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## British Psychological Society

### **Senedd Health and Social Care Committee scrutiny of the LCM on the Mental Health Bill**

This submission sets out the British Psychological Society's (BPS) key recommendations to the Senedd's Health and Social Care Committee for the Legislative Consent Motion of the Mental Health Bill.

The BPS is the representative body for psychology and psychologists in the UK, and is responsible for the promotion of excellence and ethical practice in the science, education, and application of the discipline.

As a society we support and enhance the development and application of psychology for the greater public good, setting high standards for research, education, training and knowledge, and disseminating our knowledge to increase public awareness.

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## **Introduction**

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## **Overall Views**

### **1. Your overall views on the policy objectives of the Bill to:**

#### **a. modernise mental health legislation to give patients greater choice, autonomy, enhanced rights and support; and ensure everyone is treated with dignity and respect throughout treatment; and**

It is the BPS's view that the Mental Health Act was in urgent need of reform to ensure that it was fit for purpose; to tackle disparities in the mental health system and address the unacceptable trend of people with severe mental health difficulties ending up in the criminal justice system. We welcome the amendments proposed by the Mental Health Bill, which strengthen patients' voices in the treatment process and increase the frequency of clinical reviews.

While the proposals do go some way to ensuring dignity and respect, we feel that the Bill could be strengthened in a number of ways as we highlight throughout this submission, but most importantly:

- Under sections 2 and 3, where the BPS agrees that people should only ever be detained under the Act where they pose a risk of serious harm to themselves or others, we would trust that the accompanying Code of Practice clearly defines 'serious harm' (to include both mental and physical harm) and 'appropriate medical treatment'. We would want to be included in the development of Code of Practice and would urge that other stakeholders from Wales have input; and
- Applications for detention under civil sections of the 1983 Mental Health Act require at least one recommendation from a registered medical practitioner who is approved under section 12 of the Act. Approved clinicians (ACs) who are medical practitioners are automatically approved for section 12 purposes; however, other approved clinicians are not. The BPS recommends that this legislation is amended so that all ACs (including psychologists) are eligible for section 12 approval. This amendment would be equitable, enforce consistency, and most importantly – patients, particularly those with complex bio-psycho-social problems, would benefit from access to multi-professional approved clinicians being able to make recommendations about initial detention.

#### **b. introduce measures to improve the care and support of people with a learning disability and autistic people, reducing reliance on hospital-based care.**

We believe that without necessary and additional investment in community-based services, the proposed changes to remove autism and learning disability from section 3 of the Act (admission for treatment), will have substantial and potentially harmful unintended consequences for the individuals these changes are intended to support. Without adequate community-based services, individuals with autism and learning difficulties risk being detained under spurious diagnoses, given inappropriate treatment in unsuitable environments and being diverted to the criminal justice system which is unable to and is



not intended to meet their needs. It is vital the government accepts the recommendation of the Joint Parliamentary Committee, to conduct a review of the Building the Right Support Action plan.<sup>1</sup>

## 2. What barriers do you think currently exist in accessing mental health services in Wales, and does the Bill address these adequately?

There are many barriers in accessing mental health services in Wales, therefore proper scrutiny of the Bill as it goes through parliament is key to ensure that Welsh services can be improved through the legislation. Last year, the Senedd did attempt to address the existing gaps caused delays in reforming the Mental Health Act by introducing the Mental Health Standards of Care (Wales) Bill. We were very supportive of the proposals and pleased to see that many have been adopted in the Bill.

However, we do feel that the Bill does not go far enough to address existing issues and that it must consider the unintended consequences that could arise.

- We must address the racial inequalities currently entrenched within the application of the Mental Health Act. In Wales, we know that there are still racial inequalities in our mental health services that fail to represent and support those from ethnic minorities. We are concerned that Time to Change Wales, who is leading on the anti-racist, anti-stigma campaign has lost its funding and will close this month. The new Mental Health Strategy and its delivery plans must address this disparity for the under-served populations.
- People in prison and on probation face additional challenges in accessing mental health services, which should be addressed in the Bill. We believe that there should be an assertive outreach for prison leavers as we know that mental health issues are over-represented in this population.<sup>2</sup> People being released from prison face additional challenges of delays with registering with primary care. This is common when people are released to no, temporary or unstable living accommodation, which many people leaving prison face.<sup>3</sup> In addition, we have an aging prison population affected by issues common with aging, including dementia and other issues which overlap mental health and physical health.
- We previously mentioned our concerns of the Bill around people with a learning disability and autism, and that there is currently a lack of adequate community-based services for those who are in hospital-based care. In Wales, we have additional concerns that the draft Mental Health Strategy for consultation last year contained very little about meeting the mental health needs of people who are neurodivergent, including those with LD and autism. Without a clear strategy for the mental health needs of people who are neurodivergent it is unclear how their specific needs will be met.

