

## **MHB023 – Adferiad**

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### **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: Peter Martin, Pennaeth Materion Cyhoeddus, Adferiad | Evidence  
from: Peter Martin, Head of Public Affairs, Adferiad

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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.**

Adferiad welcomes support for our longstanding call for new and strengthened mental health legislation for Wales. We think it is timely to strengthen mental health legislation in Wales given that the previously proposed Mental Health Bill, designed to strengthen patients' rights, was not included in the Kings Speech in November 2023.

We will be seeking further views from our members and clients over the next few months, and we will provide further feedback on this. Adferiad welcomes being further involved in developing new mental health legislation for Wales as well as any new code of practice, regulations, and/or further guidance.

We recognise that any new legislation can take time to plan, develop, and come into force, but we hope this Bill is adopted as soon as possible by Welsh Government. We think that this Bill should include more detail relating to ensuring that people's rights are further strengthened, people have greater choice, and that each of the overarching principles become fully embedded in service delivery.

We think this Bill provides an excellent opportunity to strengthen and amend Wales' pioneering Mental Health (Wales) Measure ('the Measure'), and that as well as introducing amendments to the Measure through this Bill, there is also an opportunity to introduce new regulations and to update the current codes of practice for Wales that relate to both the Measure and the Mental Health Act.

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A major factor in determining what to include in any new legislation and guidance must be the financial implications and its affordability. We would like to see more commitment in this Bill to applying prudent healthcare principles and ensuring that resources are targeted more efficiently on moving those patients receiving higher-end (and more expensive) services into the most appropriate (often lower) level of service.

One of the key means to achieving prudent healthcare for people using secondary mental health services is better use of Care and Treatment Plans. Health services are rarely commissioned based on delivering outcomes valued by patients, instead, many health services are arranged around the services and structures that are already in place. We want to see Care and Treatment Plans used better to determine what services are commissioned and provided.

However, review after review has found that Part 2 of the Measure is not being fully complied with, despite it being primary legislation. This part of the legislation requires all individuals accepted into secondary mental health services to have a care co-ordinator and a Care and Treatment Plan (CTP). Yet, despite this, the latest compliance returns from Health Boards shows only 75% of patients in receipt of secondary mental health services have a valid CTP, with one Health Board reporting only just over 50% of patients having a valid CTP.

All reviews of the Measure since it came into force in 2012, including those conducted by the NHS' own Delivery and Support Unit, and Healthcare Inspectorate Wales (HIW), have consistently found, and said, that CTPs are of poor quality, are not being coproduced, and are not being completed in accordance with primary legislation.

The Measure itself only required a review to be published within four years of the commencement of all the duties contained within its parts. As the Measure has not been as effective as intended and the evidence shows it is not being fully complied with, we think there should be a statutory review of its operation conducted every five years. There is also an opportunity for this Bill to include provisions for further regulatory interventions when legal requirements are not being met.

Therefore, we propose the following be included in clauses set out in the proposed Bill:

- Amend clause 48 of the Mental Health (Wales) Measure 2010 to include a requirement to produce a report on a review of the operation of Parts 1, 2,
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3, and 4 of the Measure every five years that focuses on the level of compliance with each part'

- Introduce quality standards for the co-production of Care and Treatment Plans and set out in a revised Code of Practice. These standards will be reviewed and reported against on a quarterly basis
- Give people rights to care and treatment before they become so ill that detention under the Mental Health Act is required. This will require service providers delivering and implementing services based on holistic Care and Treatment Plans mandated in the current Mental Health Measure

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

We agree with enshrining the overarching principles in legislation and that they should be included on the face of this Bill. The four principles included in the Bill are the same as those set out in Simon Wessely's independent review published in December 2018.

Wessely's review highlighted that the rate of detention under the Mental Health Act was rising and that *'the patient's voice is lost within processes that are out-of-date and can be uncaring'*.

The proposed Bill says:

A. Choice and Autonomy: all practicable steps must be taken to:

- i Support a person subject to the Act to express their will and preferences
- ii Have particular regard to the person's will and preferences, even where an intervention in the absence of consent is expressly authorized by the Act
- iii Promote the person's dignity, and accord them due respect, including respecting their social and caring relationships; and
- iv Take steps to ensure that the person understands their rights and entitlements whilst they are subject to the Act.

