Modernising the Mental Health Act
Independent Review of the Mental Health Act 1983

SUBMISSION FROM THE BRITISH ASSOCIATION OF SOCIAL WORKERS

The British Association of Social Workers (BASW) welcomes the publication of the Wessely review "Modernising the Mental Health Act: Increasing choice, reducing compulsion" and we are pleased to see some fundamental changes proposed that will strengthen the individual's rights and choices and ensure robust safeguards are available.

BASW is keen to support the development of a new Act that reflects the values of choice, self-determination and rights-based practice, which we believe many of the recommendations of the report would deliver.

The role, values and skills of mental health social workers are an essential part of the delivery of effective mental health support and should be central to workforce planning for the mental health sector, within the NHS, local authorities and other settings. Social work is also the dominant profession undertaking the AMHP role in England & Wales, as such has a strong interest in ensuring that what may be the 'biggest change to Mental Health Law' in a generation, delivers on its promise of human rights and effective assessment and treatment.

To this end, we are delighted to see recommendations that the nearest relative be replaced with a 'nominated person' (to ensure that individuals' Article 8 rights are better protected against arbitrary and antiquated processes) and that a statutory Advanced Choice Document be introduced enabling people to influence the treatment they receive in advance of being detained. We feel this better reflects the society in which we live and provides an underpinning ethos of upholding rights and delivering choice, both values central to social work as a profession.

Whilst we recognise the many positives in the recommendations of the report, we caution against locating all the challenges of the current mental health system within the legal framework. As Sir Mark Hedley, Deputy Chair of the Review said last Friday at the report's launch,

'The Mental Health Act doesn't make people better, skilled professionals do - but law sets the framework and expectations within which people work.'

Many of the current challenges within the system are in fact due to resourcing and social responses, aspects of which will not be easily resolved and certainly will not be fixed by additional statutory

provisions, however well supported they are. The realities of current services not only hinge upon the law, but also on the lack of investment and the lack of suitable alternative community provision, which will continue to be a barrier to the aspiration of responsive and effective mental health support and treatment for people receiving services.

AMHPs have become increasingly concerned at how the impact of cuts on mental health services (and inpatient beds in particular) have resulted in people either waiting unduly long periods for appropriate care to be made available, or presenting in increasing numbers in an emergency - when they are already very unwell.

Whilst much has been said about the limited proportion of NHS funding that mental health receives, the proportion of the social care budget spent on mental health support is also lacking, despite evidence that psychosocial support is essential for individual recovery and the LA statutory role for the provision of AMHPs.

We welcome many of the recommendations made, in particular we believe that the following will strengthen patient rights and dignity under the Act:

- The development of Principles on the face of the Act, and their influence throughout, this brings the Act into line with the Mental Capacity Act and will bring a greater focus on evidencing how people meet the criteria for the Act from the point of assessment onwards.

- The development of independent visitors at hospitals who can focus on ensuring dignity and respect are maintained in hospitals.

- The suggested improvements and investment for: ward design, freedom of access, repairs and maintenance and single-sex accommodation.

- The greater emphasis on development of community resources for all, and especially people with learning disability and Autism, to prevent admission & support discharge.

- The need for more robust implementation of s140 for urgent beds but a need for a method of ensuring it works. Guidance can be ignored but a statutory duty holds much more authority.

- The move to dedicated transportation and formal standards for responses to s136 'and other mental health crisis calls' - this should include all calls where a compulsory or urgent admission is needed.

Whilst long term, BASW agrees that the development of effective community resources and teams will benefit patients and reduce the numbers of people needing to be detained under the Mental Health Act, the current users of services need action now - to enable them to access the support

they need in a timely manner. Whilst we therefore welcome recommendations to ensure section 140 of the Mental Health Act works more effectively, we are also calling for immediate action to clarify that in the absence of bed being available within 4 hours of a request, AMHPs and colleagues within the police should be able to use the nearest A&E as a s140 place of safety, unless other more appropriate resources (such as health based places of safety) are available. Such changes in policy can happen now, and surely, if parity of esteem means anything, it must mean ensuring that the most unwell in our community are as welcome in A&E as someone with a heart attack.

