Reforming the Mental Health Act

Response by the Independent Mental Health Network to the Department of Health & Social Care's open consultation

April 2021

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1. Background

The Independent Mental Health Network is a member-led organisation of people with lived experience of mental health. We actively work to change the way that mental health is perceived, recognised and treated. Our Network has members all over the country, and we predominantly work in the South West and across Greater Manchester, where we also support lived experience involvement in mental health service improvement and transformation programmes.

2. Methodology

This response to certain aspects of the proposed Mental Health Act reforms [1] has been developed by IMHN's members. Two workshops have taken place; the first on Monday 29 March, and the second on Friday 16 April. 28 people attended across both sessions.

The first workshop covered the background to the Mental Health Act and the general process of law reform, the findings of 2017's Independent Review, and a guide to the major reforms put forward in the proposals. A discussion followed between members about these subjects. The second workshop focused specifically on the topics that members felt most strongly about, and this discussion formed the responses to some of the questions asked by the Department of Health and Social Care's open consultation. There were also a range of views put forward about topics that do not have a corresponding question in the consultation – these are contained in section 4 of this document.

[1] As in Command Paper 355

3. Responses

Question 8: Do you have any other suggestions for what should be included in a person's advance choice document? Your answer can be up to 500 words.

Members of IMHN expressed an interest in how the advance choice document (ACD) scheme can interact with the nominated person (NP) scheme. Specifically, support was expressed for the ACD to include a mechanism for specifying a preferred NP, and more importantly, excluding potential NPs in advance. The reason for the latter was due to concern about the potential for cases where a vulnerable person may be subject to coercive control by someone who would otherwise seem to be a good fit to act as a person's NP. We provide more information about our reasoning in our response to question 13a.

Question 13a: Do you agree or disagree with the proposed additional powers of the nominated person? Please give reasons for your answer.

In principle, members of IMHN agree with the move towards the proposed 'nominated person' ('NP') scheme, and this was felt to be a far more appropriate and person-centred approach. However, there are some reservations about how the scheme will work in practice.

Particularly, care must be taken to ensure that a person, who may be in the position to exercise coercive control that may not be in the patient's best interests, isn't appointed as a NP. In order to ensure this, we recommend providing a means for a patient to confidentially instruct who not to appoint as a NP on their advance choice document. This is referred to in part of our response to question 8.

Clear guidance must be issued specifying what a NP's powers are and how they can be exercised. This is to enable both the person to make an informed decision on who is the best fit to support them; and the NP to know their rights and responsibilities when supporting the person (as the NP won't necessarily initially know much about how the mental health system works or the legal framework)

It was noted that, when considering whether challenges to an inappropriate NP should be made in Court or in the First-tier Tribunal (Mental Health), there is little material difference; the most important thing is that a challenge can be made expeditiously.

Finally, it was queried about what the procedure would be if someone who previously was a person's 'nearest relative' does not wish to be a appointed as a NP, and a person does not have anyone else they can name.

Question 14a: Do you agree or disagree that someone under the age of 16 should be able to choose a nominated person (including someone who does not have parental responsibility for them), where they have the ability to understand the decision (known as 'Gillick competence')? Please give reasons for your answer (up to 500 words).

Members of IMHN are in support of this proposal. However, the following incompatibility between the proposal and current law must be mentioned.

It was noted that under the Children Act, parents or legal guardians may still have legal rights over people under the age of 16 (who may otherwise have the requisite level of Gillick competence). In the case that a person under the age of 16 appoints a person, other than their parent or legal guardian, as their nominated person (NP), there is probably a good reason why that young person does not want their parent or legal guardian involved in their care.

As part of our response, we wish it to be noted that there will have to be provisions put in place to ensure that a person under the age 16, who is assessed as having the required level of competence, can appoint a NP other than their parent or legal guardian and be safe in the knowledge that only this person will act for them.

Question 16a: [Regarding improvements to advocacy services]

It was felt that advocacy services can be improved by:

- Providing specific support to parents of young people being treated under the Mental Health Act, to help them understand their rights
- Introducing a statutory duty for an advocate to get in touch with a person being treated under the Mental Health Act, without delay
- Increased funding, and an increased number of caseworkers
- The ability for an Independent Mental Health Advocate (IMHN) to be involved in care planning, and the drafting of an Advance Choice Document
- Ensuring that IMHAs have greater force in law

Members also wished to raise a gap in the law, stemming from current practice, that needs to be addressed – but is likely to have implications on other provisions of the current Act, and proposed reforms. Experiences were shared of people being subject to detention or 'holds' that did not amount to formal sectioning, but in practice amounting to deprivation of liberty. It was noted that this situation restricts a person's freedom, but does not entitle them to the rights (for example, to an IMHA) guaranteed under the Mental Health Act.

Question 28a: Do you expect that there would be unintended consequences (negative or positive) of the proposals to reform the way the Mental Health Act applies to people with a learning disability and autistic people? Please give reasons for your answer (up to 500 words).

Members noted that the proposals contained within chapter 9 of part 1 of the White Paper are particularly based around those with a diagnosis. Some autistic people, or people with learning disabilities, have a diagnosis. However, there are many being treated for mental health conditions, when their autism has gone unaddressed. The proposed reforms say that autistic people should only be detained as a last resort, but the reforms don't consider that a lot of autistic people will continue to be unnecessarily sectioned because there isn't a screening for autism, and many mental health professionals are still unaware of what autism looks like.

4. Other comments not related to a consultation question

This section contains responses and comments to other aspects of the proposed reforms, for which there is not an corresponding consultation question.

Minority communities

It was strongly felt that the terminology used when discussing this aspect of the reforms should be considered very carefully. It was noted that the term 'BAME' is no longer appropriate and outdated. As an alternative, 'PERI' – people experiencing racial inequality – was suggested.

Face-down restraint

Members felt strongly that face-down restraint should be ended as a practice. Legal enforcement should be introduced, and inspections made by the Care Quality Commission to ensure compliance.

Discrimination against the LGBTQ+ community

Whilst the rights of those who identify as LGBTQ+ are guaranteed by the Equality Act, it was particularly felt that any future revision of the Mental Health Act should guarantee appropriate treatment and care to those who identify as LGBTQ+.

Conversion therapy as a mental health treatment should be banned outright, with appropriate legal force.

It was noted that the phrase 'LGBT' was mentioned once throughout the White Paper. This was not felt to show adequate consideration of the community, bearing in mind the disproportionate prevalence of mental health problems amongst those who identify as LGBTQ+.

Rights-based care

The Mental Health Act guarantees rights to those being treated under the Act for a mental health problem. However, more must be done to ensure that people are aware of what their rights are, and how they can exercise them. Whilst information is given to people being treated under the Act on admission; there are inconsistencies in when this is followed up later on, and in ensuring a person remains aware of their rights. We propose that it should be made mandatory to outline a person's rights upon admission/first point of contact; and this should re-occur regularly, not just 'as and when.'

More should be done to ensure accessibility to the information setting out what a person's rights are, with appropriate statutory force to back this up. This should particularly include providing for:

- Those who are Deaf or hard-of-hearing
- Those who have English as their second language
- A person's age (particularly noting young people who may be assessed to be Gillick competent, but may be unfamiliar with complex legal frameworks)