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The Independent Review of the Mental Health Act

Purpose

The report is for background to a visit from members of the Independent Review of the Mental Health Act team to the LGA Community Wellbeing Board Members' meeting on 21 February 2018. The review team members are:

1. Mark Trewin, Service Manager – Mental Health, Bradford Council. NHS England Mental Health Social Care Advisor.
2. Andy Bell, Deputy Chief Executive, Centre for Mental Health.

Summary

The Government has announced an independent review of the Mental Health Act, and associated mental health legislation, which could affect working practices, service delivery and protocols within social care and local authorities. This paper provides background to the review and suggested areas of discussion.

Recommendation

That the Community Wellbeing Board members note the report.

Actions

1. Officers to highlight local government's significant role in delivery of the Mental Health Act and providing good quality mental health care in the community.
2. Officers to ensure local government specific concerns are recognised and addressed by the review.

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The Independent Review of the Mental Health Act

Background

1. The Government has said that mental health is a national priority. It has announced an independent review of the Mental Health Act, and associated mental health legislation, which could affect working practices, service delivery and protocols within social care and local authorities.
2. The Independent Review is chaired by Professor Sir Simon Wessely, Regius Professor of Psychiatry at Kings College London, and President of the Royal Society of London.

Purpose of the review

3. The review has been set up to look at how the legislation in the Mental Health Act 1983 is used and how practice can improve. The purpose of the review is to understand the reasons for:
 - 3.1. The rising rates of detention under the Act.
 - 3.2. The disproportionate number of people from black and minority ethnic groups detained under the Act.
 - 3.3. Processes that are out of step with a modern mental health care system.
4. Concerns include, but are not limited to, the following;
 - 4.1. The balance of safeguards available to patients, such as tribunals, second opinions, and requirements for consent.
 - 4.2. The ability of the detained person to determine which family or carers have a say in their care, and of families to find appropriate information about their loved one.
 - 4.3. That detention may in some cases be used to detain rather than treat.
 - 4.4. Questions about the effectiveness of community treatment orders, and the difficulties in getting discharged.
 - 4.5. The time required to take decisions and arrange transfers for patients subject to criminal proceedings.

How the review will operate

5. The review will seek the views of service users, carers, relevant professionals, and affected organisations in producing recommendations. It will produce a report with recommendations for change in autumn 2018.

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6. The review team have established an Advisory Panel that includes: Clare Barcham from the ADASS MH Policy Network, but no representative from the LGA. LGA officers have met with the Lead Officer for the review.
7. Other groups have also been established to feed into the review, these include:
 - 7.1. Service user and carer group: to ensure the voices of those with lived experience of the Mental Health Act are heard during the review process.
 - 7.2. Evidence and analysis group: to provide expert analytical advice to the chair, as well as the advisory panel.
 - 7.3. Working group: to deliver the direction set by the review's leadership and advisory panel, informing the thinking at the heart of the review and ultimately supporting the development of its recommendations.
8. The first phase of work, to spring 2018, will identify the review's priorities. These will then be set out in an interim report. The focus will be on the following sources of evidence:
 - 8.1. Engagement with service users and carers, through a survey and focus groups.
 - 8.2. Engagement with professionals and advocacy organisations, through meetings, workshops and governance groups.
 - 8.3. A call for evidence – the LGA have submitted a number of key publications to the review including Being Mindful, the MH Crisis Concordat research, and Making Safeguarding Personal.
 - 8.4. Commissioning bespoke analysis, including academic literature reviews and data analysis.
9. Full terms of reference of the Independent Review of the Mental Health Act can be found [here](#).

Suggested points of discussion

10. There is an opportunity to influence the Review's priorities and ensure that it properly reflects the role of local government in mental health care.
 - 10.1. **Funding:**
 - 10.1.1. 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. Furthermore, despite increased investment of £1.4 billion in children's mental health services when compared with adult mental health spend (in 2012/13 this equated to 6 per cent of the total mental health budget spent on CAMHS)¹.