In terms of the BASW's detailed responses to specific recommendations made by Sir Simon Wessely's report, we would highlight the following to further support the robustness of the new Act in practice:

i. Making decisions about care and treatment:

We wholly support the emphasis on shared decision-making between clinicians and patients and the proposed introduction of the Statutory Advanced Choice Document, which the government has already accepted. We believe that the emphasis on shared decision making and 'best interests' is a strength of the proposals, and we offer two further recommendations:

1. ***Ensuring Mental Health Social Workers, AMHP and AMCP's [assuming the proposals in the Mental Capacity (Amendment) Bill are enacted] are explicitly stated amongst the professionals who can verify a SACD within the Act.***

2. ***Further consultation followed by clarity within the accompanying Code of Practice to the new Act in relation to the circumstances in which SACD can be overridden.***

Both BASW and the AMHP Leads Network are concerned about the discussion about possible removal of the requirement to have one doctor who knows the patient, as a response to the difficulty in obtaining s12 doctors. This seems to be a concession to the NHS and the medical profession that does not benefit the individual receiving services and has the potential to create 'waiting times.' As such we would recommend a duty on the NHS to provide section 12 doctors for Mental Health Act assessments as a mirror to the s13 duty on Local Authorities.

3. ***A concomitant duty on the NHS to mirror that placed on Local Authorities to ensure a sufficient number of approved Doctors are available to undertake Mental Health Act Assessments.***

ii. Family and Carer Involvement:

As already noted, the proposed change from the 'nearest relative' for a 'nominated person' is very welcome and is a positive move away from the nearest relative automatic and prescriptive list of

the current section 26. The nomination must happen when the client had capacity (e.g. as part of the SACD) and AMHPs can appoint 'interim nominated persons' where needed. This language of nomination is much easier to understand and provides compatibility with Article 8 rights.

The section of the report which states "*Applications to the court should be 'permitted' by the AMHP when intending to overrule an existing nomination, by a friend or relative who considers themselves better placed to take on the 'interim nominated person role'"* (p.86) is confusing. It is unclear why an AMHP would have any role in blocking a family members ability to be bring an action to court and we would recommend further exploration of this prior to entering it into statute.

The fall-back mechanism for the 'interim nominated person' using a revised list could be problematic and we would urge that clarification for this situation is provided in the Code of Practice. A list is perhaps too antiquated, as even if it is as inclusive as possible, the list would be endless and still affect a patient's choice, as such we would suggest the following as an additional safeguard in these circumstances:

4. ***Further clarification of AMHP role in displacement of nominated person (p.86 of the report)***

5. ***The AMHP able to choose a suitable person as 'interim nominated person' where no nomination is in place, with some guidance as to suitability rather than a 'list', bringing it into line with the MCA's 'Relevant Persons' Representative' (RPR).***

iii. Advocacy:

The move to an 'opt out' system (so everyone is entitled) and greater emphasis on commissioning as appropriate for the local population is positive. All patients (including informal patients, and those waiting for transfer from prison) would be eligible. The underlying question is how this provision can be sustainably financially resourced both financially and in terms of the provision of enough suitably trained advocates to meet the additional demand.

iv. Complaints & Death's in Detention:

BASW agrees and fully supports the multi-agency approach to developing links with local safeguarding boards and creation of specific roles to support people after the death of a detained person, which is progressive and will promote inclusion. We would welcome further consultation on this area with key stakeholders to ensure approaches are aligned and achievable in practice.

6. ***Further consultation with key stakeholders on strengthening the multi-agency links and pathways.***

v. The interface between the MHA and MCA/LPS

We believe that the emphasis on DoLS/LPS where a person is shown to lack capacity in relation to their residence, care and treatment and do not object, is positive, however for DoLS/LPS to really provide a 'less restrictive alternative' safeguards are necessary, and as such we are pleased to see recommendations in this report to set time limits on the use of s4B of the Mental Capacity Act where the person is being considered for admission under the Mental Health Act.

Whilst allowing time for someone whose capacity is impaired to consider whether or not they are objecting to admission or treatment is welcome, we remain concerned that under these proposals for a 72hr time limit, someone in A&E could be held much longer than someone brought into a place of safety under s135 or s136, (where the limit is 24hrs in most cases, and exceptionally 36hrs. Data suggests that 72% of people referred for a MHAA after arriving informally at A&E need admission, as opposed to 36% of those seen after being picked up by police under s136) (ADASS Benchmarking Report, 2017).).

We would therefore make the additional recommendation to further strengthen this area:

7. ***The use of MCA s4B powers in A&E are monitored in the same way that s136 is monitored, to make sure delays are not unduly long and parity across different admission routes is achieved wherever possible.***

vi. Community Treatment Orders:

BASW welcomes the clear expression of concerns that the use of CTO's has not always been appropriate, and risk aversion has led to people being kept on orders too long. Although the review has recommends retaining them - for now – the promotion of higher thresholds and stronger safeguards (especially from AMHPs) is necessary to further strengthen this area of practice.

Whilst CTO's represent one of the major changes proposed, with a greater emphasis on the AMHP as the protector of individual rights, there also needs to be a focus on Guardianship (section 7 and 37) and BASW would also positively advocate for bringing it up-to-date (in terms of rights and potentially having a requirement to live somewhere approved by a tribunal), and removing the 16yr old age restriction, so that it provides an option for young people in therapeutic residential settings, who currently have no clear rights of appeal.

