

PART 1: Proposals for reform of the Mental Health Act (p.20)

1. New guiding principles (p.20)

Consultation Question 1 (p.22)

We propose embedding the principles in the MHA and the MHA Code of Practice. Where else would you like to see the Principles applied to ensure that they have an impact and are embedded in everyday practice?

We welcome the new guiding principles and plans to embed these in the Mental Health Act and Code of Practice. Detention and treatment under the Act represents the most intensive level of mental health intervention, and should be considered in its broader context of the wider care, treatment and recovery system and pathways. These principles should therefore be applied across all tiers of mental health care and service provision, including early intervention, in both developing and delivering services and interventions.

This will help to ensure that service users are involved in decisions about their care from the outset, and that services and support can appropriately meet the needs of individuals, families and communities.

As well as embedding these principles across tiers of support available to individuals, they should also be applied more widely to population-based interventions for prevention and mental health improvement so that these are co-produced, empower communities, and actively seek to reduce inequalities in mental health and wellbeing. This is consistent in the approach set out in the Prevention concordat for Better Mental Health, which states that cross-sectoral action to prevent mental health problems should “draw on the expertise of people with lived experience of mental health problems, and the wider community, to identify solutions and promote equality.”

2. Clearer, stronger detention criteria (p.23)

Consultation question 2 (p.26)

We want to change the detention criteria so that detention must provide a therapeutic benefit to the individual. Do you agree or disagree with this proposal?

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

Consultation question 2a (p.26)

Please give reasons for your answer

The proposed amendment to specify a positive therapeutic outcome from treatment in detention, and not merely to provide that treatment, will support the delivery of higher quality and more patient-centred care for people with serious mental health problems. It is important that 'therapeutic benefit' is appropriately defined in a way that reflects the other guiding principles – choice and autonomy, least restriction and the person as an individual. We welcome recognition that therapeutic benefit is about more than just the treatment itself, but also includes the care environment and culture. This should be complemented by a holistic approach to treatment that considers the needs of the whole person in defining therapeutic benefit, including physical health needs (e.g. access to smoking cessation support).

Consideration of the relative therapeutic benefits of a hospital or community setting is recognised in the proposal as an important factor in decisions about when and whether to discharge a patient; this should also include consideration of the patient's wider circumstances and support networks, and how these may affect their ability to continue to access the care they need. Involving local authority public health teams in Community Mental Health Transformation planning can help to ensure a 'joining up' of mental health services and wider services and support, such as housing, benefits and social care. More broadly, this can be supported by strengthening working relationships between psychiatry, psychology and public health, including through developing cross-specialty training opportunities.

Consultation question 3 (p.26)

We also want to change the detention criteria so that an individual is only detained if there is a substantial likelihood of significant harm to the health, safety or welfare of the person, or the safety of any other person. Do you agree or disagree with this change?

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

Consultation question 3a (p.26)

Please give reasons for your answer

We agree that having clearer criteria for detention on the basis of health, safety or welfare of the individual or others will help to promote transparency and reduce a culture of risk aversion that disproportionately increases detention rates for people from Black, Asian and Minority ethnic (BAME) groups; people with a learning disability; and autistic people. This should also support culture and practice that promotes recovery, independence and wellbeing. We agree that it is important to retain flexibility in the criteria so that appropriate protections can be retained for those who need them; the aim should also be to prevent patients from being discharged into community settings without adequate support.

3. Giving patients more rights to challenge detention (p.28)

Consultation question 4 (p.30)

Do you agree or disagree with the proposed timetable for automatic referrals to the Mental Health Tribunal? (see Table 1 for details)

a) Patients on a section 3

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

b) Patients on a CTO

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

c) Patients subject to Part III

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

d) Patients on a Conditional Discharge

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

Question 4a (p.30)

Please give reasons for your answer

Increasing the frequency of automatic referrals to the Tribunal will increase the scrutiny of detentions under the Act and ensure that all patients have the opportunity to have their case for discharge considered, which can help to improve and reduce inequalities in patient outcomes and experiences. However, this would need to take place alongside continuous system improvement to ensure the best decisions and outcomes for patients. We agree that changes would need to be implemented gradually to ensure system capacity in light of concurrent reforms.

Consultation question 5 (p.32)

We want to remove the automatic referral to a Tribunal received by service users when their Community Treatment Order is revoked. Do you agree or disagree with this proposal?

