



## **Mind Cymru's response to Senedd Health & Social Care Committee call for evidence on Legislative Consent Memorandum on the Mental Health Bill**

### **About Mind Cymru**

We're Mind Cymru, the mental health charity. We work nationally and locally.

Nationally, we campaign to raise awareness, promote understanding and drive change. We're also the first point of call for information and advice, providing mental health information to people in Wales over a million times every year. Locally, in communities across Wales, independent local Minds provide life-changing face-to-face support to more than 37,000 people each year.

Together, we won't give up until everyone experiencing a mental health problem gets support and respect.

### **Overall views**

- 1. *Your overall views on the policy objectives of the Bill to:***
  - a) 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***
  - b) introduce measures to improve the care and support of people with a learning disability and autistic people, reducing reliance on hospital-based care.***
- 2. *What barriers do you think currently exist in accessing mental health services in Wales, and does the Bill address these adequately?***

Being sectioned is one of the most serious things that can happen to somebody experiencing a mental health problem. Whatever the therapeutic intent or clinical need, it can be completely disempowering. To lose control over where you live, who you live with, what you do in your day, what medical treatment you take and other aspects of your life, inevitably has a profound impact on

a person's sense of self and, unsurprisingly, can slow down a person's eventual recovery even while the treatment received may contribute to recovery in other ways. And this loss of liberty can be additionally traumatising, when, for example, the police are involved in the initial sectioning or people's wishes and legitimate preferences are unheard and overruled when detained. This should not have to be the way that people access mental health care.

Mind has long called for reform of the Mental Health Act. A lot has changed in the way we view mental health and we have a higher expectations of the treatment people should receive than when the Act was written. We want legislation and services which are fit for purpose, and which support people when they are in crisis. We should remember that one of the key drivers of the review of the legislation was the need to address the structural and institutional racism pervading the use of the Mental Health Act and wider mental health services. Whilst the data we have in Wales is patchy, we believe that this intent is equally relevant in Wales as it is in England and needs to be one of the lenses we view reform through.

In 2023 in Wales there were 2,190 detentions under Sections 135 and 136 of the Mental Health Act. The majority of these were adults over 18 (2,043) and from a White ethnic background (2,065). The recorded first place of safety was 705 at A&E, 1,438 at health-based locations and 22 at police stations. In terms of recorded assessment outcomes:

- 246 people agreed to go to hospital;
- 120 detained under the Act were admitted to hospital;
- 244 were discharged from the section with a community-based mental health plan of care; and
- 106 were discharged from section with no mental health follow-up care needed.

There were 7,639 inpatient admissions in 2020-21 (latest data). Of this figure, 2,157 were formal admissions. This was the highest figure since before 2010-11 (where data begins on StatsWales). The overall number of admissions was continuing to drop, influenced mostly by a reduction in old age psychiatry beds and a decrease in informal admissions.

Our vision for reform encompasses understanding and respect for a person's will and preference. Where people are treated with respect and dignity, and treatment enhances not jeopardises people's life chances and quality of life.

In Wales, Health Inspectorate Wales monitors how the Mental Health Act is used in mental health settings and publishes an annual report. Their annual reports consistently identify the same issues to

varying degrees in relation to the administration of the Act, the inpatient care environment and use of restrictive practices.

In September 2024 Mind Cymru published *Raising The Standard*<sup>1</sup> our review of data, existing evidence and experiences of inpatient care in Wales. In the report, we recommended that the Welsh Government:

- Develops an updated Welsh Code of Practice for Wales around the replacement Mental Health Act that is equitable and comprehensive.
- Improves the collection of data around the Mental Health Act, focusing on protected characteristics.
- Review the mental health estate and consider where improvements can be made in line with recommendations from HIW and feedback from patients
- Outline what is being done to improve the quality of Care and Treatment Planning in line with HIW recommendations.

