



Department
of Health &
Social Care

*From Baroness Merron
Parliamentary Under-Secretary of State for
Patient Safety, Women's Health and Mental Health*

*39 Victoria Street
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11 December 2024

Dear Colleagues,

Mental Health Bill Second Reading – Follow Up Letter

I am extremely grateful to all those who spoke during the Second Reading of the Mental Health Bill on 25 November. These reforms to the Mental Health Act 1983 (the Act) are long overdue, and I was pleased to hear such strong support for the Bill. It is however right that these measures undergo proper scrutiny and debate.

I am writing to clarify our overall positions on key areas raised during the debate, which there was not enough time to address in my closing speech. I am conscious that this letter does not do justice to the full breadth of the important and detailed points raised. I am grateful to Peers both for their valuable contributions in the debate and for their further thoughts on these and other points which have been shared in subsequent meetings. I look forward to discussing these topics further in the upcoming Committee debates.

Community Treatment Orders

I appreciate the concerns raised around the long-term use of Community Treatment Orders, and the calls for there to be a time limit placed on their use as suggested by the Independent Review. We agree with those stakeholders who have raised concerns that strict time limit risks removing support for those patients who were benefiting from the Community Treatment Order, including those with eating disorders (as noted by Baroness Parminter) and forensic patients. This wouldn't feel in keeping with the principle of treating the person as an individual. We will set out the expectation that Community Treatment Orders should end after two years in the Code of Practice, as recommended by the Independent Review, whilst highlighting that this should take into account clinical discretion based on the individual case. We are also changing how often there is an automatic referral to Tribunals, for independent scrutiny of Community Treatment Orders.

I have also noted your queries around a statutory review of Community Treatment Orders. We will keep Community Treatment Orders under review as we implement changes. We have committed to review the overall impact of the reforms and consider appropriate next steps. Therefore, we feel that a provision in legislation for such a review is unnecessary, as we are committed to monitoring and reviewing the reformed Community Treatment Orders.

Children and Young People

In addition, I want to address the concerns raised around the inappropriate placement of children and young people. We have heard that too often, children and young people are placed far away from their home and their family or in accommodation not suitable for their age. We are taking steps to provide the community-based support and specialist beds we need to ensure that children and young people can access the right type of service, as close to home as possible, in the least restrictive environment in line with NHS England policy. NHS England is currently working on developing a new model for specialised children and young people's mental health services, which would be supported by a new service specification and quality standards. This new model would support delivery of specialised services in the community as well as local children and young people's mental health services inpatient settings to ensure children and young people are treated in age-appropriate inpatient environments as well as the least restrictive environment close to their family and home. Achieving this ambition is dependent upon future investment.

There are already provisions in the Act which seek to limit instances where children and young people are placed out of area or in adult wards. Section 131A of the Act places a duty on hospital managers to ensure that the patient's environment in the hospital is suitable having regard to their age and section 140 of the Act requires ICBs to inform local authorities when accommodation suitable for children becomes available. It is also a requirement for CQC to be notified within 48 hours if a child or young person is placed on an adult ward, as per the Care Quality Regulations 2009.

Interface with the Mental Capacity Act and other legislation

We have noted points raised by a number of Peers regarding how the Mental Health Act, and this Bill, interacts with other legislation. This includes how relevant laws apply to specific groups, such as children and young people, as well as individuals with a learning disability and/or autistic people. We will continue to consider the interface between the Act and wider legal frameworks as we implement our reforms, and keep this issue under review.

We have heard the concerns raised regarding the complex interface between the Mental Health Bill and the Mental Capacity Act and the challenges this may present to decision makers. Both Acts provide appropriate procedural safeguards to ensure that the individual's Article 5 human right to liberty and security is protected during their detention. The nature of the safeguards provided under the two Acts are different, and decision-makers must use their professional judgement to decide which safeguard will best protect the interest of the individual in each individual case. We will engage with clinicians and stakeholders to understand what support and guidance could help improve application of the interface between the two Acts when we consult on the new Mental Health Act Code of Practice.

We have heard the specific concerns that people with a learning disability and autistic people, who lack capacity, could, in certain circumstances, be detained under the Mental Capacity Act rather than the Mental Health Act due to the reforms to section 3.

Our intention is to ensure that the needs of people with a learning disability or autistic people can be met in the community through provision of appropriate community based services. It is expected that this will prevent needs escalating and thus avoid the Mental Capacity Act being used as an alternative route to detention. Accordingly, the proposed changes to Part 2, section 3 of the Mental Health Act (detention criteria) will only be commenced when we are assured that there are strong community services in place.

We intend that the proposed measures around dynamic support registers, duties on commissioners and care, education and treatment reviews improve support in the community for people with a learning disability and autistic people. We will monitor the impact of the proposed reforms to ensure that they are having their intended effects.

Principles

I am aware a number of Peers were disappointed to not see a statutory set of principles in the Bill, as recommended by the Independent Review. I want to confirm that we are putting the principles on the face of the Act, so that they govern the content of the Code of Practice and will not be able to be changed except by Parliament. Practitioners will still be under a statutory duty to take account of the principles when making decisions under the Act.

The Pre-Legislative Scrutiny Committee accepted the Government's position that there are "concerns about putting entirely new Principles into the Mental Health Act and [they] are wary of making complex legislation yet more complex". The Committee recommended that the Government amends section 118 of the Act to include the revised principles, and this is the approach we have taken.

The benefit of having the principles in the Code of Practice rather than statute is that we will be able to provide further guidance on how the principles should be interpreted and it allows practitioners the flexibility to apply them as is most appropriate in those specific circumstances. We also heard concerns about the monitoring and application of the principles, we will consult on how the principles should be interpreted and applied most appropriately in specific circumstances when we come to revise the Code of Practice and provide additional guidance on this in the next revision. We are working with NHS England and partners to understand what data is available to be able to monitor the implementation and impact of the reforms. We will continue to develop a monitoring and evaluation strategy for the reforms to the Act.

I hope this letter has provided clarity on these important points raised in Second Reading. I am copying this letter to all Peers who spoke at Second Reading and placing a copy in the library of the House.

All good wishes

A handwritten signature in black ink, appearing to read "Gillian". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

BARONESS MERRON