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

Consultation question 5a (p.32)

Please give reasons for your answer

As this would not have a material impact on patients, we agree that system capacity would be better used to manage other reforms.

Consultation question 6 (p.33)

We want to give the Mental Health Tribunal more power to grant leave, transfers and community services. We propose that Health and Local Authorities should be given five weeks to deliver on directions made by the Mental Health Tribunal. Do you agree or disagree that this is an appropriate amount of time?

Strongly agree/ Agree/Disagree/ Strongly disagree/Not sure

Consultation question 6a (p.33)

Please give reasons for your answer

Consultation question 7 (p.34)

Do you agree or disagree with the proposal to remove the role of the managers' panel in reviewing a patient's case for discharge from detention or a CTO?

Strongly agree/ Agree/Disagree/ Strongly disagree/Not sure

Consultation question 7a (p.34)

Please give reasons for your answer

As the review states, there are mixed views from stakeholders on the effectiveness of managers' hearings, which may reflect differences in local systems and practice. Further evidence on whether there is systematic variation in stakeholder experiences across Trusts, and the extent to which these could practicably be addressed, should be taken into account in making this decision.

4. Strengthening the patient's right to choose and refuse treatment (p.35)

Consultation question 8 (p.37)

Do you have any other suggestions on what should be included in a person's Advance Choice Document?

We welcome the requirement to proactively offer an Advance Choice Document to all individuals who have previously been detained. The process of completing the document is as important as its content; individuals should be appropriately supported to consider their needs, options and wishes, make informed decisions about their own mental health, and to communicate these clearly in the document. There is clear rationale for encouraging service users to have their documents authenticated by health professionals but not making this a requirement for the document to be considered valid; however, the most important thing is the discussion that takes place during that process to explore potential risks, benefits and consequences.

In addition to the information specified, the following should also be included:

- Other support (wider public services or community) that they access;
- Wider health and wellbeing preferences (e.g. physical activity, being outdoors, creative activities)

These would help responsible clinicians and others involved in the patient's care, including friends, families and carers, to better support them as they move towards recovery.

Consultation question 9 (p.38)

Do you agree or disagree that the validity of an Advance Choice Document should depend on whether the statements made in the document were made with capacity and apply to the treatment in question, as is the case under the Mental Capacity Act?

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

Consultation question 9a (p.38)

Please give reasons for your answer

While the Mental Health Act and Mental Capacity Act operate as two distinct frameworks, these should be considered holistically when applied to the care of individuals to whom either or both may apply. The same level of safeguarding should be provided so that patients who do not have the capacity to make decisions about their care receive the same quality of care regardless of which Act applies.

Consultation question 10 (p.40)

Do you have any other suggestions for what should be included in a person's Care and Treatment Plans?

As above in Q8 – in line with a more holistic, patient-centred approach to care and treatment, the Plans should incorporate wider health and social needs, services and approaches that support individuals to improve their physical and mental health and wellbeing, progress through recovery, and prevent relapse. This should include integrated or concurrent treatment pathways (e.g. in the case of dual diagnosis of a mental health problem and substance use disorder) and preventative care (e.g. contraceptive services). Plans should also include consideration of cultural practices and needs.

Consultation question 11 (p.45)

Do you agree or disagree that patients with capacity who are refusing treatment should have the right to have their wishes respected even if the treatment is considered immediately necessary to alleviate serious suffering?

Strongly agree/ **Agree**/Disagree/ Strongly disagree/Not sure

Consultation question 11a (p.45)

Please give reasons for your answer

Shared decision-making ('no decision about me without me') is key to delivering patient-centered care, and is known to improve health outcomes and experiences of services. If we are to achieve parity of esteem between physical and mental health, then individuals experiencing mental health problems need to be afforded the same rights and respect as those presenting with physical health conditions. Failing to do so is likely to harm the patient-provider relationship, and increase the likelihood of engagement with services or treatment. It also directly contradicts the autonomy principle set out in this proposal.

Definitions of 'suffering' and what should be done to alleviate it are also subjective, particularly with regards to mental health and wellbeing. There is also no universal treatment that is appropriate for every patient; for example, while some may benefit from medication, others may feel that an alternative form of treatment would be more appropriate (e.g. talking therapies) – or that any potential benefits would be outweighed by side effects. Improving access to earlier intervention and treatment before an individual reaches the point where they are subjected to the Act, and involving them in decisions about that care, can help to avoid the degree of suffering where refusing treatment could be detrimental to the patient.

