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Decoding the reformation of the Mental Health Act

The government is consulting on a white paper containing sweeping reforms of the Mental Health Act – some of the changes it's likely to propose will require systemic change.

In 2018 Sir Simon Wessely undertook an independent review of the mental health act, exploring how it is used and how its practice can be improved. The review was undertaken because of rising rates of detention under the act, a disproportionate number of non-white people being detained and processes that hadn't been updated since 1983.

The review was stark and set out what needs to change in practice and law to ensure the patient's voice is respected and that individuals are empowered to shape their own treatment and care. It also made recommendations about how to address the disparities in how the existing act affects non-white people.

Now, in 2021, the government are consulting on a white paper with sweeping reforms for the mental health act which should revolutionise how people are able to access and experience mental health services, leading to better outcomes.

Putting the patient first

People currently have little say in their own care under the mental health act. By applying a new governance model, the white paper sets out how patients will have much more power over their own care. This includes giving patients advance choice documents so that they can outline their wishes about care and treatment before it happens. From this a statutory care and treatment plan is developed between the mental health provider and the patient which is informed by the person's wishes.

This plan will then be assessed independently by a tribunal and the rules put in place will mean it is much more difficult to overrule a person's wishes. Alongside this there will be a way to challenge treatment decisions if the patient doesn't agree. The healthcare system has long talked about putting people in control of their own health and care – as outlined by the King's Fund in 2014. Shifting the responsibility for decision-making from solely the clinician to include the patient should therefore be beneficial both to the patient and the system, as it should improve outcomes and reduce time needed in treatment.

The white paper stresses that patients should be treated as individuals: "We will ensure that patients are viewed and treated as rounded individuals in accordance with the NHS Constitution's statement that staff should 'value each person as an individual, respect their aspirations and commitments in life and seek to understand their priorities, needs, abilities and limits'."



Advocacy for the patient

Part of this individual focus will be achieved by giving enhanced rights to independent mental health advocates (IMHAs). IMHAs already exist, but they don't currently have the rights to support people detained under the Mental Health Act or informal patients. The white paper expands the role of these advocates so that they can support people in expressing their thoughts and challenge treatment if they feel it isn't in their best interests.

At the moment the nearest relative is the person responsible for someone who is not able to make decisions for themselves, but the new act means that a person can nominate someone else, be it a friend or family member, to carry out this key role.

Aligned with the clear disparity for non-white people at present, the white paper also introduces culturally appropriate advocacy, so that people from a broad range of cultural and ethnic backgrounds are protected and involved in their own care.

Racial equality and mental health

It is welcomed that there is a real focus in the mental health act for non-white people given the disproportionate number of people detained under the existing mental health act.

Alongside culturally appropriate advocacy, a large part of the approach on this is focused on workforce and increasing representation in occupational therapy and clinical psychology. At the moment there is a massive under-representation of African and Caribbean people at a senior level across mental health. This will be addressed through the NHS people plan. As we recently outlined when looking at the voluntary, community and social enterprise mental health services, lived experience and diversity is key to shifting outcomes for people who are suffering from a period of mental health unwellness.

The reform of act white paper states: "Black people should not be treated less favourably than people from other groups – whether in mental health services, by the NHS or by public services as a whole. [...] Although many of the changes set out in this White Paper will have a positive impact on people from black, Asian and minority ethnic groups, the scale of disparity that exists means that specific targeted interventions will also be vital."

Examples of best practice approach have also been included for organisations to consider in the reforms, including a specialist app developed for BAME staff, Liberate, designed to support anxiety and stress levels.

It also shows how the system around the act needs to change in order to reduce inequalities experienced by ethnic minorities. An example of this in practice is the Care Quality Commission delivering on their new equality objective to provide 'equal access to care and equity of outcomes in local areas'. The act is one part of a whole system that needs to think and act differently.

Illuminations

- Putting patients more in control of their own care should lead to improved outcomes for all people looked after by the mental health act.
- Advocacy and where that comes from is key – new support mechanisms should allow a more tailored and thoughtful approach to care.
- The new mental health act does well to focus on ethnic minority groups and how to better support them. However, in order for this to work the system around the act needs to change at the same time.

If you have any questions or comments about this briefing, please call us on 07732 681120 or email advice@good-governance.org.uk.