Reforming the Mental Health Act – Consultation responses from Healthwatch Worcestershire

In 2017, the government asked Professor Sir Simon Wessely to lead the Independent Review of the Mental Health Act 1983, to examine issues around the use of the act and to propose recommendations for modernisation and reform.

The final report of the independent review, published in December 2018, concluded that the act does not always work as well as it should for patients, nor for their families and carers. When the act fails people, they become disempowered, are excluded from decisions about their care and treatment, and are treated with neither dignity nor respect. The review found that current legislation goes too far in removing people's autonomy and does not do enough to protect and support the ability of people to influence or make decisions about their own care.

Informed by the review's recommendations, the Government are proposing a wide range of changes to rebalance the act, to put patients at the centre of decisions about their own care. Four principles, developed by the review and in partnership with people with lived experience, will guide and shape our approach to reforming legislation, policy and practice. These are:

- choice and autonomy – ensuring service users' views and choices are respected
- least restriction – ensuring the act's powers are used in the least restrictive way
- therapeutic benefit – ensuring patients are supported to get better, so they can be discharged from the act
- the person as an individual – ensuring patients are viewed and treated as individuals

Healthwatch Worcestershire (HWW) shared the Government's Consultation document with members of our Reference and Engagement Group and invited responses to help shape our reply, none were received. HWW are therefore responding to the following sections as outlined below. These will be submitted online via the Governments survey response portal.

Learning Disabilities and Autism

1. Do you agree or disagree with the proposed reforms to the way the Mental Health Act applies to people with a learning disability and autistic people?

- Strongly agree

HWW agree that it is important to have a focus on providing community support and reduce the number of people with a learning disability and Autism being cared for in specialist inpatient services. Especially as in the past people with learning disabilities and Autism have been in hospitals for long periods of time, out of county and away from their families. Admission to hospital should only happen for very specific reasons, not just the lack of alternative appropriate support and therefore agree with limiting the ability to

detain people with a learning disability and Autism. However, it will be vital that appropriate community support is available.

HWW agree with the importance of recognising that treatment is for the individual's mental health and not learning disability or Autism. Good that that the reform highlights importance of having a better understanding learning disability and Autism and that behaviour may have other drivers, such as unmet emotional, support or medical needs.

2. Do you agree or disagree that the proposed reforms provide adequate safeguards for people with a learning disability and autistic people when they do not have a co-occurring mental health condition?

- Not sure

HWW agree that it is important to understand the reason for behaviours and distinguish between mental health condition and behaviours or traits relating to learning disability or Autism. Also that the Act should be changed to reduce the number of people being admitted to hospital when it is not necessary or appropriate. However, HWW has in the past received feedback about people not being able to access mental health support, due to diagnosis of Autism Spectrum Condition, but without the provision for alternative specialist support. Therefore, it will be important to ensure there is appropriate specialist community support. In particular for people with Autism Spectrum Conditions, who have in the past fallen into the gap between mental health and learning disability services.

3. 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?

- Not sure? – We won't respond to this question

4. We think that the proposal to change the way that the Mental Health Act applies to people with a learning disability and autistic people should only affect civil patients and not those in the criminal justice system. Do you agree or disagree?

- Not sure? – We won't respond to this question

5. Do you expect that there would be unintended consequences (negative or positive) on the criminal justice system as a result of our proposals to reform the way the Mental Health Act applies to people with a learning disability and to autistic people?

- Not sure? – We won't respond to this question

6. Do you agree or disagree that the proposal that recommendations of a care and treatment review (CTR) for a detained adult or of a care, education and treatment review (CETR) for a detained child should be formally incorporated into a care and treatment plan and responsible clinicians required to explain if recommendations aren't taken forward, will achieve the intended increase compliance with recommendations of a CETR?

- Strongly agree – see below

7. We propose to create a new duty on local commissioners (NHS and local government) to ensure adequacy of supply of community services for people with a learning disability and autistic people. Do you agree or disagree with this?

- Strongly agree – see below

8. We propose to supplement this with a further duty on commissioners that every local area should understand and monitor the risk of crisis at an individual-level for people with a learning disability and autistic people in the local population through the creation of a local 'at risk' or 'support' register. Do you agree or disagree with this?

- Strongly agree – see below

For 6, 7 and 8 – HWW agree that these actions should increase accountability of those responsible for care and treatment of individuals, for actions being carried out following care and treatment reviews, providing the required community based support and identifying and monitoring risk. Sufficient monitoring of implementation of all three of these recommendations will be vital. Ensuring involvement and feedback from the individual and their family in their care and the review process. People with a learning disability and Autism and carers should also be involved as experts by experience in the wider monitoring the quality of care, provision of services and reviews of individuals for each area.

9. What can be done to overcome any challenges around the use of pooled budgets and reporting on spend on services for people with a learning disability and autistic people?

