Department of Health & Social Care

From Stephen Kinnock MP
Minister of State for Care

39 Victoria Street
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By email to: MPs appointed to the Mental Health Bill Public Bill Committee

4 July 2024

Dear Colleagues,

I thank you for the constructive discussion held on the fourth day of the Committee Stage for the Mental Health Bill, on 19th June 2025.

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

Tribunal Powers

You asked whether there are any plans to give legal weight to tribunal recommendations, such as through a written response or justification where those recommendations are not followed.

As part of the consultation process, we asked whether the Tribunal should be given the power to direct community services. In response several practical difficulties were raised, in particular whether such a power would be sufficiently flexible to account for fluctuations to a patient's mental state, and as such whether any Tribunal directions would continue to be relevant to the patient at the point where the patient is intended to be transferred, given leave or discharged. In addition, if a Tribunal direction conflicted with a clinician's professional judgment, it would place them in the difficult position of seeking to comply with a Tribunal direction, whilst ensuring that they continue to act in accordance with their professional ethics and code of conduct.

To ensure that Tribunal recommendations are followed, the Tribunal can reconvene if its recommendations are not acted upon, ensuring accountability from after-care bodies. This approach accommodates the complex nature of mental health cases. Mental health patients can experience fluctuating conditions that require flexible, real-time decision-making by clinical and local teams. This policy of recommending after-care services is designed to accommodate this flexibility while ensuring Tribunal oversight over a patient's care and discharge.

Data on readmission rates

Data on readmission rates was also requested. Data from the Mental Health Services Data Set show that 17.9% of people were detained more than once during 2023/24.

Data is not available on the number of people readmitted to hospital following a tribunal outcome. However, the CQC report on activity and outcome data of the First-Tier Tribunal as part of their monitoring the Mental Health Act reports:

- In 2023/24, there were 28,357 applications to the first-tier Tribunal for all detained patients and 4,438 applications against CTOs.
- Comparing the data for 'total discharge by Tribunal' against 'no discharge', the Tribunal discharged patients in about 10% of its decisions relating to detention overall.
- Just under 4 percent of decisions in relation to CTOs discharge the patient.

The Impact Assessment (IA) has taken a prudent and narrow approach to modelling the benefits of these reforms. Only policy measures where there is clear research evidence of the impact on detention and admission rates have been modelled as doing so. This means analysis has been limited to changes to the ability to detain people with a learning disability and autistic people without co-occurring mental health conditions, and due to increased uptake of ACDs.

We expect that the reforms introduced by the Bill will have wider benefits, such as improved patient experience of the MHA due to improved safeguards and increased patient empowerment, avoiding unnecessary or inappropriate detention and admissions, a potential reduction in length of detentions, and health benefits to patients. There is limited research evidence on the likely scale of these impacts, so these benefits have not been quantified in the IA.

We are developing a monitoring and evaluation strategy for the MHA reforms. It is expected that evaluating and monitoring the reforms will need to be a long term, staged exercise given the long period over which different reforms are expected to be sequentially commenced following initial primary legislation. We will utilise existing data collections to monitor these new processes to help assess whether reforms are being delivered as intended and are likely to achieve the intended outcomes. As the reforms are introduced, we will proactively seek new opportunities for additional monitoring data to enhance the metrics captured for monitoring and evaluation.

Human Rights Act

1. **Information on how the Government will monitor compliance with the Human Rights Act among private providers, and what enforcement mechanisms will be used, was requested.**

The Human Rights Act is enforced by the domestic courts, thereby enabling victims to get redress if public authorities have acted in breach of their obligations.

The UK's National Human Rights Institutions also perform a monitoring and enforcement role. The Equalities and Human Rights Commission (EHRC) has a statutory role under section 9 of the Equality Act 2006 to encourage good practice in relation to human rights and encourage public authorities to comply with section 6 of the HRA. It also has statutory powers to monitor the law and report on progress, powers of investigation, and may conduct inquiries.

The Northern Ireland Human Rights Commission (NIHRC) and Scottish Human Rights Commission (SHRC) also both have statutory roles relating to the promotion and protection of human rights in NI and Scotland respectively.

2. **It was also questioned whether there had been any consultation with private care providers about the potential operational and financial impacts of this extension.**

In response to concerns raised about whether there has been any consultation with private care providers regarding the potential operational and financial impacts of this extension, we do not consider this a new burden. Most providers will already have patients or people they are providing care to where they have existing obligations under the Human Rights Act. For example, those providing inpatient care will already have people detained under the Mental Health Act, which is already in scope of the Human Rights Act. Care providers in the community, providing s117 aftercare, will also have individuals receiving care under the Care Act, which is already covered by section 73. Therefore, this is not an entirely new obligation for private care providers.

As registered providers, and providers of care arranged and paid for by NHS bodies or local authorities, providers should already be providing care in ways which are compatible with the Human Rights Act. For example, a rights-based approach to care and treatment is a requirement of contracting and commissioning arrangements between the NHS and private providers. Statutory guidance, such as the Mental Health Act Code of Practice also requires a rights based approach, as do CQC regulatory requirements.

The amendment has also been supported in a statement from the National Care Forum.

3. **It was also queried as to whether the extension will only apply to services arranged by or paid for by NHS bodies.**

The amendment applies to inpatient care arranged and paid for by NHS bodies. For s117 this will apply to care arranged and paid for by NHS bodies and Local Authorities as there is a joint obligation to provide s117 after care. For section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 this will apply to care arranged and provided by a local authority.

4. **Information on what protections exist for patients receiving private mental health care outside these arrangements was sought.**

There are alternatives routes to bring claims against private providers if a patient, or their family, have concerns. This includes civil proceedings and judicial review.

5. **Concern was raised around how the Government plans to ensure consistency in application across all four nations.**

The Human Rights Act applies across the whole of the United Kingdom and is a protected enactment in the devolution settlements.

However, healthcare is a devolved matter, and this includes the monitoring of the quality of and performance of provision.

6. **Clarification was sought on how the Government anticipates the private provision of mental health-related services to expand, and, if so, to what extent.**

The private and voluntary sector can and does play an important role in providing health and social care services, including to some of the most unwell or vulnerable patients. Our focus is ensuring we have high-quality services which deliver good value for money.

7. **A response to whether the insertion of 'subject to subsection 2' inadvertently limits the scope of the new protections was requested.**

Under this amendment, private providers will be taken to be exercising a function of a public nature for the purposes of section 6(3)(b) of the Human Rights Act - when they are providing certain forms of care and treatment, when those services are arranged and/or paid for by either local authorities or the NHS.
These functions are:

- section 117 after care;
- services provided in pursuance of arrangements made by a local authority in Scotland discharging its duty under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and;
- inpatient treatment and assessment for mental disorder.

<u>24-hour neighbourhood mental health centres</u>

The location of the six neighbourhood mental health centres was requested.

The areas are as follows:

- Whitehaven run by Cumbria, Northumberland, Tyne, and Wear NHS Foundation Trust
- York run by York Mental Health Partnership
- Birmingham East Central run by Birmingham and Solihull NHS Foundation Trust
- Tower Hamlets run by East London Foundation Trust
- Lewisham run by South London and Maudsley NHS Foundation Trust
- Sheffield run by Sheffield Health and Social Care NHS FT.

I hope this letter has provided further clarification on the issues raised in Committee. I am copying this letter to all members of the Committee and will place a copy in the library of the House.

Yours sincerely,

STEPHEN KINNOCK