

Briefing - Royal College of Psychiatrists: Draft Mental Health Reform Act Bill

**Education, Welfare, Health and Public Services Debate- House of Lords,
Tuesday 17th May 2022**

About the Royal College of Psychiatrists:

The Royal College of Psychiatrists is the professional medical body responsible for supporting psychiatrists throughout their careers from training through to retirement, and in setting and raising standards of psychiatry in the United Kingdom. We work to secure the best outcomes for people with mental illness, learning difficulties and developmental disorders by promoting excellent mental health services, training outstanding psychiatrists, promoting quality and research, setting standards and being the voice of psychiatry.

[For more information about the college click here.](#)

Key Messages:

We welcome the proposed reforms to the Mental Health Act to improve patient care and increase safeguard, it however cannot be emphasised enough that they are not deliverable without the required investment in the psychiatric workforce.

In addition to reforming the mental health act, the Government must continue to invest in stretched community services, ensure proper capital funding to fix dilapidated, often unsafe buildings used by mental health services and ensure there are enough mental health staff to meet demand, equipped with the right skills and support.

Background:

The Mental Health Act is the main piece of legislation covering the assessment, treatment and rights of people with a mental disorder. It allows people to be detained (sectioned) and treated without their agreement if there is a risk of harm to themselves or others.

- Former College President, Professor Sir Simon Wessely, led a full review of the 1983 Mental Health Act, which sets out a number of recommendations for reform. This included increasing patients' ability to make decisions about their own care and treatment, emphasising the importance of using least restrictive interventions, ensuring patients are supported in their recovery, and tackling inequalities.
- In January 2021, the Government published its White Paper on reforming the Mental Health Act. The College submitted a response to the public

consultation on the White Paper. It is expected that the Government will bring a Bill to Parliament in Autumn 2021.

- In October 2021, the College commissioned external research on the impact of the proposed reforms on the psychiatric workforce. It found that by 2023/24 an additional 333 FTE psychiatrists will be needed, and a further 161 by 2033/34.
- On Tuesday 10 May the Government announced in the Queen's speech draft legislation to reform the Mental Health Act.

[More information about the Draft Bill can be found here.](#)

Draft Mental Health Reform Act Bill:

Below are some of the key parts of the Bill mentioned in the Queen's Speech report and the Royal College's response to them.

Workforce and Investment:

An insufficient workforce is the biggest barrier to delivering the Long-Term Plan, reforming the Mental Health Act, and recovering from COVID-19.

The announcement in the Queen's Speech made no mention of additional workforce planning or extra investment.

In a survey of college members, insufficient access to community mental health services was cited as the greatest cause behind increases in formal admissions. 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.

In October 2021, we commissioned a report in response to the Government's White Paper to review, titled 'Estimating the impact of proposed reforms to the Mental Health Act'ⁱ on the workload of psychiatrists. Based on DHSC's estimated rate of detention growth, the research found that:

- By 2023/24, an additional 333 FTE (Full Time Equivalent) psychiatrists will be needed, costing £40m per year by 2023/24.
- By 2033/34, a further 161 FTE psychiatrists will be needed, costing £60m per year by 2033/34 (including £40m cited to 2023/24).

These numbers relate only to the impact of the proposed reforms and are additional to those required to deliver NHS Long Term Plan commitments.

NHS England have set a target to increase the consultant psychiatric workforce by 830 by March 2024. Assuming current trends continue, four out of five of these posts will be unfilled (based on NHS Digital workforce data from March 2017 - March 2021).

Similarly, for mental health nurses we can expect around 2,000 more to be in post by March 2024, compared to the 9,250 still required according to the Long-Term Plan.

There are already currently not enough psychiatrists to meet the demand on mental health services, and that gap is growing. Vacancy rates at consultant level have increased in recent years (9.3 % in 2019 vs 5% in 2013), with general adult, child and adolescent and old age psychiatry seeing the greatest shortages and with considerable regional variation. Workforce shortages have an enormous impact on wait times and they undermine the quality of care that patients deserve.

The Government should commit to increasing medical school places to 15,000 and prioritise schools that focus on encouraging students towards shortage specialties like psychiatry.

However on its own, investment will not immediately deliver the number of extra psychiatrists that are needed. Investment should be accompanied by a workforce plan to ensure the required workforce is in place at the time of implementation. It takes 13 years to train a consultant psychiatrist, so longer-term planning is essential. There is urgent need for a funded multiyear workforce strategy that outlines how the Government will grow and retain the psychiatric workforce and consistently monitor progress so that it can change course where necessary.

For the reforms in the Bill to be successful the government needs to provide additional funding and workforce planning.

Amending the Definition of Mental Disorder:

The draft Bill will amend the definition of mental disorder so that people can no longer be detained solely because they have a learning disability or because they are autistic.

Autistic people and those with intellectual disabilities deserve better care and we hope these reforms, accompanied by expanded services in the community, can provide it.

