MHB014 – Age Cymru

Senedd Cymru | Welsh Parliament

Bil arfaethedig – Datblygu'r Bil Safonau Gofal Iechyd Meddwl (Cymru) |
Proposed Development of the Mental Health Standards of Care (Wales) Bill

Ymateb gan: Sam Young, Swyddog Polisi ac Ymgyrchoedd, Age Cymru |
Evidence from: Sam Young, Policy and Campaigns Officer, Age Cymru

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Enshrining overarching principles in legislation

Question 1: Do you think there is a need for this legislation? Can you provide reasons for your answer.

We agree that there is a need to update the legislation on mental health in Wales, so that mental health can move towards being treated with the same seriousness and complexity as physical health.

Mental health is increasingly being recognised as something that affects everyone and in diverse ways - much like physical health. The Covid-19 pandemic in particular saw a growth in public interest in mental health, and encouraged conversations among sections of society who had previously been overlooked in discourse around mental health, such as older adults. However, our societal approach to mental health care remains grounded in the legislation of the Mental Health Act 1983, which arguably restricts patient autonomy and encourages a culture of detaining people as the default option – a measure that can pose a serious danger to patients, as well as creating fear of mental health services and sustaining popular stigma towards people affected by mental health conditions.

We believe that the proposed bill creates the possibility of a more person-centred and participatory approach to mental health care that would help to move away from obsolete and harmful legislation. It also comes at a good time: the Draft Mental Health Bill 2022, which holds many similarities to the proposed bill, is making slow progress in the UK Parliament, meaning that the development of this Wales-based draft bill can take stock of legislative developments in the UK draft bill and amend itself accordingly.

The success of this legislation could be of particular benefit to older people in Wales. Age Cymru's research shows that ageism is still rife in discussions around

mental health, with poor mental health still viewed (including by some healthcare professionals) as a natural part of ageing. This unhelpful opinion, which stops many older people from seeking mental health support, could be challenged by legislation that places mental health on a par with physical health.

Our research also suggests that detention and pharmaceutical remedies are still commonly used in health and social care settings as a means of controlling mental ill health among older patients, despite the potential damage and restrictions to personal freedom that these can cause. Again, a change to the legislation around mental health could push mental health care away from these restrictive practices and instead towards care that respects the experiences of older patients and allows for their participation in care.

Lastly, as the population is set to age over the coming decades, so too is the commonality of age-related mental health conditions such as dementia expected to rise, with the number of people living with dementia in the UK expected to reach 1.6 million by 2050. Planning for the future will require more flexible legislation that takes into account the complexities of mental health and the individual experiences of patients.

Question 2: Do you agree or disagree with the overarching principles that the Bill seeks to enshrine?

We agree with the overarching principles of this proposed bill. Increasing patient choice and autonomy, reducing restrictions on personal freedoms, maximising therapeutic benefit and ensuring that care is person-centred are all important ways by which mental health care can be updated so that it receives the same respect and complexity of treatment as physical health.

These principles are especially important for older people, who often have specialised mental health care needs and could benefit greatly from the updated, generally more person-centred approach to mental health care described in this proposed bill.

Some examples of mental health issues that disproportionately affect older people include:

Physical disabilities and long-term health conditions:

- Older people are more likely to experience long-term physical health conditions and disabilities, with many experiencing several conditions at the same time. Our surveys have consistently shown that older people who are experiencing these are more likely to experience poorer mental health as a result.

Bereavement:

- Our annual surveys show that bereavement is a major cause of poor mental health among older people, often due to the death of a partner, carer or close friend. In our 2023 survey, those respondents who told us that mental health was a challenge were almost six times more likely to have been experiencing grief or bereavement at the time.
- However, death and dying are not the only causes of bereavement among older people. Many also experience grief when they move into a care home or hospital care setting, as they are removed from their home, friends and community.
- Other older people have remarked that their struggles with grief have been worsened by their inability to attend funerals or visit graves and other sites of memorial – whether due to lockdown during the pandemic, or ongoing problems such as the lack of access to public and community transport.

Loss of autonomy:

- Restrictions to an individual's autonomy can have serious effects on their mental health. This is an issue that affects older people in large numbers, whether due to disability, long-term health conditions or mental health conditions such as dementia.
- There are also structural reasons as to why older people's autonomy can be restricted, including a lack of access to transport and difficulties accessing their finances (e.g., due to a lack of alternatives to online banking).

Loneliness:

- Loneliness and isolation remain common issues among older people, especially among those living in more rural areas. Loneliness is a major cause of poor mental health and can also contribute significantly to cognitive decline.

Dementia:

- While dementia and mental ill-health are often grouped together, they are different conditions and it is possible for someone with dementia to live with good mental health.

However, many factors in society's current approach to mental health care make it harder for older adults living with dementia to experience good mental health. For example, a major problem is the difficulty people living with dementia have in communicating their needs, which can result in poor mental health and, in many cases, challenging behaviours from the person with dementia. A more person-centred approach to mental health care may be able to identify the needs of someone living with dementia and take early action to resolve them.