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<sup>1</sup> [Government response to the Joint Committee on the draft Mental Health Bill - GOV.UK](#)

<sup>2</sup> [People in prison have higher rates of mental illness, infectious diseases and poor physical health – new study — Department of Psychiatry](#)

<sup>3</sup> [HOL0159 - Evidence on Homelessness](#)



- The Bill fails to address the wider issue around gaps in the mental health workforce, which impacts on the availability of support and treatment and what will be needed to ensure that changes brought about by the legislation can be delivered. The current mental health workforce is already struggling to deliver services to the increasing numbers of those who need support. We are pleased to have a mental health workforce implementation plan and are looking forward to the long-awaited mental health strategy/delivery plans, but with funding cuts to projected commissioned placements (eg. DClinPsych) and no overall plan to develop the psychological workforce in Wales, we need assurance that the future workforce is equipped to deliver good quality care and meet the requirements of the new Act in future.

### **Impact on areas of devolved competence**

#### **3. Do you support the principle of Westminster legislating in areas that are devolved to the Welsh Government?**

It is imperative that devolved areas where Westminster plans to legislate must be properly scrutinised by the Senedd, Welsh Government and the relevant stakeholders, to ensure that the impact on Wales is fully considered.

While Welsh Government had an opportunity to consider our own devolved Welsh Mental Health Act, mental health legislation is highly complex and would require significant legal, financial and administrative resources. We also acknowledge that mental health legislation<sup>4</sup> in Wales does exist separately to England, and that it covers important areas of service delivery to improve patient experience and outcomes. However, the Review of the Measure found that despite the legal requirements the quality and accessibility of these services must be improved,<sup>5</sup> and we are still waiting to see Welsh Government act on these. As previously mentioned, we supported James Evan's Member Bill<sup>6</sup> introduced last year to supersede those areas in the existing Mental Health Act that were not working in Wales and are pleased to see that these have laid a foundation for some of the proposals to the Bill.

### **Alignment with policy priorities**

#### **4. Do you think the provisions of the Mental Health Bill align with the Welsh Government's Mental Health strategy and broader policy priorities?**

We feel that the provisions of the Bill do align with current Welsh policy and legislation. There is a joint focus on person-centred care for individualised support and recovery, early intervention and prevention and addressing issues proactively, and ensuring that services are accessible to all demographics.

#### **5. Are there specific Welsh priorities or policies that should be better reflected in the Bill?**

Part 2 of the Mental Health (Wales) Measure, which covers a holistic approach to Care and Treatment Planning, could be better reflected in the Bill. We believe that treatment providers

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<sup>4</sup> Mental Health (Wales) Measure

<sup>5</sup> [the-duty-to-review-final-report.pdf](#)

<sup>6</sup> Mental Health Standards of Care (Wales) Bill



must outline a comprehensive treatment plan which offers the maximum range and breadth of treatments that have an evidential basis or clinical rationale to facilitate a better health outcome. Patients should have a case formulation included in their treatment process where possible, with agreed treatment options and routes leading to recovery. Formulation is an evidence-informed approach, **involving an exploration of a person's life**, through which practitioner and patient arrive at an understanding of the factors that cause, worsen, and maintain the issues that are causing someone harm to themselves or others. This is proven to improve patient engagement and treatment outcomes.

### **Cross border considerations**

#### **6. How will the Bill address the movement of patients across the Wales-England border, ensuring smooth collaboration between services?**

We believe that that having the same legislation should enable seamless cross-border healthcare.

### **Application of the Mental Health Act 1983: autism and learning disability**

#### **7. How will the Bill's provisions integrate with Welsh Government's efforts to reduce mental health-related hospital admissions? Specifically, your views on proposals to amend the Mental Health Act 1983 so that people with a learning disability and/or autism cannot be detained for compulsory treatment unless they have a "psychiatric disorder".**

Under this Bill, a duty will be set on integrated care boards (ICBs) in England and health boards in Wales to establish and maintain a register of people with a learning disability and autistic people who are at risk of detention. Health boards and local authorities must have regard to the register and the needs of the local 'at risk' population, when carrying out their commissioning duties, to make sure autistic people who are at risk of hospitalisation are having their needs met in the community.

However, as discussed in this submission, there is a lack of community resources in place for those with autism and learning disabilities and so without necessary and additional investment in community based-services, it is unlikely this duty will work in practice.

### **Consultation with the community clinician**

#### **8. Your views on proposals to introduce a new requirement for hospital clinicians to collaborate with a second professional from a community service when making decisions regarding the use and operation of community treatment orders ("CTO").**

We see the significant benefits of this proposal in terms of continuity of care, but this requirement may create additional pressure on an already strained mental health workforce, as community clinicians may have limited availability to participate in CTO decision-making. The mental health workforce strategy is key to ensure that there is sufficient community staff for this proposal to be effective.



