

Change ahead for the Mental Health Act? Interim report gives flavour of what's to come

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Summary

The Mental Health Act - and the broader mental health system which surrounds it - is currently under the microscope via a wide-ranging independent review commissioned by the government.

The review's recently published interim report summarises what it has found so far and gives us a taste of the changes we could see recommended when the final report is published later this year.

In this briefing, we look at some of the stand-out options for change being considered.

What has the MHA review found so far?

The independent review's interim report is very clear that "...the MHA needs to change".

Why does it need to change? Key drivers for reform picked up by the review so far include:

- Rising numbers being subject to compulsory detention, with significant racial disparities;
- 2/3rds of service user survey responders saying they were not treated with dignity and respect;
- Doubt over effectiveness of procedural safeguards, especially in first 3 months of detention;
- 'Nearest relative' system no longer fit for purpose;
- Insufficient emphasis on service users' wishes/advance planning;
- Advocacy provision patchy;
- Effectiveness of Community Treatment Orders in doubt;
- S117 aftercare system complex and inequitable;

These are just a few of the areas the review will focus on as it undertakes its broad-ranging look at the system and moves towards making recommendations for change in its final report.

What changes might we see recommended?

The interim report gives us a glimpse of what a future MHA might look like.

Specifically, the list of 'issues for further consideration' set out in the report suggests that the final recommendations could *potentially* include, for example:

- Combining or reconfiguring sections 2 and 3 of the MHA, with a shorter initial period for assessment and treatment;
- Introducing 'guiding principles' into the MHA itself - e.g. to address dignity/respect issues;
- Strengthening the role of advance planning within MHA treatment provisions;
- Enabling service users to appeal to the Tribunal against compulsory treatment decisions;
- Making the Tribunal the sole channel for challenging being subject to the MHA, with an opportunity to apply more than once in the statutory period if there is a change in circumstance;
- Changing the nearest relative provision to allow individuals to nominate a person of their choice, plus possibly granting the nominated person a statutory role in treatment decisions;
- Extending/strengthening the role of advocacy and streamlining different advocacy frameworks;
- Replacing or reforming the current system of CTOs;
- Reforming eligibility for S.117 aftercare and better defining what it is.

The interim report recognises, however, that solving the current problems cannot rely on legislation alone, and the final report is also likely to recommend wider systems and practice changes aimed at achieving the review's ultimate goal which

is to 'make the MHA work better for everyone'.

What next?

The independent review will now consider in more detail the issues/focus areas set out in the interim report, with a view to publishing its final report and recommendations.

No specific timescale has been given for the final report other than 'later this year'.

The expectation is that the recommendations will then be used by the government to help create a 'forward-looking plan of changes' to legislation and associated practice.

In the meantime, the review is continuing to invite anyone with evidence/experiences relevant to any of these issues to get in touch via MHActreview@dh.gsi.gov.uk.

How we can help

Our national team of mental health and mental capacity specialists have extensive experience in advising health and social care providers - both in the NHS and the independent sector - in relation to all aspects of the law in this area, including:

- Advice on all aspects of the Mental Health Act, including the impact of legislative changes;
- Advice on drafting and implementing policies that are compliant with legislative change and will withstand regulatory scrutiny;
- Representation at First Tier Tribunals;
- Advice on the interface between the Mental Capacity Act and Mental Health Act;
- Advice and representation in Court of Protection proceedings.

We also provide training on all aspects of the Mental Health Act and Mental Capacity Act, including induction and refresher courses for S.12 Approved Clinicians.

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