8. ***Review and update Guardianship, with a removal of age limits, to provide a viable appeal process for young people in therapeutic residential settings.***

vii. Therapeutic Benefit:

BASW welcomes the removal of the power to discharge removed (except where there are fundamental errors in applications). BASW also welcomes the development of an independent visitors at hospitals who can focus on ensuring dignity and respect are maintained in hospitals.

BASW welcomes the greater emphasis on development of community resources for people with LD & Autism, to prevent admission & support discharge. Monitoring of use of the Act with people with autism and LD will be effective in organizing future service provisions.

viii. Criminal Justice Settings:

We agree with the recommendations in the review report in relation to Part 3 of the Act. If implemented, hopefully they will avoid people being imprisoned unnecessarily and make it easier to transfer people out of prison.

Given the high numbers of men from the BAME community who are in custody after arrest, these moves could have a positive impact on the experiences these men have in the mental health system, however we would also advocate that transfers should be possible from immigration detention centres.

If the Government legislated to give the Tribunals the power to discharge patients with conditions that restrict their freedom in the community, this would address the issue of tribunals being able to set discharge conditions that amount to a Deprivation of Liberty, however this would need to be carefully considered alongside the Mental Capacity (Amendment) Bill and current caselaw on Article 5 in the mental health system, to ensure that changes in statute align with other legislation and avoids creating an additional interface issue.

ix. Hospital Manager Role

We are cautious in relation to the role of the hospital manager changing and would be keen to understand where this safeguard would alternatively be located. Whilst not in opposition to this recommendation, we do believe that the current role has a valuable contribution to upholding individuals' rights and as such would not want to see it removed without a robust alternative in place.

BASW generally welcomes the perspectives in the review and the focus on rights and choice which it seems to be based on. It is pleasing to see that many of the BASW previous recommendations in relation to integrated services, 'nearest relative' and BAME service-users have been addressed in the report. As the 'bridge' between the community and acute psychiatric care, AMHPs and Mental Health Social Workers are particularly sensitive to the impact of cuts in social care on people's ability to manage mental distress – so recognise that the ambitions of this review will only be recognised if there is a substantial, and sustained investment in community mental health care.

The introduction of a common data set, collected nationally of AMHP work is very welcome, however, given the value of this data and the inevitable 'time lag' between recommendations being made, and the collection methods being established, we would strongly support the delivery a formal approach to data gathering, in partnership with ADASS, NHS Digital/Benchmarking and the

Chief Social Worker. This will not only allow the development and testing of the dataset, but will also be helpful in monitoring the challenges currently facing the system.

We also recognise, and will endeavour to support our members to step up to the challenge issued by our colleagues in the BAME, LD and Autism communities in respect of our role as protectors of rights - by using new powers to review whether people continue to meet the criteria for detention prior to tribunals and renewals of CTOs (if these are agreed by Parliament) and not certifying their continued detention if they do not.

All this of course depends on the Government, and NHS managers having access to accurate and timely data on how the law is working in practice. For this reason, we are particularly pleased to see the report's recognition of AMHP Leads across the country, and their national network.

ABOUT BASW

1. The British Association of Social Workers (BASW) is the professional body for social work in the United Kingdom, with offices in England, Northern Ireland, Scotland and Wales. With over 21000 members, we exist to promote the best possible social work services for all people who may need them, while also securing the well-being of social workers.

2. Among our members are experts in mental health practice and service provision. They are employed as: Approved Mental Health Professionals (AMHP's), Best Interest Assessors (BIA's), social workers in community mental health teams and psychiatric hospitals, as well as commissioners, advocates, managers and academics.

3. This submission response is in relation to *'Modernising the Mental Health Act – Independent Review of the Mental Health Act 1983'.* This response has been prepared by the BASW Mental Health Policy, Practice, and Education Group. This is a specialist group of mental health professionals with longstanding experience in services provision, research and training, education and development of social workers.

4. Research evidence highlights that the wider mental health professional network – and people who use services and their carers – particularly value social workers' expert knowledge of mental health law, their understanding of patients' holistic needs, their interventions drawn from social determinants of mental health perspectives, and their person-centred approaches to treatment (Abendstern et al. 2014).

5. With increasing fragmentation of mental health services, social workers have played an indispensable role in joining up services, being skilled versatile practitioners as well as experts in mental health, who understand (for instance) safeguarding, carers' and family issues, housing and welfare systems. Social workers often work with the most disadvantaged, marginalised and

vulnerable members of society and are therefore, in a strong position to comment on the impact of (e.g.) welfare cuts and increasing poverty on mental health and related issues.

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