We would also want assurance that the second professional identified has close contact with the patient. For example, in the case of patients on probation, probation officers are more likely to be better placed than social workers to communicate the current situation patients find themselves in as they see the person more frequently.

### **Nominated person**

#### **9. Your views on:**

- a. the proposed introduction of a “nominated person” role to replace the nearest relative in decision-making;**

We agree with the proposal to “replace the Nearest Relative (NR) provisions in the Act with a new role of Nominated Person”. We feel that this empowers people as it provides them with choice, flexibility, and autonomy. But we must ensure there is no opportunity for coercion or exploitation within the process.

### **Transfers from prison to hospital: time limits**

#### **12. Your views on proposals to introduce a statutory 28-day time limit within which individuals with a severe mental health need must be transferred from prison to hospital for treatment under the 1983 Act.**

The BPS have long been calling for increased investment in the psychological workforce across prisons, so people can access psychological support at the point of need. This increased investment in this workforce is pivotal so mental health difficulties can be supported early on. However, where people need treatment in a mental health hospital, it is also essential that this transfer happens in a timely manner.

The BPS therefore welcomes that this Bill will speed up transfers from prison to hospital by limiting the time it can take to transfer prisoners who need treatment in a mental health hospital to a maximum of 28 days. However, for this transfer period to successfully work in practice within the timeframes set, this duty needs to be backed up by practical availability of resources within the healthcare system. Failure to provide adequate resources risks an increase in people being transferred but not receiving the quality of care that they need.

We would also like to see clear lines of accountability in this process. As a number of authorities will be involved in this process - lines of accountability may be blurred without clear direction of who is responsible for exactly what part of the transfer process.

### **Help and information for patients**

#### **13. Your views on proposals to place a duty on Local Health Boards in Wales to make arrangements they consider appropriate for making information available about advance choice documents (“ACD”) and helping those people they consider appropriate to create ACDs.**

We agree that Local Health Boards should help people to make an Advance Choice Document that they do so in a culturally appropriate manner.



## **Early intervention and community-based support**

### **14. Are the provisions for crisis intervention and preventive care adequate and in line with the Welsh Government's focus on early intervention and community-based support?**

There must be a general shift in policy and funding in Wales from treatment to prevention and early intervention, which includes realistic thresholds for accessing timely care, specifically psychological interventions and community support services. This can mitigate the need for more complex and expensive care and treatment further down the line as well as improve patient outcomes.

## **Removal of police stations and prisons as places of safety**

### **15. Your views on proposals to remove police stations and prisons as a place of safety for adults experiencing a mental health crisis.**

We welcome these proposals because prisons and police cells are not intended as places of safety and should only be used for places of detention. People in a mental health crisis who were detained in police cells have described them as distressing, unsafe environments, with some feeling as though they were being punished for their mental illness. Due to the additional distress inflicted in this type of setting, this environment can also result in a worsening of symptoms and reduce a person's chances of recovery. Although we agree individuals in a mental health crisis should be taken to a health-based place of safety and not to a police station, there must be an increase in funding for healthcare services and the psychological workforce required to ensure that patients can access suitable healthcare facilities in Wales and the appropriate psychological support.<sup>7</sup>

## **Workforce**

### **17. What impact will the Bill have on mental health practitioners and services in Wales, particularly in the context of staffing pressures and workforce development**

We feel that many of the proposals in the Bill would impact on mental health practitioners and services in Wales, increasing staffing pressures and service demands.<sup>8</sup> Our members say that many staff in mental health services feel demoralised, under-valued and unsupported. The workforce in mental health settings is also aging with early retirements adding to staff shortages. In Wales, there is an ongoing crisis of recruiting and retaining practitioner psychologists coupled with a 'freeze' on paid places on the DClinPsy course, as well as uncertainty on the future plans of the wider psychological workforce, such as Clinical Associate in Applied Psychology recruitment.

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<sup>7</sup> [BPS Briefing HoL Committee Stage \(2024\)](#)

<sup>8</sup> For example, although we welcome that police stations should no longer be places to detain people in crisis, this change would require additional investments to appropriate health services to avoid pressures on Emergency Departments. Community services are already limited in capacity to facilitate this. This investment is crucial. In addition, regarding the 28-day limit to transfer from prison to hospital treatment proposal, which we also welcome, this will put added pressure on an already stretched workforce.



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## **Conclusion**

We welcome the long-awaited changes to the Mental Health Act and feel that legislation covering England and Wales has many benefits. But we feel that the legislation goes wider than what is being proposed. Updated legislation must align with our mental health workforce strategy in Wales and with the new mental health strategy and its delivery plans. We would like to be involved in the future development of the Act's Code of Practice for Wales that will determine how our profession will be expected to deliver on the changes, in the wider context of Welsh strategies and guidance.