The emphasis on supporting people with Learning Disability and Autism in the community is positive, but there are concerns about the impacts on these groups including the safety and care of those with complex needs and inadequate community support. We understand there is often a lack of sufficient community services to meet the complex needs of people with LD when they are in crisis and hospital admission for care and support is often essential. It will be essential to

provide adequate services in the community, with an expanded and well-trained workforce in order to implement these changes safely and effectively.

Changing Detention Criteria:

The Bill will change the criteria needed to detain people, so that the Act is only used where strictly necessary: where the person is a genuine risk to their own safety or that of others, and where there is a clear therapeutic benefit.

We agree in principle, but 'genuine risk' could be open to interpretation, which will allow for discretion but also wide variation in interpretation and can have different meanings for lawyers and clinicians. We maintain that the decision about what constitutes a substantial likelihood and significant harm should be a clinical decision rather than a legal one.

Mental Health Advocates and 'Nominated Person':

The Bill would aim to give patients better support, including offering everyone the option of an independent mental health advocate, and allowing patients to choose their own 'nominated person', rather than have a 'nearest relative' assigned for them.

Independent Mental Health Advocates (IMHAs) are specially trained to advocate on behalf of patients detained under the Mental Health Act. They act independently from mental health services. The proposed reforms will extend the availability of IMHAs to all mental health inpatients, and to increase the scope of the service to cover involvement in statutory care and treatment plans.

This is an extremely important service that should be available to all patients on request. It should not, however, be a substitute for legally qualified advice.

We welcome the proposal for more flexibility for a 'nominated person.' It is particularly important for patients who come into forensic mental health services, as it is common for a patient to have been abused by the legally designated nearest relative.

28-Day-Time Limit Transfers:

The Bill will introduce a 28-day time-limit for transfers from prison to hospital for acutely ill prisoners and ending the temporary use of prison for those awaiting assessment or treatment.

We welcome the concept of a target, but not its enshrinement in legislation. Our concerns are mainly about unforeseen consequences. We think there is a substantial risk of avoidance of recommendations for transfer, even in appropriate

cases, if there is a perceived penalty against clinicians, health trusts or boards or all of these in the event of a target not being met.

Where patients remain in prison beyond such a period this almost always results from lack of hospital beds and not from failure of clinicians to respond to assessment requests.

Tribunal Appeals:

The Bill will look to increase the frequency with which patients can make appeals to Tribunals on their detention and provide Tribunals with a power to recommend that aftercare services are put in place.

We agree that it may be beneficial for patients to have the opportunity to challenge their detention more frequently.

We are however concerned that increasing the frequency of tribunals will also increase workload. The workforce implications of this would need to be carefully considered with a costed feasible delivery plan. We would hope that before any changes are made, a very careful calculation of expected increase in workload would be made.

Ethnic Disparities in the Bill:

The Bill will also address the existing disparities in the use of the Act for people from ethnic minority backgrounds.

We support the proposed attempts by the Bill. Black people are four times more likely than white people to be detained under the Mental Health Act. They are more likely to receive diagnosis of severe mental illness yet less likely to access and receive care from mental health services. It is important that both investments in community mental health services and reform of the Mental Health Act address this unacceptable disparity.

Supervised Discharge:

The Bill will introduce a new form of supervised community discharge. This will allow patients who are no longer therapeutically benefiting from detention in hospital, but whose risk could only be managed safely in the community with continuous supervision, to be discharged into the community with conditions that amount to a deprivation of liberty.

The proposed power of 'supervised discharge' may appear to offer a path to reduction in restrictions for people who would otherwise be detained in hospital,

which would be welcomed. However, we are concerned about unintended consequences because of a pressure to discharge people from inpatient services before treatment programmes are completed could lead to a much larger group being deprived of their liberty in the community for prolonged periods of time.

Mental Health Services:

One of the best ways to prevent people being detained under the Mental Health Act is to provide support to stop people from reaching a crisis point in the first place. However, commitments in the Bill could put further strain on mental health services, which have already been impacted by the COVID-19 pandemic.

COVID-19 has had an enormous impact on the health system. The mental health consequences of COVID-19 are also becoming increasingly evident with growing demand on a range of services. The funding promised in 2019 to implement the Long Term Plan cannot be stretched further than it was intended, and future funding settlements must be commensurate to demand.

Many of the buildings used to deliver mental healthcare in England are not fit for purpose, posing serious challenges to those who receive treatment and those who work in those facilities. The COVID-19 pandemic and its impact on areas such as infection control and social distancing highlighted further the unacceptable disparity in estate provision for mental health services. As the Government invests in updating the healthcare infrastructure, it is imperative that mental health services are not left behind and additional, targeted investments are made to begin addressing this urgent need.

The reforms in the Bill cannot be considered separately from these challenges facing mental health services.