Reform of this legislation is well overdue, and we welcome the steps being taken by the UK Government, however in some areas we do not believe the current reforms go far enough. We also recognise that reforming the legislation whilst a significant step, is only the first and needs to be accompanied by clear and enforceable guidance and a culture that listens, respects and responds to the needs of people who are subject to the legislation. This includes improving the quality and experiences of people subject to inpatient care in Wales, as outlined in our *Raising The Standard* report.

**Recommendation:**

**The development of the new Mental Health Act needs to be accompanied by a commitment from NHS Wales and the Welsh Government to ensure resources are available to improve inpatient care in Wales**

**Impact on areas of devolved competence**

- 3. Do you support the principle of Westminster legislating in areas that are devolved to the Welsh Government?**

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<sup>1</sup> [https://www.mind.org.uk/media/s0xpd3x/raisingthestandard\\_report\\_2024\\_eng-final.pdf](https://www.mind.org.uk/media/s0xpd3x/raisingthestandard_report_2024_eng-final.pdf)

Wales's groundbreaking piece of legislation, the Mental Health Measure, demonstrated a commitment to legislate to improve the lives and experiences of children, young people and adults experiencing poor mental health. The fact that over ten years after it came into force some of the provisions before the UK Parliament in the new Mental Health Bill are seeking to bring some of the provisions in the Measure into England demonstrates how it was ahead of its time.

Whilst the review of the Mental Health Act was not instigated by Welsh Government there was an opportunity when the review reported to seek to deliver on some aspects of the review through Welsh legislation and regulation. This would allow for consolidating mental health legislation in Wales beyond the Measure and potentially developing a Mental Health Act for Wales.

Unfortunately, this opportunity was not taken at the time and now, at the point of publication of draft legislation, it is too late for Welsh Government to seek to make these changes and consolidate legislation in Wales without undertaking a lengthy consultation process that would further delay a long overdue reform of this particular piece of legislation and impact on Welsh people currently subject to it. It is for the reason of the delay in bringing in measures that would improve rights for people subject to the Act that we support the current decision for UK Government to legislate in this devolved area.

We acknowledge that there are clear benefits of those subject to the draft Bill having the same rights and expectations in England and Wales due to people still being treated across the border. However, people in Wales have had different rights under the Mental Health Measure for some time so this is not insurmountable. Obviously, James Evans MS's backbench Bill sought to bring in some of the principles and key commitments from the review into Welsh law before the draft Bill was published in Westminster.

We have consistently asked Welsh Government to review the legislative landscape for mental health in Wales to ensure it is fit for purpose and that the Codes of Practice relating to the Mental Health Act and the Mental Health Measure complement each other. There continues to be outstanding actions from the Duty to Review the Mental Health Measure<sup>2</sup>, many of these crucial to the operation of the legislation.

The Duty to Review Final Report recommended amending regulations to:

- expand the list of health professionals registered with a regulated professional body able to undertake a local primary mental health support service (LPMHSS) assessment

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<sup>2</sup> <https://www.gov.wales/sites/default/files/publications/2019-03/the-duty-to-review-final-report.pdf>

- expand the list of health professionals registered with a regulated professional body able to undertake the care coordination role

In addition to amending Part 3 of the Measure to:

- ensure that there is no age limit upon those who can request a reassessment of their mental health
- extend the ability to request a re- assessment to people specified by the patient

Since the Duty to Review Report was published other reports and research have identified further areas for improvement, including, for example, the NHS Delivery Unit's *National Assurance Review of Care and Treatment Planning* and their *Review of Local Primary Mental Health Support Services for Children and Young People*. As such, there is a clear need for a wider consideration of the Measure, including both the Duty to Review Report and other areas for improvement.