We agree that it is important to enshrine this principle into legislation and be on the face of the Bill. Care and Treatment Plans (CTPs) are already a legal requirement in Wales through primary legislation (Part 2 of the 'Measure'). There is a specified format laid out in the legislation and a considerable amount of statutory guidance. However, CTPs in Wales are not focussed specifically on 'treatment decisions' but rather on 'goals' and 'outcomes' that people seek to achieve as part of their on-going 'recovery'.

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Wessely's review proposed two different sorts of care plans. A statutory CTP for people who are detained under the Mental Health Act (rec.43) that mainly relates to treatment choices, and a separate Statutory Care Plan (SCP) for people in contact with CMHTs, inpatient care and/or social care services (rec.71). The report envisaged the new statutory SCP incorporating the new statutory CTP for when someone is detained. The envisaged SCP is the equivalent of CTPs in Wales.

We need to include shared decision making relating to treatment choices, medication, etc. into our current CTP process. We also think it is important to reduce unnecessary bureaucracy and avoid duplication of assessments and having multiple care plans.

As an example of combining different care plans, the Code of Practice relating to assessing people under the SSWBA (Part 3 para.38) states that, 'In order to avoid duplication of assessments under different legislation being carried out separately, a local authority may carry out a needs assessment under the Act at the same time as it carries out an assessment under other Acts or at the same time as another body carries out an assessment under other Acts.'

Further, the Code of Practice relating to meeting people's needs under the SSWBA (Part 4 para.98) states that, 'Where there are overlapping duties to prepare plans that are nationally or legally prescribed (for example a Care and Treatment Plan prescribed under the Mental Health (Wales) Measure 2010 ...and there is a plan that meets the requirements of a care and support plan; the preparation, delivery and review of that care plan can be regarded as the way for the local authority to meet its duties to prepare, deliver and review a care and support plan.'

We think the following additional points should be added to the proposed Bill under Choice and Autonomy:

- v** Ensure there is shared decision-making between clinicians and patients for all treatment decisions as far as is practicable
  - vi** Ensure that decisions about medication are, wherever possible, in line with the patient's choice and that patients have a right to challenge treatments that do not reflect that choice
  - vii** Ensure that people can make a range of choices and statements about their inpatient care and treatment as far as is practicable
  - viii** Amend clause 18 of the Mental Health (Wales) Measure to include additions to the eight areas for which outcomes must be achieved and recorded in a Care and Treatment Plan. These additions to include:
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- The full range of treatment and support available to the patient from health and care organisations (including third sector)
  - Any care that could be delivered without compulsory treatment
  - If detained under the Mental Health Act, why compulsory elements are needed and what is the least restrictive way in which the care should be delivered
  - How the current and past wishes of the patient (and family, carers, where appropriate) have informed the plan
  - A patient's choice of Nominated Person
- ix Ensure all care plans for an individual are co-produced and are combined where this is practicable
- x All patients have a right to be involved in the planning of their care and to make choices and refusals regarding treatment
- xi People will be able to make advance statements, setting out how they would wish to be treated if they become unwell and unable to express their views clearly at some point in the future. The Tribunal and any person responsible for giving treatment under the new Act would have to take an advance statement into account.

## **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.**

There has long been criticism of the current method of determining the 'Nearest Relative' (NR), and that this needs to change. Currently a person detained under the Act has no say over who fulfils the role of the NR who is automatically appointed through a hierarchical list of conventional relatives.

A person subject to the Act being able to choose a 'Nominated Person' (NP) is not likely to be too contentious. However, a process needs to be in place where a person has not nominated a NP.

Wessely's review also proposed a new Interim Nominated Person (INP) selection mechanism to be applied where a person has not nominated a NP, and this may be contentious. This proposal allows for an AMHP to appoint an INP, 'working to

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guidance to identify the friend or relative most suitable to fulfil the role'. This is a concern, and we think needs very careful consideration. The issue here is that the state has the power to take away someone's liberty and then has the power to determine who it is that should protect their rights.

