans should be improved.**

Part III (criminal justice system)

Part III of the Mental Health Act covers people in contact with the criminal justice system. A guiding principal of the Review is that these patients should have the same outcomes, rights and safeguards as civil patients. The interim report finds this is currently not the case.

Resources: Many problems in this area are caused by resource issues: a lack of beds, a high workload and a lack of staff. But reforms to Part III of the MHA that could bring around some improvement.

Delayed transfers: One of the problems the Review hopes to tackle is delays in transfers from prison to hospital. In 2016/17, only one third of prisoners in England were transferred within the recommended 14 days. 7 percent waited more than 140 days.

Transfers between levels of hospital security: There are concerns that offender-patients remain in conditions of higher security than they need, and for increasing periods of time. However, in Scotland, legislation works to the principle of a least restrictive alternative with a legal right to appeal. Since this was introduced in 2003, there has been a significant reduction in the numbers of people detained at the highest level of hospital security – from a high of 230 to 111 in 2017.[8]

The 'double jeopardy' of prisoner-patients who have an indeterminate or fixed sentence: People subject to indeterminate or fixed sentences require both a Parole Board and a Mental Health Tribunal hearing to be discharged from hospital after serving their minimum period in custody.
This 'double jeopardy' causes considerable delays (up to 18 months) and affects patient recovery and availability of beds. There is no need for patients to be subject to both boards and tackling this will save resources and improve care.

Improving the system for approving leave of absence: Small decisions on rehabilitation of patients subject to restriction orders require approval from the Mental Health Unit in the Ministry of Justice. This unit is insufficiently staffed and it is usual for simple requests to take over six months to be processed. True rehabilitative decisions take even longer.
A system allowing decisions to be devolved to the Responsible Clinician and others resting with an external body, would improve and streamline care.

- **RCPsych wants to processes of transfer to and from hospital for prisoners and for making decisions on their release sped up and streamlined.**

[8] http://www.gov.scot/Publications/2017/09/9675/downloads#res524674