Despite repeated commitments to address these actions in delivery plans, we still have not seen a plan or tangible action to move these issues forward. We believe that Welsh Government should use the opportunity of the new Bill to take forward outstanding actions relating to the Measure to ensure the whole legislative framework in Wales is revised, fit for purpose and up to date

**Recommendation:**

**Welsh Government should commit to reviewing the operation of the Mental Health Measure, including implementing the Duty to Review recommendations, and ensure that there is alignment and a seamless approach across the Codes of Practice for both the Measure and a revised Mental Health Act.**

**Alignment with policy priorities**

- 4. Do you think the provisions of the Mental Health Bill align with the Welsh Government's Mental Health strategy and broader policy priorities?**
- 5. Are there specific Welsh priorities or policies that should be better reflected in the Bill?**

The intention behind the new Mental Health Bill is to improve the rights and experiences of people subject to detention for their mental health. Creating more rights for people subject to the Bill is in line with Welsh Government policy, although there has been less of a focus on inpatient care in recent years with the focus being more on prevention and early intervention to prevent people needing to be detained and placed in an inpatient unit. The development of this legislation provides the perfect opportunity to examine the quality and effectiveness of inpatient care and detention within Wales, as outlined in our *Raising The Standard* report.

- **Race Equity Commitments**

It should be remembered that one of the primary drivers for the initial review of the Mental Health Act was the shocking racial injustices in the use of the Act. Experiences and outcomes are also on average worse for people from racialised communities. Data from England indicates that Black and Black British people are more likely to be detained for longer and to experience repeated admission. They are also more likely to be subject to police powers under the Act and experience higher levels of restraint compared to White people. Whilst the data with regard to Wales is not as comprehensive, we have no reason to question that statistically this would also be true of the application here, despite having smaller communities. In our view the current Bill only scratches the surface of addressing the racial disparities within the Act. It has failed to take on many of the recommendations from both the independent review of the Act and the pre-legislative scrutiny.

In Wales we have the Welsh Government's Anti-Racist Wales action plan and the draft mental health strategy outlined the intent to ensure the mental health system is anti-racist in its approach and application. Both of these commitments are welcome and the Welsh Government could continue to lead the way by taking steps to request amendments to the legislation to strengthen the provision in relation to anti-racism in the workings of the legislation.

We would like to see the Bill amended to introduce a new "responsible person" role at the hospital level to oversee race equity in the operation of the new Act. The person in the role would have responsibility for monitoring data and overseeing workforce training and policies to address bias and discrimination in the use of the Act. This would be particularly important in Wales where we know that data collection and publication is poor and reporting on protected characteristics is also limited. We would also like to see a requirement on the mental health tribunal to report on its discharge rate and use of statutory recommendations, with breakdowns by racialised communities, to establish a better understanding of whether decisions are being made consistently.

We would like to see a duty introduced on the Secretary of State and extended to Welsh Ministers to report on progress in reducing inequalities and there should be an equity principle included on the face of the Bill to make clear that this must be at the heart of decision making.

Finally, as part of the Welsh Government's commitment to anti-racism, they should seek to develop a Patient and Carer Race Equality Framework for Wales. This has already been co-produced for the NHS in England<sup>3</sup> with the purpose of guiding and tackling inequality within the mental health system.

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<sup>3</sup> <https://www.england.nhs.uk/mental-health/advancing-mental-health-equalities/pcref/>

At present there is no equivalent framework for Wales and the development of one would make real in mental health services the intention behind the Anti-Racist Wales Action Plan.

**Recommendation:**

**Welsh Government should seek to instigate amendments to the legislation that strengthens the race equity elements as outlined above, reflects the Welsh Government's commitments to an anti-racist Wales and commit to the development of the Patient and Carer Race Equality Framework for the delivery of mental health services in Wales**

- **Use of restrictive practices**

The Mental Health Act 1983's Code of Practice for Wales is clear that restrictive practices must only be used as a last resort. It should only be used when all other interventions have failed and have not had a successful outcome for the patient.

Currently, no data is published about restrictive practice in Wales. In Wales we have the *Reducing Restrictive Practices Framework*<sup>4</sup>, which is a multi-sector framework for reducing the use of restrictive practices, which is non-statutory. The guidance lists specific areas of data that Local Health Boards should collect, such as the length of time that an incident of restraint happened. Particularly without data on a person's protected characteristics, such as their age or ethnicity, it is hard to know who is more likely to be subject to restrictive practices.