¹ Reference <http://epi.org.uk/wp-content/uploads/2016/11/time-to-deliver-web.pdf>

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10.2. Section 117 after care costs:

10.2.1. The lead officer of the review has reported that Section 117 aftercare costs are emerging as an early issue. Under Section 117 a person is entitled to free aftercare if they have been detained for treatment under section 3 of the Mental Health Act. Local authorities and Clinical Commissioning Groups (CCGs) are responsible for providing section 117 aftercare. Sometimes there are disputes between the CCG and the local authority about who is responsible for S117 aftercare services. There appear to be no available figures on how much Section 117 costs local authorities in total.

10.3. Scope of the review: how will the review address the Mental Capacity Act and the Deprivation of Liberty Standards (DoLS)?

10.3.1. Following a Supreme Court judgement in 2014, there was an increase of nearly 70 per cent in completed DoLS assessments from councils between 2014/15 and 2015/16, and a 380 per cent increase between 2013/14 and 2014/15.

10.3.2. A Law Commission impact assessment² concluded that on-going and unfunded costs to local authorities of authorisations under DoLS were around £172 million per year.

10.3.3. It is important that reforming DoLS is part of any new Mental Health Bill to simplify the current complex legislation, address the financial burden that DoLS places on councils and better protect the rights of people receiving care and support.

10.4. Scope of the review: Prevention

10.4.1. The review is looking at the use of the Mental Health Act so prevention may be beyond its scope. Though it's worth noting that councils support and influence mental health and wellbeing in a myriad of ways. We need to move away from just focusing on mental illness to helping everyone stay mentally well. This means overhauling our attitudes and approach to mental health and mental health services, increasing investment in prevention, early intervention and life-time support and building resilience.

10.5. Scope of the review: How will the review address children and young people's mental health and link to the children's MH review and wider mental health reforms:

10.5.1. The Care Quality Commission (CQC) have recently completed phase one of its review of Children and Young People's Mental Health services. The report confirms many of the issues raised in the Five Year Forward View for Mental Health published in 2016 and in particular, comments on the difficulties children

² http://www.lawcom.gov.uk/app/uploads/2015/08/cp222_mental_capacity_impact_assessment.pdf

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and young people face in accessing appropriate support for their mental health concerns from a system that is fragmented and where services vary in quality.

- 10.5.2. During phase two of the thematic review, the CQC will undertake fieldwork to identify what helps local services to achieve, or hinders them from achieving, improvements in the quality of mental health services for children and young people, as set out in the NHS's Five Year Forward View for Mental Health.
- 10.5.3. The recently published green paper on 'Transforming CYP's mental health provision' makes proposals for the introduction of a new Designated Senior Lead for Mental Health in schools and the creation of new Mental Health Support Teams. New teams and structures could add further complexity to an already fragmented system and complex commissioning landscape. Further clarity is needed about the role of local government in the reforms and the relationship between these new teams, schools, local authorities and existing CAMHS. In addition, it is important that the new reforms do not undermine the ongoing work to design and deliver Local Transformation Plans which is attached to the additional £1.4 billion investment for CAMHS.
- 10.5.4. The LGA has recently published [Bright Futures](#), that calls for adequate and sustainable funding for Children's and Young People's mental health services, improving standards and having a focus on prevention.

Local government engagement in the review

11. The LGA has met with the Review Policy Lead and outlined key issues for councils. We have provided a number of publications to the review in their call for evidence. We can help communicate the review to councils and support local government involvement, including working with ADASS.

Implications for Wales

12. The review is commissioned by and will report to the UK Government. Recommendations will extend to England in relation to matters that are devolved in Wales (including health), and England and Wales in relation to non-devolved matters (including justice).
13. The review should engage with the Welsh Government and stakeholders in Wales, where appropriate, to consider interfaces with Welsh legislation and practice.
14. The Mental Health Act applies to both England and Wales. However, since the Government of Wales Act, the Welsh Assembly has been able to pass its own laws and make changes to England and Wales laws as they apply in Wales.

Financial implications

15. The outcomes of the Review may present new burdens or financial implications for councils.