Mental Health Backlog:

Demand on mental health services surged during the pandemic. 1.5 million people were in contact with mental health services in June 2021, the highest number since records began

In November, NHS England and NHS Improvement confirmed that at least 1.4 million are waiting for mental health treatment, while a further 8 million 'would benefit from care, if access barriers were reduced.'

- Source: NHS England and NHS Improvement board paper, <https://www.england.nhs.uk/wp-content/uploads/2021/11/board-item-5-251121-update-on-mental-health-services.pdf>

To tackle the mental health backlog, sustained investment in the workforce is needed, including substantial growth in medical school and core psychiatry training places.

Demand for Children and Young People’s Mental Health Services:

There has been a specific increase in demand for children and young people’s mental health services. Research by the Royal College of Psychiatrists has demonstrated how children and young people’s mental health has been severely affected by the pandemic, with more of these patients presenting to emergency departments in crisis.

NHS data shows there were 703,041 referrals to children and young people’s mental health services in the 2021 calendar year. This can be compared to 508,509 in 2020 (38.3% increase) and 410,716 in 2019 (71.2% increase). For referrals for 0–18-year-olds, there were 682,291 in 2021 compared to 493,367 in 2020 (38.3% increase) and 394,593 in 2019 (72.9% increase).

- Source: NHS Digital, Mental Health Monthly Statistics, <https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-services-monthly-statistics>

There were also significant increases in the number of children and young people waiting for eating disorder treatment. In the final quarter of 2021:

- 1,918 patients were waiting for routine treatment, the highest on record, and up from 1,216 at the same time last year (57.7% increase) and only 2,460 people received routine treatment, down from 2,554 at the same time last year.
- 203 patients were waiting for urgent treatment, the second highest on record, and up from 86 at the same time last year (136% increase).
 - Source: NHS England and NHS Improvement, [Children and Young People with an Eating Disorder Waiting Times](#)

The earlier patients can access appropriate mental health support, the better their long-term outcomes. Action must be taken now to ensure all children and young people receive the mental health support they need, when they need it. A systems-wide approach is critical to supporting the mental health of children and young people. This includes efforts to bring schools and NHS services closer together, tackling issues in social care provision.

Any improvements to mental health support for children and young people will also heavily rely on having a robust mental health workforce.

Unmet Need:

2021 showed the Mental Health services continued to fall short of its targets in the NHS Long Term Plan (LTP) and extra requirements from this Bill will put further pressure on these commitments.

In 2021 Calendar year, 40,411 people were in contact with specialist perinatal mental health services compared to the Long-Term Plan target of 57,000 for the 2021/22 financial year.

This suggests a shortfall against that expectation of 12,000-15,000. Prior to the pandemic, performance was broadly on track until that point (30,625 women accessed perinatal services in 2019/20 against the expectation of 32,000).

- Sources: NHS Digital, Mental Health Monthly Statistics, <https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-services-monthly-statistics> and NHS England, Mental Health Dashboard, <https://www.england.nhs.uk/mental-health/taskforce/imp/mh-dashboard/>

Over the course of the 2021 calendar year, 183,971 people with SMI (Severe Mental Illness) received a complete list of physical health checks. This compares to the Five Year Forward View for Mental Health target of 280,000 or the LTP Implementation Plan target for the 2021/22 financial year of 302,000.

- Sources: NHS England, [Physical Health Checks for People with SMI](#), NHS England, [Mental Health Implementation Plan 2019/20-2023/24](#)

In 2020/21 1.022m people started IAPT treatment. IAPT treatment provides short term psychological therapy for people with mild to moderate symptoms of anxiety, stress, panic, worry, low mood / depression. The Long-Term Plan Implementation Plan from NHSE set an expectation of 1.6m accessing IAPT treatment in 2021/22, however with only two months of data to come the number is currently only at 1.034m.

- Sources: NHS Digital, [Psychological Therapies, Reports on the use of IAPT services](#), NHS England, [Mental Health Implementation Plan 2019/20-2023/24](#)

The COVID-19 pandemic has had an inevitable impact on the delivery of the Long Term Plan and increased efforts and resources will be needed to get us back on track. We also need a skilled mental health workforce to provide the care that patients need, when they need it.

Mental Health Watch:

You can find out more how services are performing using [Mental Health Watch](#)ⁱⁱ. Produced by the Royal College of Psychiatrists, Mental Health Watch is a resource

to summarise key data on mental health services on key indicators at a local, regional, and national level in one, easy-to-use platform.

Contact details:

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References

ⁱ Estimating the impact of the proposed reforms to the Mental Health Act on the workload of psychiatrists, <https://www.rcpsych.ac.uk/improving-care/campaigning-for-better-mental-health-policy/the-mental-health-act/workforce-implications-of-proposed-reforms-to-the-mental-health-act>

ⁱⁱ Mental Health Watch, <https://mentalhealthwatch.rcpsych.ac.uk/>