Our work for *Raising The Standard* identified concerns over data collection and collation in relation to the use of restrictive practices within NHS mental health inpatient settings and also reflected concerns within Health Inspectorate Wales (HIW) annual reports which highlighted lack of training and repeated incidences of restraint. Our FOI's to health boards also identified that some units have used prone restraint on patients. Prone restraint is where a person is held chest down, whether they placed themselves in this position or not, is resisting or not and whether they are face down or have their face to the side. It should only be used in exceptional circumstances and where necessary to maintain the safety of patients and others.

We believe the Welsh Government should use the Mental Health Bill as an opportunity to extend the Mental Health Units (Use of Force) Act to Wales. The Act is known as Seni's Law, being named after Olaseni Lewis who died as a result of being forcibly restrained in 2010, and "make(s) provision about the oversight and management of the appropriate use of force in relation to people in mental health units"<sup>5</sup>. Whilst the legislation states it extends to England and Wales, the powers lie with the

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<sup>4</sup> <https://www.gov.wales/reducing-restrictive-practices-framework-html>

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/2018/27/enacted>

Secretary of State within the legislation and only references English NHS structures. The legislation provides a basis for statutory guidance in relation to the use of restraint within mental health units.

Extending this law to Wales would both ensure equality of treatment between both nations, clarify the duties as they relate to Welsh Ministers and provide a basis for statutory collection of data and guidance for use of restraint within mental health inpatient settings.

**Recommendation:**

**We ask Welsh Government to use this Bill as an opportunity to extend the Mental Health Units (Use of Force) Act to Wales in order to clarify its scope and provide patients with the same rights as those in England**

- **Care and Treatment Plans (CTPs)**

The proposed Bill would introduce Care and Treatment Plans for people subject to inpatient care in England. The Mental Health Measure already has provision for CTPs and has put in place a wider remit so a Plan will be in place for anyone in receipt of secondary mental health care. Whilst we have had CTPs in Wales for some time, it will be important to ensure that any measures proposed within the Bill and subsequent guidance that are beyond what we have already are taken into account. The CTPs as outlined in the Bill appear to be more focussed on clinical decision making in relation to treatment, detention and use of restrictive practices. The CTPs under the Mental Health Measure are more about outcomes and ongoing holistic support for people, which does not appear to be the intention of those in the Bill. This means that whilst they have the same title, the intent of the plans are different, hence the need to ensure that plans in Wales encompass the focus of the plans proposed in the Bill to provide the widest possible coverage and further enhance the CTPs available to patients in Wales.

The quality and effectiveness of plans, including the level of co-production with patients, has been highlighted several times in Wales. Mind Cymru has called for improvements to care and treatment planning for patients under the Measure for several years. Welsh Government data indicates that most people receiving secondary mental health services have a valid CTP, but we know the general quality of them needs to be improved. Our 10-year review of the Measure<sup>6</sup> recommended that the Welsh government:

- Develop mandatory training for care coordinators on producing quality CTPs, to ensure the training is implemented nationally and monitor uptake.

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<sup>6</sup> [https://www.mind.org.uk/media/13351/thementalhealthmeasure\\_tenyearson.pdf](https://www.mind.org.uk/media/13351/thementalhealthmeasure_tenyearson.pdf)

- Develop accessible information and advice about co-production and taking part in care and treatment planning and ensure it is available for patients and other relevant people including carers, advocates etc.

Incomplete and insufficient CTPs can have negative consequences for patients. Some recent inspections by HIW saw that “a lack of detailed information was recorded” to “reflect patient needs and reasons for interventions in order to ensure safe patient care”. This is particularly concerning as the use of restrictive practice should be planned so that it is more likely to be avoided.

