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Sent via email to: jcmentalhealth@parliament.uk

Dear Sir/Madam

Re: Draft Mental Health Bill

We are writing in response to the consultation on the draft Mental Health Bill. We welcome the Government's intent to reform current legislation and the priority thereby being given to people with acute and long-term mental health issues.

As an organisation committed to values of independence, choice and control we welcome the aims of the Bill to reduce detentions under the Mental Health Act; to improve patient choice and control over their care; to enhance the benefit they receive from treatments; and to reduce the inequalities faced by people with learning disability and autism and people from black and minority ethnic communities.

Our teams have examined the draft Bill and accompanying impact assessment and noted some areas of concern or comment that we wish to highlight for further clarity as part of the pre-legislative scrutiny committee's call for evidence.

Amended definitions and detention criteria

We welcome the intention to reduce detentions under the Act and to ensure that treatment provided to people, especially if under detention, is of benefit to their recovery. We know that in practice there are often cases of complex needs, risk and repeat presentations that are not easy to resolve or treat and can leave tired professionals and stretched services at a loss as to how best to support them or suffering with burnout or compassion fatigue. Instances of emotional crisis, personality disorder, complex PTSD are some examples.

What clarity and assurances can you provide that the requirements of the new criteria will not have the unintended consequence of allowing these groups of people to be excluded from the provisions of the Act and lead to new categories of 'diagnoses of exclusion' as was the case prior to the 2007 amended definition of mental disorder? How will you ensure that busy NHS services seeking to manage their workloads will not look to this criteria as a tool to reduce the level of service they are required to provide to these people with complex case histories?

As an organisation committed to supporting community based independent support for people with learning disability and autism we have been working within the Building the Right Support/Transforming Care Programme to support more people to move from hospital based settings to community alternatives. This work has shown us the need for significant market development in order to ensure there is an adequate supply of quality community provisions available to support those people currently

part of hospital populations who often have high intensity, multiple needs. Both the prevention of new admissions and the discharge of current inpatients is dependent on community-based services that can provide the right support and expertise.

We welcome the move to require Local Authorities and ICBs to work closely to ensure that these provisions exist in their areas and are available to those at risk of admission otherwise. However, we cannot see evidence in the impact assessment of the significant investments that will be required in order to achieve this. We feel there will be a range of organisational costs associated with the various strands of this work that are not accounted for in the impact assessment. These ranges from the administrative element of developing and maintaining the register, to the time involved for professionals and managers in contributing to it, plus the significant project work for commissioners to drive the market to ensure these provisions are developed.

What is accounted for is a projected cost saving in relation to the cost of inpatient treatment, though we cannot see any account of the consequent cost of the required care and support packages in the community to allow these to take place. We know from those cases we already manage in the community that these are usually very high cost placements, often more so than hospital inpatient stays. What provisions will be made to ensure these much needed changes can be delivered?

It is important that the Government takes into account these needs, as well as the potential cost and the requirement for additional funding to underpin the necessary actions - and is mindful of potential considerations under the New Burdens doctrine.

Guardianships

We believe the consequence of the above plans to reduce the numbers of people with learning disability and autism detained under the Act for treatment, coupled with the ongoing inclusion of this group in Guardianship, will result in a significant increase in the number of applications for guardianships.

The impact assessment suggests this is not expected to be the case. However, we feel that removing the ability to detain in hospital alongside retention of the ability to use guardianship make this a likely route by which many of the people with learning disability and autism currently detained in hospital will be moved into community-based settings. We also note that calculations on how many of the currently detained population this could apply to are based on those without any mental disorder recorded alongside their learning disability or autism. We feel this is likely to lead to an underestimate, given that many of these recorded mental disorders may be of a nature that would not meet the threshold for MHA detention.

Guardianships are in limited use now and as such, the costs of their delivery may be difficult to estimate and have not been reflected as significant in the impact assessment. However, the workload associated with guardianships – both in accepting initially, ongoing oversight and renewals, is not insignificant and one we do not feel is represented accurately – perhaps due to the limited number and so limited information available. Should guardianship become the only available legal framework for people who can no longer be detained under s3 then the likely increase could quickly become overwhelming for local authorities used to administering only a very small number. We know from experiences of DoLS following Cheshire West that legal changes can create significant resource implications and feel that this area of the bill requires greater attention to ensure a similar, while smaller scale, result is not borne out.

Again, we feel there will be a range of organisational costs associated with this work that are not accounted for in the impact assessment and, again, this presents another potential New Burden. Some areas we can see impacts in include:

The administrative element of developing and managing the acceptance of paperwork, renewals and tribunals. MHA Administration services are situated in hospital and carry out a range of functions on behalf of hospital managers in relation to scrutiny of paperwork, rectification of errors, management of timescales, expiry dates and reminders plus the tasks associated with the co-ordination of appeals to the Tribunal. The tiny number of Guardianships currently in effect mean this work is often absorbed within current systems on an ad hoc basis – but even a small level of increase would require a significant

change to this to ensure proper oversight and compliance.

The time involved for professionals and managers in considering accepting, administering and renewing guardianships. While the impact assessment accounts for some professional time from AMHPs in undertaking assessments, little is represented in terms of the ongoing management of the guardianship, undertaking statutory visits, oversight of support planning and renewals. We feel this takes much more time and from a much wider range of professionals, including senior level managers and the DASS or delegated staff members which is not accounted for.

We welcome any further clarity in regards to the areas we have highlighted and are keep to support in any further development of the proposals to ensure that the key objectives can be achieved.

Yours sincerely



Cllr Michael Harrison
Executive Member Health and Adult Services



Richard Webb
Corporate Director Health and Adult Services