

## **The 2025 Mental Health Bill:**

### **Evidence to the Welsh Assembly Health and Social Care Committee**

#### **Centre for Mental Health, January 2025**

Centre for Mental Health is pleased to be able to provide evidence to the Committee responding to its questions on our views about the Mental Health Bill currently being debated in the Westminster Parliament. We have responded below to questions where we have evidence that may be useful to the Committee. While we do not have evidence specific to Wales, our views relate to the Bill's application across both nations.

#### ***Overall views***

*1. Your overall views on the policy objectives of the Bill to: modernise mental health legislation to give patients greater choice, autonomy, enhanced rights and support; and ensure everyone is treated with dignity and respect throughout treatment; and introduce measures to improve the care and support of people with a learning disability and autistic people, reducing reliance on hospital-based care.*

We support the overall objectives of the Bill and believe that its provisions will, in sum, improve the way the mental Health Act works for patients and communities. The Bill draws, with some significant exceptions, largely on the work of the 2018 Independent Review of the Mental Health Act, which set out a plan for reform to modernise outdated legislation. The Review addressed specific concerns about the disproportionate use of the Act among people from racialised communities as well as seeking to improve the experiences of all patients who are subject to the legislation.

#### ***Consultation with the community clinician***

*8. Your views on proposals to introduce a new requirement for hospital clinicians to collaborate with a second professional from a community service when making decisions regarding the use and operation of community treatment orders ("CTO").*

We welcome this proposed change to the Act. Many people are currently placed on CTOs as a result of decisions made by hospital-based clinicians without either a second opinion or the agreement of a community-based clinician. This increases the risk of subjective decision-making and disparities in the use of CTOs between different practitioners. Currently, Black people are seven times more likely to be given a CTO when they are discharged from hospital than white people.

We hope that the involvement of a second clinician will reduce the disproportionate use of CTOs among people from racialised communities by providing an additional check on their use. It is our view that a similar process is required when a CTO is renewed, such that it cannot be continued indefinitely on the basis of a single clinician's decision. We hope that the Bill will be amended to create this additional safeguard against the continued use of CTOs if they are no longer necessary. We would also like to see more proactive provision of Independent Mental Health Advocacy for people given CTOs.

#### ***Nominated person***

*9. Your views on: the proposed introduction of a "nominated person" role to replace the nearest relative in decision-making*

We support the introduction of a 'nominated person'. We believe this provides patients with a greater say in who can make decisions on their behalf, alongside the introduction of Advance Choice Documents and the extension of opt-out advocacy. These safeguards will redress to some extent the inherent power imbalance in the use of the Act, and it is vital that these are applied fairly to children. Further clarification is needed on how the role of the Nominated Person (NP) will align with parental responsibility, especially in situations where an Approved Mental Health Professional (AMHP) appoints an NP for a child or young person who lacks the capacity or competence to make such decisions.

#### ***Transfers from prison to hospital: time limits***

*12. Your views on proposals to introduce a statutory 28-day time limit within which individuals with a severe mental health need must be transferred from prison to hospital for treatment under the 1983 Act.*

We strongly support this proposal. Currently, too many people are subjected to long delays in getting access to a hospital bed – a process that in the community would take a matter of hours. In some cases, people are assessed by multiple different clinicians before a bed is found, and in the meantime are kept in unsuitable facilities within prisons (Durcan, 2023).

For this to be achieved, it will be important for the NHS and its partners to unblock secure mental health services, addressing long delays in hospital discharges as well as admissions. Lengths of stay in secure wards are prolonged by a lack of community-based provision for this group of patients.

### ***Removal of police stations and prisons as places of safety***

*15. Your views on proposals to remove police stations and prisons as a place of safety for adults experiencing a mental health crisis.*

We warmly welcome this proposal. People who are detained in a police cell during a mental health crisis report feeling criminalised by the experience – especially those from Black communities (Durcan, 2014). The use of police cells for this purpose is now much rarer as a result of investment in health-based places of safety. It is vital that such facilities are readily available and adequately staffed so that people have somewhere to go in a crisis.

The use of prisons as a 'place of safety' under the Bail Act is outdated and needs to be repealed. While this is not used often, it affects women disproportionately and is likely to be highly traumatic and harmful (Durcan, 2021).

### ***Children and young people***

*16. Does the Bill adequately consider the needs of children and young people in Wales, particularly given the higher rates of mental health concerns reported post-pandemic?*

Centre for Mental Health hosts the Children and Young People's Mental Health Coalition, a group of over 300 organisations working for better mental health for children and young people. Our response to this question draws on the Coalition's views and concerns about the Bill.

Children and young people who are detained under the Mental Health Act 1983 should be guaranteed the same safeguards as adults. However, the Bill in its current form means that children and young people could potentially be excluded from some of the safeguards set out in the Bill and therefore be at a disadvantage compared to adults. The Bill presents a crucial opportunity to maximise choice and autonomy, and this must apply equally for children and young people. We believe this can be achieved through the introduction of a decision-making test for under-16s and by improving the Nominated Person provisions for children and young people.

A significant number of children and young people are admitted to mental health settings informally, that is on the basis of their own or parental consent. Concerns have previously been raised that children and young people who are informal patients are often under exactly the same conditions as those detained, without access to safeguards that children formally detained have. Many children and young people who are informal patients are also often unaware of their rights and often do not feel that their voices are listened to.

We believe it is crucial that informal patients aged under 18 have the same safeguards as those detained under the Act. There are two key provisions in the Mental Health Bill that can be strengthened to improve care for children and young people admitted informally:

- Extending care and treatment plans to informal patients aged under 18
- Extending advocacy on an opt-out basis to informal patients aged under 18.

We are also concerned that children and young people are still being inappropriately placed in settings out of area and on adult wards, and that the Mental Health Bill does not contain adequate safeguards to address this. The Joint Committee recommended stronger procedural requirements where inappropriate placements are considered need to be put in place, including a requirement that such a placement is demonstrably in the child's best interests. It is imperative that the Mental Health Bill strengthens safeguards against children and young people being placed in inappropriate settings.

## References

Durcan, G (2014) Review of Sections 135 and 136 of the Mental Health Act

<https://www.centreformentalhealth.org.uk/publications/review-sections-135-136-mental-health-act/>

Durcan, G (2021) The future of prison mental health care in England

<https://www.centreformentalhealth.org.uk/publications/future-prison-mental-health-care-england/>

Durcan, G (2023) Prison mental health services in England, 2023

<https://www.centreformentalhealth.org.uk/publications/prison-mental-health-services-england-2023/>