Better planning and adequate support for staff in how to use CTPs effectively would benefit patient outcomes and ensure they feel treated with dignity and respect. It is positive to note that the new draft mental health strategy recognises the need to improve the quality of CTPs and to better involve patients and their families in their development. This commitment needs to be made a reality urgently to drive the improvements needed.

**Recommendation:**

**Welsh Government should ensure that either through the Bill or subsequent regulations CTPs in Wales are inclusive of the aspects of clinical decision making outlined in the Bill**

**Welsh Government should commit to ensuring the quality and co-production aspects of CTPs in Wales are improved, regularly reviewed and appropriate training made available for those developing plans.**

**Cross-border considerations**

- 6. *How will the Bill address the movement of patients across the Wales-England border, ensuring smooth collaboration between services?***

Having the same rights and duties in both nations should provide for a seamless experience for people in receipt of care across the border in England. It is particularly important to ensure that care and treatment plans are valid in both nations, as these will determine the care and support someone should receive when they enter or are discharged from an inpatient unit.

**Application of the Mental Health Act 1983: autism and learning disability**

- 7. *How will the Bill's provisions integrate with Welsh Government's efforts to reduce mental health-related hospital admissions? Specifically, your views on proposals to amend the Mental Health Act 1983 so that people with a learning disability and/or autism cannot be detained for compulsory treatment unless they have a “psychiatric disorder”.***

We have no specific expertise in this area, although we would support any steps to ensure people receive the right and appropriate level of support consistent with their diagnosis or condition.

### **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”).***

A Community Treatment Order (CTO) allows a responsible clinician to discharge a detained patient from hospital whilst imposing conditions and retaining the ability to recall the patient to hospital.

Work we have undertaken in England in relation to CTOs has led us to the position that these orders are not effective in their main aim of reducing readmission nor do they reduce the amount of time people spend in hospital. People have told us that they are coercive and intrusive whilst also being hugely unsupportive of people’s recovery. There is a lack of information about how people can be discharged from the CTO and it is questionable whether in a well-resourced and co-ordinated mental health system compulsory supervision should be necessary. Due to this we believe that CTOs should be abolished, a position supported by the Joint Committee on the draft Mental Health Bill which also concluded that CTOs should be abolished for people under part II of the Act.

Mind is currently calling for the Bill to be amended to either abolish CTOs or at least introduce a statutory review of CTOs to report within three years of Royal Assent. The Bil should also be amended to introduce a maximum duration of two years for CTOs whilst any statutory review is underway.

#### **Recommendation:**

**We call on the Welsh Government to support the abolition of Community Treatment Orders and/or to instigate a review into their effectiveness and application within Wales, ensuring that the voices of lived experience are fully heard.**

### **Nominated person**

9. ***Your views on:***
- a) ***the proposed introduction of a “nominated person” role to replace the nearest relative in decision-making;***
  - b) ***the extent to which this proposed reform is consistent with the Welsh Government's vision for a rights-based approach to mental health care?***

The proposed bill would replace the Nearest Relative (NR) provision in the Mental Health Act 1983 with a new role of a Nominated Person (NP). This NP will be able to represent the person and exercise relevant statutory functions on their behalf.

The 2018 Independent Review of the Mental Health Act highlighted that service users and stakeholders consistently found the current model of family and carer involvement outdated and insufficient.

We welcome the introduction of the nominated person, which will enable people to choose someone who will represent their interests. There are clear benefits for children and young people, who should be able to choose who represents their interests and can act on their behalf when they are unable to do so.

### **Deprivation of liberty**

- 10. *How does the Bill address the use of compulsion and deprivation of liberty in mental health care (e.g. to shorten the period etc), and does it respect Wales's legislative competence in these areas?***
- 11. *Are the safeguards for patients sufficient, particularly for children, young people, and those with learning disabilities or neurodiverse conditions?***

We have outlined our view on the decision to progress this legislation on a Wales and England basis earlier in the response. Currently provisions for deprivation of liberty are the same in both nations governed by the current legislation and as the new legislation would not propose any deviation on these areas between the nations, we would conclude that there would not be any specific impact on legislative competency as this has always rested within the current legislation.