- Not sure? – We won't respond to this question

Children and Young People

No specific questions, but generally –

HWW welcome the strengthening of the rights and support children and young people will receive and that all children in in-patient care will receive a care and treatment plan. We also welcome a review of the way in which competence to consent to treatment is assessed.

The Role of the Care Quality Commission

Q - How would CQC support the quality (including safety) of care by extending its monitoring powers?

HWW believe the CQC should have a greater role in monitoring MH services, raising its own profile and publicising both its role and powers, and the activities it will undertake to address the quality of provision for people receiving such services. It will be important to ensure that the principles on which the reforms are based are working in practice. This should include:

- A focus on closed cultures, including awareness-raising sessions and training opportunities for providers and professionals in all sectors
- An emphasis on person-centred care where the individual is protected and has their rights recognised

- Consideration of local joint working and the timeliness of intervention and treatment, including discharge arrangements that are in the best interests of the individual
- Consideration of the provision of appropriate local resources and community services so that care can be provided as close to home as possible
- Monitoring the accessibility of such services for carers/family members and advocates, and the ongoing involvement of the individual's support networks. This should include identifying good practice examples for staying in touch when restrictions are in place (eg pandemic lockdown) and mechanisms for sharing such examples more widely
- Focus on the physical environment to ensure that it is fit for purpose and provides a safe personal space as well as appropriate communal areas, and supports the individual's treatment plan
- Focus on the quality of the workforce – qualifications, training, numbers, support and supervision, etc – so that patients have access to the right people at the right time to meet their needs
- A shift from inspecting individual services to one that looks at services and service development in geographical areas, thereby identifying both effective provision 'across the board', as well as highlighting gaps in provision or problems with working arrangements between agencies.

If CQC is not to have enforcement powers in this area then clear arrangements need to be put in place to ensure that their monitoring activities are meaningful and influential, and regulatory action can be taken by the appropriate body/bodies in a timely fashion to safeguard patients.

The Experiences of People from Black Asian and Minority Ethnic Backgrounds

There are no question for this section – HWW view and response

Healthwatch Worcestershire welcome the proposed changes to the Mental Health Act and acknowledge that overall, the strengthening of the legal basis to Mental Health practice and an enhanced commitment to continuous improvement is welcome and does align the proposed changes to treatments, with current best practice. However, there is one area where we believe particular attention might usefully be commented upon. That is the section dealing with the BAME population of service users.

The proposal to inaugurate a Patient and Care Race Equality Framework (PCREF) is a positive step. The leadership of this initiative will be crucial to its success and the framework and the terms under which it operates will also directly impact of its success. If, as it claims, its aim is "to embed structural and cultural change in health care delivery, to improve how patients from diverse backgrounds access and experience mental health care." It will need to maintain a relationship with the wider community. The use of CTOs and the need for hospital treatments do not usually arise within the hospital, but in the

community and if we wish to embed structural and cultural change in healthcare delivery for diverse communities, it will be necessary to be aware of, and to engage with, external changes outside the formal hospital setting. We believe that holistic not only encompasses the individual. But the whole community.

STP (System Transformation Partnerships) planning does provide an opportunity for some of that engagement in the community. It has set in motion planning groups consisting of a wide and influential group of Health Professionals and senior members of Local Authority Public Health Departments and Housing. These are focused on Patient Care Networks (PCN's) and they have been charged with creating the conditions for better health outcomes in the community. A basic tenet of their objectives is to create a more equal health economy. It is envisaged that the statistical basis for their activities will eventually be based on granular data and will focus on specific areas, which have difficulties. Many of these localities will have a high incidence of people suffering with Mental Health conditions. Exchange of this information could be of considerable value to explaining why persons have serious mental health conditions and whether it is geographically significant, with common features. It may also be a step in the direction of reducing the differences in the amount and quality of different health services and bringing those gaps in Mental support and the wider consequences of that deficiency, may contribute to a reduction in the gap in the deficit in "Parity of Esteem." We consider this substantial aspiration will need the leadership of a senior consultant and a senior manager at the head of the PCREF and ideally at least one of those appointees should be from the BAME community.

We strongly support the intention to ensure that there are enough advocates with enhanced powers from the BAME community to service that community. The proposal that qualifications for all advocates are to be upgraded, is also welcome.

We would also like to see more BAME staff in clinically sensitive and influential positions, such as psychiatry and psychology.

We strongly support the active monitoring of CTOs among the BAME community as a tool for ensuring the are falling.

We express our concern that a recent impact assessment of Approved Mental Health Professionals (AMPH) recommends an increase in numbers of 7% by 2023/04. This is a significant uplift, and we would like to see firmer commitments to the funding implications of this research and how they will be met.

Finally, we support all training within and beyond the borders of the mental health service that will bring about positive changes to health and social welfare inequality and to efforts to embed those structurally within the health service and the wider community.