People should have the opportunity to choose a Nominated Person in advance of any compulsory action under the Mental Health Act as part of their Care and Treatment Plan under the principle of Choice and Autonomy above

## **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.**

Yes, we agree with this, although we question whether Welsh Government has the devolved power to amend legislation relating to the criteria for detention

**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.**

Yes, we agree.

## **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 would like to see any evidence that confirms the quality of the assessment or the ability to build a rapport with the patient is equal to face to face support. We think that the choice should always lay with the patient to determine where and how best an assessment should be undertaken. We think this specific proposal needs further detailed consideration and to be more widely consulted upon.

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## **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.**

See 8 below

**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.**

These two provisions were originally one of several recommendations included in the Welsh Government's 'Duty to Review Final Report'<sup>1</sup> published in 2015, and it is good to see them resurface 9 years later.

### **General Views**

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

**Carers:** Jo Roberts has already suggested in her filmed interview that more consideration should be given to the rights of carers and families. Although there are many duties on local authorities set out in the Social Services and Wellbeing Act, we think it is important to acknowledge in this Bill the vital role they play in supporting people with mental illness and there should be cross references to other related legislation.

**People from diverse and ethnic communities:** Black people are disproportionately subject to compulsion under the Mental Health Act and Wessely's review highlighted that yet again black people are disproportionately more likely to be subject to a CTO than admission to hospital.

Wessely proposed increasing the threshold for a CTO, and recommended they should end for an individual after 2 years. He also said the whole process of CTOs

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<sup>1</sup> [The Duty to Review Final Report Post-Legislative Assessment of the Mental Health \(Wales\) Measure 2010](#)

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should be reviewed after 5 years and if there is no evidence of clear benefits to people, they should be abolished altogether.

Diverse Cymru has developed a 'Cultural Competency Toolkit' in Wales that aims to help mental health and social care staff better interact with clients from other cultures by providing guidance on how staff can take action to overcome the barriers that people from BME communities frequently face when accessing services.

People from BME communities are less likely to seek support for mental health problems at an early enough stage due to cultural barriers, etc. and it is therefore important to ensure this valuable resource is widely promoted and used and we should continue to work more closely with Diverse Cymru to ensure that action is taken to reduce the inequalities in access to care and treatment and tackle the issue of the disproportionate number of Black people who are detained under the Act.

Here is Jo's story: [https://youtu.be/m\\_1VMW6S6l4](https://youtu.be/m_1VMW6S6l4)

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

The major challenge is to regulate referral to CAMHS. Clear referral criteria need to be introduced and managed to ensure that only appropriate referrals are made. An amended and updated Code of Practice should set out Wales-wide criteria on what constitutes an appropriate referral.

Click [here](#) to view Adferiad's publication 'Young People and Mental Health - prevention, early intervention, and the role of mental health service

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

The proposed Bill has little to say on the detail of reducing or eliminating the use of coercion and restrictive practices apart from applying the very general principle, *'the exercise of any power under the Act must be done in the least restrictive and least invasive manner consistent with the purpose and principles of the Act'*.

Third sector organisations have been calling on the Welsh Government to legislate to end the use of face down restraint in Wales. We want all Health Boards in Wales to properly record any instance where a patient is restrained.

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In England the Mental Health Units (Use of Force) Act became law in November 2018 ('Seni's Law'). This new law requires mental health units/hospitals to actively take steps to reduce the use of force against patients including by providing better training on managing difficult situations and collecting better data to highlight progress and any problem areas. It also requires Police officers to wear body cameras when called to mental health settings, which can be used in evidence.

We should consider whether and how 'Seni's Law' could be incorporated into legislation in Wales. We also need to consider how informal patient's rights are being restricted due to being on the same ward as patients who are detained under the Act, e.g., being on a locked ward, having to ask permission to leave and often being deterred from leaving.

Adferiad would be pleased to be involved in any discussions that take place about improving mental health legislation in Wales, whether through updating current codes of practice, introducing new regulations, or amending existing guidance or primary legislation.

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