Consultation question 12 (p.48)

Do you agree or disagree that, in addition to the power to require the Responsible Clinician to reconsider treatment decisions, a the Mental Health Tribunal judge (sitting alone) should also be able to order that a specific treatment is not given?

Strongly agree/ Agree/Disagree/ Strongly disagree/Not sure

Consultation question 12a (p.48)

Please give reasons for your answer

5. Improving the support for people who are detained (p.49)

Consultation question 13 (p.51)

Do you agree or disagree with the proposed additional powers of the Nominated Person?

Strongly agree/ Agree/Disagree/ Strongly disagree/Not sure

Consultation question 13a (p.51)

Please give reasons for your answer

The proposed additional powers of the Nominated Person could improve support for individuals who would otherwise struggle to make their wishes and concerns heard.

However, it is important that the NP is appropriately chosen to ensure that they truly represent the patient's best interests, and that the patient themselves is supported in making that choice to the best of their capacity and ability.

Consultation question 14 (p.52)

Do you agree or disagree that someone under the age of 16 should be able to choose a Nominated Person (including someone who does not have parental responsibility for them), where they have the ability to understand the decision (known as "Gillick competence")?

Strongly agree/ Agree/Disagree/ Strongly disagree/ Not sure

Consultation question 14a (p.52)

Please give reasons for your answer

Decisions concerning children under 16 should be considered in the context of appropriate safeguards to ensure that the adult in question was acting in their best interests. More joined up working between health, social care and education can help to identify where there may be safeguarding concerns in or outside the home.

Consultation question 15 (p.54)

Do you agree or disagree with the proposed additional powers of Independent Mental Health Advocates?

Strongly agree/ **Agree**/Disagree/ Strongly disagree/ Not sure

Consultation question 15a (p.54)

Please give reasons for your answer

The proposed additional powers could enable a more holistic, personalised approach to advocacy by involving IMHAs throughout the patient journey, supporting them to be more involved in decisions about their care at all stages. As well as these additional safeguards, it is important to reduce inequalities in access to advocacy services, particularly among marginalised groups (some patient groups would prefer an 'opt out' model), and also to improve the quality and consistency of services.

Consultation question 16 (p.55)

Do you agree or disagree that advocacy services could be improved by:

- Enhanced standards

Strongly agree/ **Agree**/Disagree/ Strongly disagree/ Not sure

- Regulation

Strongly agree/ **Agree**/Disagree/ Strongly disagree/ Not sure

- Enhanced accreditation

Strongly agree/ **Agree**/Disagree/ Strongly disagree/ Not sure

- None of the above, but by other means

Strongly agree/ **Agree**/Disagree/ Strongly disagree/ Not sure

Consultation question 16a (p.55)

Please give reasons for your answer

Enhancing standards, regulation and accreditation can both improve the overall quality of independent advocacy services, and reduce inequities in patient experiences and outcomes. However, this relies on criteria being developed appropriately and in a way that is representative of diverse patient groups and their needs. It is also important to ensure that efforts made to increase diversity and representation among the mental health workforce includes IMHAs.

6. Community Treatment Orders (CTOs) (p.56)

No consultation questions in this section

7. The interface between the Mental Health Act and the Mental Capacity Act (p.61)

Consultation question 17 (p.64)

How should the legal framework define the dividing line between the Mental Health Act and the Mental Capacity Act so that patients may be made subject to the powers which most appropriately meet their circumstances?

Safeguards across the MHA and the MHC need to be harmonised and strengthened so that improvements are felt by anyone detained in hospital for mental health treatment.

Consultation question 18 (p.65)

Do you agree or disagree that the right to give advance consent to informal admission to a mental health hospital should be set out in the MHA and the MHA Code of Practice to make clear the availability of this right to individuals?

Strongly agree/Agree/ Disagree / Strongly disagree/ Not sure

Consultation question 18a (p.65)

Give reasons for your answer

If agree:

Consultation question 18b (p.65)

Are there any safeguards that should be put in place to ensure that an individual's advance consent to admission is appropriately followed?