In terms of children and young people, we have addressed some specific issues in answer to the penultimate question.

### **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 have no specific evidence regarding this particular issue.

### **Help and information for patients**

- 13. *Your views on proposals to place a duty on Local Health Boards in Wales to make arrangements they consider appropriate for making information available about advance choice documents (“ACD”) and helping those people they consider appropriate to create ACDs.***

We welcome the provision to introduce Advance Choice Documents, which will enable people to provide their thoughts and preferences for treatment in advance and can be used to steer professionals if the person is unable to provide the guide themselves. We would welcome clarification from Welsh Government on how these documents will interact with and relate to Care and Treatment Plans under the Mental Health Measure, so that there is seamless support available to people.

For these documents to be effective then there needs to be clear, accessible information available so that people feel able and confident in completing them. Consideration should also be given to wider crisis planning and how these documents can feed into keeping people safe and enabling access to early support.

**Recommendation:**

**Welsh Government to clarify relationship between Advance Choice Documents and Care and Treatment Plans as set out by the Mental Health Measure.**

**Early intervention and community based support**

- 14. *Are the provisions for crisis intervention and preventive care adequate and in line with the Welsh Government’s focus on early intervention and community-based support?***

We welcome Welsh Government’s focus on early intervention and support, as this is crucial to preventing people reaching a point of crisis. We should not underestimate the continuing role that mental health stigma plays in acting as a barrier to people seeking support or how being stigmatised by professionals can prevent future support being sought. Whilst we have come a long way in being more open in talking about mental health there are still experiences that are less understood and public attitude surveys are indicating that some of the good work in tackling stigma is being undone with an increase in negative attitudes.

Considerable work has been undertaken in recent years to improve the support available to people who experience a mental health crisis. From reducing the use of police cells to detain people to funding being made available for the development of sanctuary services for both adults and children and young people. Whilst these developments are welcome, we should not lose sight of the need to ensure we are supporting people at an early enough point so that they do not experience a crisis in

the first place. We have heard frequently from people with lived experience that it often feels like help and support is not there when it is needed, and it is only at the point of crisis that people can access what they need.

As the police forces in Wales roll out Right Care Right Person (RCRP), which outlines what calls relating to mental health the police will respond to, it will be important to monitor and understand the impact this is having, not only on police time and presentations at NHS services such as A&E, but also on the voluntary sector and the experiences of people seeking help with their mental health when experiencing a crisis. We fully support people getting the right help from the right professionals at the right time, however this needs to be carefully agreed between organisations and the interests of the person seeking support placed at the centre of the approach. We are awaiting more information and feedback on how the initial roll out of the approach has impacted on people seeking help.

There needs to be more thought given to the extent of community support available once someone has been discharged from an inpatient unit, the way in which a Care and Treatment Plan guides what support someone can access and the capacity to effectively support someone on their recovery journey within the community. We know that there is an increase in people seeking help and support which is leading to lengthy waits for support in some parts of Wales. The system at both NHS and voluntary sector level is under significant pressure to meet the level and complexity of need. This will need to be understood and carefully monitored as the new legislation is implemented to ensure that the new provisions within the Bill can be supported by the rest of the mental health system.

### **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.***

Whilst we welcome this provision, in fact police stations are now very rarely used as a place of safety for anyone experiencing a mental health crisis, as the data highlights. The development of the Crisis Care Concordat by Welsh Government, statutory and voluntary sector partners sought to ensure that people experiencing crisis received the right support from the right organisation at the right time. The development of the Concordat also led to the wider commissioning of sanctuary services from the voluntary sector in Wales for adults and increasingly for children and young people. These are safe spaces for people to be taken in order to receive support.

