

Independent Review of the Mental Health Act 1983 - Final Report

Purpose of report

For direction.

Summary

This report updates Community Wellbeing Board Members on the publication of *'Modernising the Mental Health act. Increasing choice, reducing compulsion' - the final report of the Independent Review of the Mental Health Act 1983.*

This report is intended as background to the Board discussion with Andy Bell, Deputy Chief Executive of the Centre for Mental Health, and member of the Working Group that supported the review. Andy Bell is to attend the LGA Community Wellbeing Board.

Recommendations

Community Wellbeing Board Members are asked to:

1. Note the update on the final report of the Independent Review and recommendations;
2. Agree and comment upon the draft key messages in response in paragraph 12 to 13; and
3. Agree that that the Community Wellbeing Board Chairman writes a response to the recommendations of the review to Professor Sir Simon Wessely, the Review Chair and also to Jackie Doyle-Price MP, the Minister for Mental Health, Inequalities and Suicide Prevention.

Action

Officers to action in accordance with Members' direction.

Officers will share this report with the LGA Children and Young People's Board Lead Members, as the Mental Health Act 1983 also applies to Children and Young People. We will inform the Community Wellbeing Board Members of the Children and Young People Board views, and reflect their views in any future actions.

Officers will discuss with ADASS about their response to the Mental Health Act review and, in particular, any new operational or legal implications that may present new burdens.

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Independent Review of the Mental Health Act 1983 – Final Report

Background

1. The Government has published the final report of [the Independent Review of the Mental Health Act 1983](#). The report makes a number of recommendations about how to bring the Mental Health Act (MHA) up to date and give people a stronger say in their treatment.
2. The LGA made a detailed submission to the review and officers from the review team met with the LGA Community Wellbeing Board in February 2018.
3. The final report sets out recommendations covering four principles that the review believes should underpin the reformed Act:
 - 3.1. choice and autonomy – ensuring service users' views and choices are respected
 - 3.2. least restriction – ensuring the Act's powers are used in the least restrictive way
 - 3.3. therapeutic benefit – ensuring patients are supported to get better, so they can be discharged from the Act
 - 3.4. people as individuals – ensuring patients are viewed and treated as rounded individuals
4. The review looks in particular at:
 - 4.1. rising rates of detention under the Act;
 - 4.2. the disproportionate number of people from black and minority ethnic groups detained under the Act; and
 - 4.3. processes that are out of step with a modern mental health care system.
5. The report recommends that a Mental Health Act, with compulsive powers is retained, whilst there being a shift towards a more rights based approach, improving respect and dignity, and ensuring greater attention is paid to a person's freely expressed wishes and preferences. Furthermore, that all reasonable support will be available to enable people to take their own decisions where that can be done. The review recommends MHA regulation should be amended to require professionals to record how the principles have been taken into consideration.
6. The review states that taken as a whole their recommendations will mean that the new MHA will have greater safeguards and greater respects for wishes and preferences. All of these will be underpinned by changes to accountability, challenges and transparency.
7. In its response to the review the government has said it will introduce a new Mental Health Bill to transform mental health care. There is currently no confirmed timeframe for

this. However, the review state that ‘the core of our recommendations must be taken alongside the forthcoming NHS Long Term Plan – improved crisis and community services are essential if our recommendations are to be effective’.

8. There are 154 recommendations in the review report. Not all apply directly to local government and but many do. Recommendations range from technical and operational use of the Act, legislative and regulatory change, to service improvement and cultural change.
9. The government has immediately accepted two of the review’s recommendations to modernise the Mental Health Act. Firstly, those detained under the Act will be allowed to nominate a person of their choice to be involved in decisions about their care. Secondly, people will also be able to express their preferences for care and treatment and have these listed in statutory ‘advance choice’ documents.
10. The LGA has [responded](#) publically to the final MHA review report. We said it was positive that the review team has recognised the role of community mental health services in preventing people from reaching crisis point in the first place.
11. Funding implications are not addressed in detail in the report, but the report states that their recommendations must be considered alongside the NHS Long Term Plan (LTP) and Green Paper. The LTP promises investment in mental health services. The LGA has said that the ambition set out in the LTP can only be fully realised if adult social care and public health services in councils are also properly funded.
12. **Board members are invited to consider the following suggested key points, which could form the basis of our response to the Review’s recommendations:**
 - 12.1. **We welcome the focus on more rights based approach.** Mental health services should be designed around the needs of the person, their families and carers.
 - 12.2. **We welcome the fact that the review recognises local government’s role in mental health** both in terms of its statutory duties under mental health legislation, supporting treatment and recovery, prevention and early intervention in the community. We believe there needs to be a re-focus in mental health services away from medicalisation and treating mental ill health to early intervention and support for recovery through integrated community based services.
 - 12.3. **We urge government to follow through with much-needed investment in community mental health services.** Improvements cannot be achieved by legislation alone. Whilst legislative change is critical, any changes to the MHA must be underpinned by improvements to mental health services.
13. **Any new statutory duties introduced in response to the review will require additional funding for local authorities which must be met by government.**
 - 13.1. A key issue for councils is funding for mental health. Whilst the NHS has seen increased spending on mental health of £11.4 billion since 2010, with a further

£1 billion promised by 2020/21, the social work element of mental health has seen no such investment.