- The above point is particularly true for older people living with dementia who do not speak English as their first language. As dementia deprives them of the ability to communicate in English, their mental health will suffer, and they may become distressed. A more person-centred approach to mental health could tackle this by ensuring that language needs are considered earlier on.

Specific changes to existing legislation

A. Nearest Relative and Nominated Person

Question 3: Do you agree or disagree with the proposal to replace the Nearest Relative (NR) provisions in the Mental Health Act 1983 with a new role of Nominated Person?

Can you provide reasons for your answer.

We agree with this position.

The NR provisions from the Mental Health Act 1983 do not take into account the various personal, cultural, medical and other circumstances that may make it unsuitable to select someone's nearest relative to represent them and fulfil any relevant statutory functions while they are experiencing mental ill-health.

Our work has repeatedly found that there are limitations to assuming that all people a) have a healthy, close relationship with their relatives, and b) belong to a traditional family unit that easily maps onto the NR provisions of the 1983 Act.

For example, many older LGBTQ+ people do not live within a traditional family unit, making it inappropriate to impose the NR provisions of the 1983 Act upon their personal situation. Many older LGBTQ+ people have also experienced strained relationships with their family members, and would not feel comfortable with a close family relative being selected to represent them, as would happen under the 1983 Act. For older LGBTQ+ people, therefore, it is

imperative that greater agency is given to the patient to nominate someone suitable to represent them.

We have also heard from stakeholders that veterans sometimes have strained relationships with family members, particularly if they have a history of trauma from their time serving in the Armed Forces. Again, it is vital that the legislation around mental health is changed to reflect this.

However, the change from NR provisions to a Nominated Person approach must be accompanied by robust safeguarding measures. People receiving treatment for mental health conditions can be vulnerable to abuse, and it is important to ensure that patients are not pressured into nominating someone who may abuse their trust and act against their best interests.

B. Changing the criteria for detention, ensuring the prospect for therapeutic benefit

Question 4: Do you agree or disagree with the proposal to change in the criteria for detention to ensure that people can only be detained if they pose a risk of serious harm either to themselves or to others?

Can you provide reasons for your answer.

We agree with this proposal.

Detention is often used as a response to mental ill-health among older people – and not always because they pose a harm to either themselves or others. This is particularly true in hospital and care home settings, where current mental health legislation compounded by staffing pressures mean that the use of anti-psychotic drugs and other forms of detention remain common. In particular, we are concerned that older adults living with dementia and other neurological conditions who are unable to communicate their needs to staff may display behaviours that challenge, resulting in them being detained.

We strongly support a change to the legislation around the detention of people experiencing mental ill-health. Unnecessary detention due to mental ill-health is an infringement on an individual's right to liberty and should only be used as a last resort when the individual poses a direct threat to themselves or others. We also urge that dementia training in hospital and care home settings is updated to account for the difficulties that people with dementia may have in communicating their needs to staff, thereby nipping challenging behaviours in the bud before they escalate to a situation in which staff resort to detention.

Furthermore, changes to the criteria for detention in Wales could be complemented by the anticipated introduction of Liberty Protection Safeguards by the UK Government – a piece of legislation that appears to have been shelved for the rest of the current parliament. In the meantime, the Welsh Government should work towards strengthening the existing system of Deprivation of Liberty Safeguards (DoLS), for which there is still a considerable backlog.

Question 5: Do you agree or disagree with the proposal to change in the criteria that there must be reasonable prospect of therapeutic benefit to the patient?

Can you provide reasons for your answer.

We agree that the criteria for detention should include the reasonable prospect of therapeutic benefit to the patient.

As discussed in the previous answer, we want to discourage the use of detention as a default option in cases of mental ill-health where the patient exhibits behaviours that challenge. Age Cymru's research has shown that detaining individuals – particularly via the use of anti-psychotic medication – remains an issue to older adults experiencing mental ill-health, especially in care homes.

As part of our belief in moving away from detention as a default response, we believe that any form of detention must contain a therapeutic element. Ensuring that detention is followed up with a therapeutic response would not only help the individual by providing medical support, but also contribute to a cultural shift away from using detention as an 'easy option' and instead integrate it into a more holistic and less reactive approach to mental ill-health. Such a cultural shift would play an important role in ensuring that mental health is treated with the same seriousness as physical health.

C. Remote (Virtual) assessment

Question 6: Do you agree or disagree with the proposal to introduce remote (virtual) assessment under 'specific provisions' relating to Second Opinion Appointed Doctors (SOADs), and Independent Mental Health Advocates (IMHA)?

Can you provide reasons for your answer.

We broadly agree with the idea of introducing remote assessment by SOADs and IMHAs, as this has the potential to give individuals greater agency over seeking support for their mental health.