### **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?**

The Bill aims to introduce more choice, accountability and oversight in how the Mental Health Act is used. Welsh Government has based its policy direction around children's rights as outlined in the UNCRC. We believe that whilst this Bill does tackle some areas in relation to children and young people, there is more that it could be doing in order to fully embrace the children's rights-based approach Welsh Government is committed to.

We believe the following changes are needed to the existing provisions in the Bill to strengthen safeguards for children and young people.

- **Advance Decisions**

The Bill will give legal weight to Advance Decisions within the Mental Health Act. This means that adults will be able to record their advance refusal to a particular treatment in the event they lose capacity. An advance decision will have the same effect as a capacious refusal of treatment and will ensure that the individual can access enhanced safeguards before that treatment can be given<sup>7</sup>. Whilst Advance Choice Documents (in which advance decisions can be recorded) will be available to people of all ages, the Bill does not permit under 18s to make advance decisions.

As such, someone under 18 could say in their Advance Choice Document that they refuse a particular treatment in the future, but this would have limited weight. Specifically, it would mean that if the child or young person lacked capacity or competence to consent to treatment when it was offered, their advance refusal would not give them access to the enhanced treatment safeguards available to adults. This means that rather than being on an equal footing, children and young people would be disadvantaged compared with adults.

**Recommendation:**

**We ask the Welsh Government to seek an amendment to the Bill which extends advance decisions to children and young people aged under 18.**

- **A framework for assessing capacity for under 16s**

Many of the safeguards set out in the Mental Health Bill rely heavily on consent, capacity and competence to make decisions. For those aged 16 and above, the test for assessing capacity is set

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<sup>7</sup> Making an advance decision does not give an absolute right to refuse that treatment under the Mental Health Act. It will simply enable access to enhanced safeguards and if those safeguards are followed correctly, treatment can still be given,

out in the Mental Capacity Act 2005. However, there is no test for determining whether an under 16-year-old can make a decision about their care.

This is of huge importance because unless those aged under 16 demonstrate that they are able to make the particular decision, they are assumed to be unable to do so. Accordingly, without a framework in place, children and young people aged under 16 will not benefit fully from the rights and safeguards included in the Bill. For example, a lack of a decision-making framework will impact on determining whether an under 16-year-old can exercise their right to choose a Nominated Person (or terminate their nomination) and to access enhanced safeguards around treatment. It will also be a crucial factor in determining whether or not they can consent to informal admission.

**Recommendation:**

**We ask Welsh Government to seek an amendment to the Bill to include a framework for assessing capacity for under 16s.**

**Workforce**

**17. *What impact will the Bill have on mental health practitioners and services in Wales, particularly in the context of staffing pressures and workforce development?***

There will clearly be a need to ensure that all professionals have the appropriate training and awareness in relation to the new provisions within the proposed Bill. Health Education and Improvement Wales will need to ensure that the mental health workforce plan considers the provisions within the Bill to ensure not only training is available, but also that the right skill mixes are being trained to make the rights in the Bill a reality for people. We know that often those working in inpatient units are doing the best they can, but staffing shortages can lead to more pressure and stress on the workforce, which has a knock-on impact on the activities and support patients can receive. There is an urgent need to ensure that the workforce strategy listens to both those working within inpatient settings and patients themselves so that the workforce can feel supported to deliver the best outcomes for people in their care.

It is worth considering the capacity of the Mental Health Tribunal for Wales as well. The Bill will bring in changes to the tribunal system and Welsh Government should provide reassurances that the resources will be available to meet any future demand for access to the tribunal from patients. Connected to this there is also the need to consider the depth of the legal profession able to undertake mental health casework to ensure that people can access appropriate, expert legal support when engaging with the tribunal.

**Conclusion**



We believe that this Bill is a step forward for improving the rights and safeguards for people in both Wales and England. However, we believe that the Bill could be strengthened with amendments in a few key areas to improve experiences and safeguard people.

We welcome the scrutiny of the LCM and the Bill general and would be happy to discuss further any aspect of this response

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