Consultation question 19 (p.67)

We want to ensure that health professionals are able to temporarily hold individuals in A&E when they are in crisis and need a mental health assessment, but are trying to leave A&E. Do you think that the amendments to section 4B of the Mental Capacity Act achieve this objective, or should we also extend section 5 of the MHA?

a) Rely on section 4B of the Mental Capacity Act only

b) Extend section 5 of the Mental Health Act so that it also applies A&E, accepting that section 4B is still available and can be used where appropriate.

Consultation question 19b (p.67)

Please give reasons for your answer

Regardless of the conditions under which individuals may be held, it is important for health professionals to not view the incident in isolation, and to understand what led to the circumstances that resulted in the A&E attendance, and what might make them feel they need to leave more urgently. Detaining an individual who is concerned about something at home may cause them further distress, particularly if they do not have anyone who can be contacted to support alternative arrangements. Taking a holistic approach to care and treatment even during crisis can help to ensure that wider support needs are met.

8. Caring for patients in the Criminal Justice System (p.68)

Consultation question 20 (p.70)

To speed up the transfer from prison or immigration removal centres (IRCs) to mental health inpatient settings, we want to introduce a 28 day time limit. Do any further safeguards need to be in place before we can implement a statutory time limit for secure transfers?

Yes/No/Not sure

Consultation question 20a (p.70)

Please explain your answer

Consultation question 21 (p.72)

We want to establish a new designated role for a person to manage the process of transferring people from prison or an Immigration Removal Centre to hospital when they require inpatient treatment for their mental health. Which of the following options do you think is the most effective approach to achieving this?

- Expanding the existing Approved Mental Health Professional (AMHP) role in the community so that they are also responsible for managing prison/ IRC transfers
- Creating a new role within NHSEI or across NHSEI and HMPPS to manage the prison/IRC transfer process
- An alternative approach (please specify)

Consultation question 21a (p.72)

Please give reasons for your answer

Consultation question 22 (p.75)

Conditionally discharged patients are generally supervised in the community by a psychiatrist and a social supervisor. How do you think that the role of Social Supervisor could be strengthened?

Training should incorporate an understanding of the social determinants of mental health and wellbeing; mental health inequalities and their relationship with physical health; mental health improvement; and how these can promote and support recovery. Social supervisors should be equipped to facilitate access to support beyond the mental health diagnosis, e.g. wider health and care services; community support and networks.

Consultation question 23 (p.77)

For restricted patients who are no longer therapeutically benefitting from detention in hospital, but whose risk could only be managed safely in the community with continuous supervision, we think it should be possible to discharge these patients into the community with conditions that amount to a deprivation of liberty.

Do you agree or disagree that this is the best way of enabling these patients to move from hospital into the community?

Strongly agree/ Agree/ Disagree/ Strongly disagree/Not sure

Consultation question 23a (p.77)

Please give reasons for your answer

Safe and effective discharge into the community depends on appropriate services and support being available – not just in relation to mental health treatment, but wider needs such as housing, benefits and management of physical health conditions. Community management should also demonstrate therapeutic benefits.

If agree:

Consultation question 24 (p.77)

We propose that a ‘supervised discharge’ order for this group of patients would be subject to annual Tribunal review. Do you agree or disagree with the proposed safeguard?

Strongly agree/ Agree/ Disagree/ Strongly disagree/Not sure

Consultation question 25 (p.77)

Beyond this, what further safeguards do you think are required?

9. People with a learning disability and autistic people (p.80)

Consultation Question 26 (p.83)

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/ Agree/Disagree/ Strongly disagree/ **Not sure**

Consultation Question 26a (p.83)

Please give reasons for your answer

In principle, the proposed reforms as applied to people with a learning disability and autistic people would be consistent with the service model vision set out by NHSE, LGA and ADASS (2015): “Children, young people and adults with a learning disability and/or autism who display behaviour that challenges, including those with a mental health condition, have the right to the same opportunities as anyone else to live satisfying and valued lives and, to be treated with the same dignity and respect. They should have a home within their community, be able to develop and maintain relationships and get the support they need to live a healthy, safe and fulfilling life.” (p.4)

However, the Challenging Behaviour Foundation highlights the need for fundamental elements to be in place if the provisions are to be meaningful for people with a learning disability and autistic people, and for the structural causes of admission to be addressed. Effective implementation depends on the systems and mechanisms themselves being more appropriate and inclusive of the needs of this group – including specialist knowledge of LD and autism among professionals and representatives providing support to people with a learning disability and autistic people. It also requires improvement across other parts of the health and social care system to ensure that individuals are able to access the right support at the right time, and prevent conditions that would result in admission being the only option.