- 13.2. Furthermore there continues to be a historical underspend on children's mental health when compared with adult mental health spend. We need to ensure local areas receive the full £1.7 billion of funding as promised for Future in Mind and the Government's Green Paper Transforming Children and Young People's Mental Health Provision and for funding to be guaranteed beyond 2021 in order ensure services are sustainable going forward.
 - 13.3. The review also recommends the Government should resource policy developments into alternatives to detention and prevention of crisis. Providing more and better alternatives to detention will only be possible with additional funding.
- 14. Deprivation of Liberty Safeguards (DoLS):** The review has run in parallel with the introduction of the Mental Capacity (Amendment) Bill. The LGA agrees with the Review's recommendation that that the Deprivation of Liberty Safeguards (DOLS) as part of the Mental Capacity Act (MCA) needs urgent reform. This should create a simpler scheme that ensures adequate protection for human rights. Briefings on the Bill can be found on the LGA website. We wish to continue to work with Government and national partners as the Bill develops, and on any code of practice and impact assessment that clarifies and resources councils' responsibilities.
- 15. Some specific recommendations in the MHA review relevant to local government include;**
- 15.1. **To enhance and extend advocacy.**
 - 15.2. **Commissioning by local authorities should be strengthened** to improve transparency and effectiveness across the system.
 - 15.3. **Approved Mental Health Professionals.** The review recommends that the LGA, ADASS, AMHP leads, NHS England, HEE and DHSC agree guidance on the appropriate number of AMHPs for the successful operation of the MHA and ensure that local areas have the ability to fulfil this. They recommend that the government should consider developing regulations that outline AMHP training and professional standards.
 - 15.4. **The review recommends there should be more accessible and responsive mental health crisis and community based services** that respond to people's needs and keep them well.
 - 15.5. **The review recommends that there is a concerted, cross organisational drive to tackle the culture of risk aversion** – to include LGA and ADASS and other national partners.

- 15.6. **Detention.** Changes to the Act to clarify and improve levels of length of detention, and challenging detention and clarify the criteria and practice of Community Treatment Orders.
- 15.7. **Safeguarding.** Local authorities have a responsibility under the Care Act to investigate any safeguarding issues, including those in private and mental health units in their area and that Trusts have a duty to co-operate with local authorities on safeguarding issues. The review notes that local authorities have not always been involved to the extent that they should, and that hospitals have not always engaged with the safeguarding process.
- 15.8. **Improved care planning and Section 117 aftercare.** The review recommends that there should be a statutory care plan for people in contact with mental health services. And a statutory duty for CCGs and local authorities to work together to deliver the plan. In addition, new national guidance should be created to tackle the confusion that exists around S117 aftercare.
- 15.9. **Person centred care.** The review makes recommendations to improve experiences of people from ethnic minority communities. Including, culturally appropriate advocacy, greater representation in all professions, behavioural interventions to combat implicit bias to be piloted and improved data on use of the MHA.
- 15.10. **Learning disabilities and autism.** The review recommends a new duty on health and social care commissioners to collaborate to provide sufficient community based alternatives to detention for those with learning difficulties, autism or both, and to facilitate timely discharge.
- 15.11. **Children and young people.** The review has made recommendations in two main areas for children and young people: the legal basis for admission and treatment; and proper safeguards and procedures. The review states that they want to establish a proper balance between the rights of young people and those who are legally responsible for them, usually their parents.

Implications for Wales

16. The review is of the UK Governments responsibilities under the MHA in England and Wales. The UK Government is responsible for health policy in England, and justice policy in England and Wales. The Welsh Government may be interested to follow similar reforms but each set of proposals will have to be tested specifically for Welsh application and modified as necessary.

Financial Implications

17. Financial implications of the review are not identified in the report. However the review states that the recommendations are to be seen in the context of the NHS Long Term Plan and social care Green Paper.

Next steps

18. Community Wellbeing Board Members are asked to;

- 18.1. Note the update on the final report of the independent Review and recommendations;
- 18.2. Agree and comment upon the draft key messages in response;
- 18.3. Agree that the Community Wellbeing Board Chairman writes a response to the recommendations of the review to Professor Sir Simon Wessely, the Review Chair and also to Jackie Doyle-Price MP, the Minister for Mental Health, Inequalities and Suicide Prevention;
- 18.4. Officers will share this report with the LGA Children and Young People's Board Lead Members, as the Mental Health Act 1983 also applies to Children and Young People. We will inform the CWB Members of the CYP Board views, and reflect their views in any future actions;
- 18.5. Officers will discuss with ADASS about their response to the MHA review and, in particular, any new operational or legal implications that may present new burdens; and
- 18.6. Mental health will continue to be a priority for the LGA and officers will engage with partners going forward and keep Board members informed of developments.