



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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By email

17 February 2025

Dear Colleagues,

I am grateful for your contributions to the constructive debate on the fourth day of the Committee Stage for the Mental Health Bill, on 27th January 2025.

I am pleased to follow up on some of the points I said I would like to address following the debate.

County Courts and Legal Aid

Baroness Berridge raised concerns around the capacity of the county court to remove a nominated person who is deemed unsuitable for the role, and asked, in respect of the Nearest Relative provision under the current Mental Health Act, how many county court applications there are, how long the wait is, what the success rate was, and how many receive legal aid.

The legal aid scheme is targeted at the most serious cases in which legal advice and representation is justified and the means test, where it applies, ensures that those most in need receive it.

Legal aid is available for advice and assistance (and, in some instances, for advocacy) in relation to matters arising under the Mental Capacity Act 2005 and the Mental Health Act 1983.

For advice, assistance or advocacy regarding matters under the Mental Health Act 1983 brought to the Mental Health Tribunals, all applications are non-means tested to patients and/or the nearest relative.

County Court mental health cases are largely limited to applications for the displacement of a nearest relative. Legal aid is available to a person seeking the displacement of the nearest relative (except where the person bringing that application is doing so in a professional capacity) and to the nearest relative themselves. Legal representation is available where the applicant meets the means test (unless they are under 18) and the relevant merits criteria.

For the Court of Protection, legal representation is limited to the most serious health and welfare cases (for example, deprivation of liberty or medical treatment). Funding is generally on a means tested basis except in specific cases, for example, applications involving a challenge to a deprivation of liberty authorisation. Special merits criteria apply that add additional criteria onto the general merits criteria, for example that the case will have an oral hearing.

Regarding legal aid figures, the figures for legal aid for civil representation for displacement of nearest relatives at the County Court are shown in the table below. The number of applications to the County Court to displace a nearest relative under section 29 of the Mental Health Act, and how long people wait and the rate of success, is not collected by HM Courts & Tribunals Service.

Grants and closed cases may not reflect the number of applications in a given year due to applications being made in the previous financial year, or case durations lasting through to the next.

Legal aid civil representation figures for displacement of nearest relatives at County Court mental health cases

Financial Year	Applications	Grants	Closed cases¹
2019-20	16	15	17
2020-21	16	13	15
2021-22	18	19	7
2022-23	14	13	24
2023-24	5	5	12

Data on instances of police using relevant Mental Health Act powers

Lord Kamall asked for further information on the data the Government has on the instances of police using relevant powers to take patients to take patients to emergency departments. He also asked that I share links to the data I referred to in the house on incidences of the number of patients escorted to A&E departments by the police.

The Home Office collects national policing data on detentions under section 135 and 136 of the Act and removal to a place of safety, including the number of times A&E has been used and on the method of transport. This is part of the annually published “Stop and search, arrests and mental health detention” accredited official statistics, and it forms part of the data which the Home Secretary requires police chief officers to provide to her under section 44 of the Police Act 1996 (as amended). Data for the year to March 2024 was published on 26 September, and the Home Office’s report and data tables can be accessed here: [Stop and search, arrests and mental health detentions, March 2024 - GOV.UK](https://www.gov.uk/government/collections/police-powers-and-procedures-england-and-wales). (Data for previous years can be accessed in the relevant links on this page: <https://www.gov.uk/government/collections/police-powers-and-procedures-england-and-wales>).

Engagement with civil society organisations and charities

Lord Kamall also asked that, when implementing the provisions of Clause 46 and commissioning health-based places of safety, that we undertake discussions with local civil society organisations and charities. We recognise the vital role that civil society, including charities and voluntary organisations, play in supporting people with physical and mental

¹ ‘Closed cases’ refers to pieces of work by legal aid providers that are completed in the period.

health needs. These organisations improve health outcomes and tackle health inequalities not only by delivering services but also by shaping their design and advocating for, representing and amplifying the voice of service users, patients and carers. We would expect that local NHS organisations continue to involve them, as appropriate, in discussions about local service planning, and this may include around places of safety.

Tribunal Powers

In addition, I wanted to provide clarification to Baroness Browning around the power of tribunals to request reports to facilitate discharge and whether this is in primary legislation. The Tribunal already has extensive powers to require responsible authorities to provide information to support the Tribunal's decisions in determining the conditions of detention and whether a patient should be discharged. For the First-tier Tribunal (Mental Health), these powers are found in secondary legislation: the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. These Rules are made by the independent Tribunal Procedure Committee, established under primary legislation with the responsibility for making rules relating to the practice and procedure to be followed in the First-tier Tribunal and Upper Tribunal.

I am copying this letter to all the Peers who spoke during the debate and will place a copy in the library of the House.

All good wishes,

A handwritten signature in black ink that reads "Gillian". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

BARONESS MERRON