Consultation Question 27 (p.83)

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?

Strongly agree/ Agree/Disagree/ Strongly disagree/ Not sure

Consultation Question 27a (p.83)

Please give reasons for your answer

Consultation Question 28 (p.83)

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?

Yes/No/Not sure

Consultation Question 28a (p.83)

Please give reasons for your answer

If appropriately implemented, the reforms could help to promote better inclusion of people with a learning disability and autistic people, and increase opportunities to reduce some of the persistent physical and mental health inequalities in this group. However, without the right community services and support being made available, and the right pathways in place to ensure access to that support as needed, they could result in a widening of these inequalities – including through individuals falling into the criminal justice system in the absence of adequate support.

Consultation Question 29 (p.83)

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?

Strongly agree/ Agree/Disagree/ Strongly disagree/Not sure

Consultation Question 29a (p.83)

Please give reasons for your answer

Consultation Question 30 (p.83)

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 autistic people?

If the reforms are not accompanied by appropriate community services and support, individuals that would currently be detained in hospital may end up in the criminal justice system. The focus needs to be on preventing crisis and the conditions that lead to admission, and not just changing criteria for admission.

Consultation Question 31 (p.84)

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 Clinician required to explain if recommendations aren't taken forward, will achieve the intended increase compliance with recommendations of a CETR?

Strongly agree/Agree/Disagree/ Strongly disagree/Not sure

Consultation Question 31a (p.84)

Please give reasons for your answer

Consultation Question 32 (p.86)

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/ Agree/Disagree/ Strongly disagree/Not sure

Consultation Question 32a (p.86)

Please give reasons for your answer

People with a learning disability and autistic people are disproportionately affected by health and social inequalities, including in mental health, which strengthening community support and provision could help to address. However, there must be appropriate safeguards in place to ensure that community provision is not used as a substitute where inpatient care would be more appropriate for the individual. Any duty to provide additional services must be met with appropriate funding and resources within the system, with the roles and responsibilities of each agency clearly defined.

Consultation Question 33 (p.86)

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/ Agree/Disagree/ Strongly disagree/ Not sure

Consultation Question 33a (p.86)

Please give reasons for your answer

An ‘at risk’ or ‘support’ register could be a valuable tool in identifying and addressing early support needs, and also in supporting physical and mental health improvement as part of a prevention and early intervention approach. However, it needs to be backed with effective and efficient mechanisms for providing timely and appropriate support, as well as adequate capacity within the system to meet those needs. Eligibility would also need to be clearly and appropriately defined.

Consultation Question 34 (p.86)

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?

More joined-up working between health, social care and education services.

10. Children and Young People (p.87)

No consultation questions in this section

11. The experiences of people from black, Asian and minority ethnic backgrounds (p.90)

No consultation questions in this section

PART 2: Reforming Policy and Practice Around the New Act to Improve Patient Experience (p.96)

Consultation question 35 (p.102)

How could the Care Quality Commission support the quality (including safety) of care by extending its monitoring powers?

Consultation question 36 (p.113 – *labelled Q35 in document*)

In the impact assessment, we have estimated the likely costs and benefits of implementing the proposed changes to the Act. We would be grateful for any further data or evidence that you think would assist Departments in improving the methods used and the resulting estimates. We are interested in receiving numerical data, national and local analysis, case studies or qualitative accounts, etc, that might inform what effect the proposals would have on the following:

Different professional groups, in particular:

- How the proposals may impact the current workloads for clinical and non-clinical staff, Independent Mental Health Advocates, Approved Mental Health Professionals, Mental Health Tribunals, SOADs etc; and
- Whether the proposals are likely to have any other effects on specific interested groups that have not currently been considered.

Service users, their families and friends, in particular:

- How the proposal may affect health outcomes;
- How the proposals may improve the ability for individuals to return to work, or effects on any other daily activity;
- Whether the proposals are likely to have any other effects on specific interested groups that have not currently been considered; and
- Any other impacts on the health and social care system and the justice system more broadly.

Advancing Mental Health Equality toolkit

Equally Well UK resources