However, the introduction of remote assessment must not disadvantage individuals who are digitally excluded. This is a particular issue for older people: one in three people over 75 in Wales have no access to the internet, and another one in three over 60 do not use a smartphone. Those older people who live in rural areas or who live with a disability or long-term health condition are especially likely to be digitally excluded. It is important that those who cannot or choose not to access the internet are not disadvantaged in any way when seeking mental health assessments.

D. Amendments to the Mental Health (Wales) Measure 2010

Question 7: Do you agree or disagree with the proposal to amend the Measure to ensure that there is no age limit upon those who can request a re-assessment of their mental health?

Can you provide reasons for your answer.

We agree with this proposal. While it is understood that the removal of age limits on requesting re-assessment of mental health issues is intended primarily to apply to younger people, we are also keen to ensure that it continues to apply to older people as well.

Poor mental health is often (incorrectly) perceived to be an inevitable part of ageing. This misrepresentation is repeatedly frequently in public discourse and in many cases is internalised by older people, who as a result choose not to seek mental health support. Ensuring that there is no upper age limit on seeking a mental health re-assessment can play an important role in making older people aware that mental health is something that affects anyone, regardless of age.

Question 8: Do you agree or disagree with the proposal to amend the Measure to extend the ability to request a re-assessment to people specified by the patient?

Can you provide reasons for your answer.

We agree with this principle, as it offers another means for people – especially those who may require representation by someone else due to a disability or long-term health condition – to gain access to mental health support.

As per our response to Question 3, there must be robust safeguards in place to prevent cases of abuse during the process of nominating someone to act as a representative to the patient.

General Views

Question 9: Do you have any views about how the impact the proposals would have across different population groups?

These proposals have the potential to greatly improve older people's access to and experience of mental health care. In particular, they offer the possibility of increasing the agency of older people through mental health care pathways, as well as ensuring that any care offered is more appropriate to their personal needs.

Furthermore, these proposals have the potential to change the culture around older people accessing mental health support. By bringing mental health up to the same standards of care as physical health, we can break down some of the unhelpful cultural misapprehensions that persist around mental health being something primarily experienced by younger people, and instead normalise the idea of older people seeking mental health support as much as they would support for physical health issues.

Question 10: Do you have any views about the impact the proposals would have on children's rights?

n/a

Question 11: Do you have any general views on the proposal, not covered by any of the previous questions contained in the consultation?

Links to UK Draft Mental Health Bill 2022 (re. Question 1)

We would also like to see greater clarity around how this proposed bill interacts with the UK Draft Mental Health Bill 2022, with which it shares many similar features. As work continues on this proposed legislation, it would be useful to examine how closely it aligns with the UK bill and how any legislative crossovers between the two are expected to be tackled in future.

Passive forms of restriction (re. Question 4)

We believe that there is a wider and underacknowledged issue of the passive restriction of older people in Wales.

While there are many ways by which an older person might be actively detained by a health or social care professional, we also believe that a greater number of older people in Wales experience passive forms of restriction on a regular basis, whether in hospital, care homes or within their own homes. Examples could

include restrictions on mealtimes, limited visiting hours or blanket restrictions on access to the outside world due to the assumption that the older person will be unsafe outside the care environment. In each case, there is a risk to the mental health of the individual due to restrictions imposed on their liberty.

We understand that, in institutionalised care, this passive form of restriction often stems from a lack of staff, meaning that there are fewer carers available to help older people in their care lead an active lifestyle. It may also be due to a lack of space in follow-on care (e.g., waiting in hospital for a care home space to open up), meaning the older person is unable to leave hospital and get support to live in a more active manner. Another problem is persistence of assumptions that older people – especially those living with dementia – are incapable of leading an active lifestyle (e.g., travelling outside the home, meeting people, developing new hobbies and interests, etc). This unhelpful attitude can force passivity onto an individual, effectively restricting them.

This more passive form of restriction can have serious effects on an individual's mental health, depriving them of liberty. While it may not come under the remit of this specific proposed legislation, this bill nonetheless represents an opportunity to rethink how we approach caring for older people, ensuring that care is empowers individuals and supports their autonomy, rather than forcing passivity onto them.

Adequate resourcing for mental health care (general comment)

While we broadly agree with the proposals set out in this document, we note that a change to the legislation around mental health could only be of limited value if mental health care itself is not adequately resourced. Our research into mental health care for older adults has found that, in many cases, medical and care practitioners are aware of the mental health needs of their older patients but are unable to meet them due to a lack of funding and available staff. We therefore stress the need to ensure adequate resourcing for these proposals, otherwise mental health care will continue to be the poorer relation to physical health care, despite the best intentions of policymakers and care practitioners.

At the same time, we would like to see greater efforts on the part of legislators to address the root causes of poor mental health in Wales. This means addressing the socio-economic factors that contribute to poor mental health (among people of all ages, abilities and backgrounds), including poor quality housing, social isolation and difficulty accessing employment.