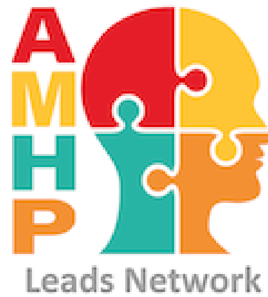

AMHP Leads Network – supplementary evidence to the Joint Committee on the Draft Mental Health Bill

Following our appearance at the Joint Committee on Wednesday 16th November 2022, we would like to offer the following supplementary evidence on issues raised outside of the prepared questions.

1. Informal/voluntary admission

During the Joint Committee session, The Baroness Buscombe requested written view as to our considerations around informal admission (section 131). The AMHP Leads Network (ALN) remains concerned at the degree of coercion that exists within the mental health system, with many so-called voluntary patients remaining within a ward environment in the belief that they will be detained if they attempt to leave. We believe that all efforts should be made to ensure that informal/voluntary admission does not amount to a 'de-facto' detention through such coercion or duress.

Informal admission, as it is now, should remain the first offer to a person who is believed to require treatment in hospital. However, for informal admission to be valid and truly informal we submit that sufficient information must be provided to individuals at the time of admission. This information would need to include the purpose of the admission, detail about their likely care and treatment, environmental restrictions, and confirmation that, subject to potential use of section 5, they are free to leave. These requirements should be periodically reiterated to informal patients during their admission, as the rights to appeal are for detained patients in the same settings.

More detailed suggestions and discussion in relation to what information ought to be included can be found in case law such as *A Primary Care Trust v LDV* (2013) EWHC 272 (Fam) and *Heart of England NHS Foundation Trust v JB*[2014] EWCOP 342.

The ALN would encourage consideration to be given to the declining of a voluntary admission as criterion for both sections 2 and 3 (i.e. it would be for registered medical professionals to confirm in their medical recommendations that such an offer was made and declined, and that the use of compulsion is the only means by which to assess and/or treat the individual in a hospital setting).

Where the patient has capacity and requests informal admission, but the assessing team still wish to utilise compulsion on clinical and risk grounds, there should be a positive obligation on those professionals to provide clear rationale for their use of compulsion against the express wishes of a person agreeing to be admitted informally.

2. Nominated Persons and Parental Responsibility – potential conflicts

During the Joint Committee session, Dr Ben Spencer MP raised the question of potential conflicts between an under 16 (with Gillick competence) choosing a Nominated Person (NP) - who was not a parent or someone with parental responsibility (PR) - and those with PR (usually a parent). Dr Spencer indicated a belief that a child's parents should always have preference and provided an example of where NP and parental conflict could arise.

We would like to clarify our position with regards to this area of proposed legislation. It is the generally held view of the ALN that if the principle of choice is accepted as fundamental to the reform of mental health legislation then this should be applied to all who are potentially subject to the Act, and to all who have capacity/competence to choose. We believe that a competent child choosing a non-parent as their NP is not inherently problematic and should be seen positively as aiding the child patient's voice. The construction of family itself is multi-faceted and complex. It does not always equate that a child's parent has their best interests at heart or fully appreciates the views of their child. The aim of the Review was to move away from prescriptive statutory arrangements in this area. A non-parent NP in these circumstances could bring a valuable contribution to the child's care and need not be in conflict with the child's parent(s).

As with any NP acting against a child patient's best interests or welfare, mechanisms would be in place to provide a legal remedy to remove them (currently expressed at section 29 and accounted for in the Bill), while good practice should always be to find resolution without resort to legal measures.

It should also be remembered that the Bill itself directs the AMHP to nominate a person (or local authority) with parental responsibility to be appointed as NP where one does not exist and prevents the AMHP in considering a wider field of candidates than would be the case for a young person or adult. This we believe is an appropriate measure within the proposed legislation and goes someway toward addressing the concerns expressed by the Dr Spencer MP.

3. Learning disability and autistic people being removed from section 3 detention criteria

During the Joint Committee session, The Baroness Berridge enquired as to the view of the ALN on removing those with a learning disability or autism from treatment criteria. We are aware that our position may not have been made clear enough during the evidence session.

Notwithstanding all of the resource, commissioning and criminal justice implications, the ALN support the removal of these groups from section 3. The Baroness referred to the potential for transitional arrangements to be put in place, given those very real concerns over the resource gap that will become starker with such a change. While we are not sighted on what such arrangements might look like, as a Network, we would support all efforts to support and protect these groups of people from immediate discharge into a care void on the understanding that such arrangements were focussed on securing a person-centred and less restrictive outcome in the quickest possible time with the minimum disruption to that person.

4. Section 13, supporting AMHP consideration and 'mirror duties'

During the Joint Committee session, Dr Dan Poulter MP, sought clarity on what was meant by our encouragement for the Committee to recommend the insertion of "mirror duties" and responsibilities to support AMHPs at section 13 – including greater Code of Practice clarification as to the responsibilities of Integrated Care Boards, mental health services and other relevant organisations.

To clarify, this was not specifically a call for additional resources. The suggestions as described on the day and set out below are based on reducing the barriers AMHPs currently face in gaining cooperation from partner agencies in further reducing detention rates. We consider these to be resource neutral, if supported correctly. The role of AMHP in considering requests for detention is as much about reducing the need for admission and compulsion, as it is ensuring that individual rights and autonomy is respected. Securing alternatives to admission is something that AMHPs do each day on an almost industrial scale, however due to national data collection mechanisms being centred around detention rates only, this prevention often goes unmeasured.

We submit that the suggestions below represent cost effective measures that will support a reduction in detention rates by requiring partner agencies to prioritise their existing resources and focus in support of AMHPs' considerations at section 13:

- **Require all partner agencies involved in, or responsible for, the care and treatment of an individual to remain proactively involved throughout any period of AMHP consideration, assessment, or admission process.** This 'duty to cooperate' should be codified at an amended section 13 and is aimed at ensuring all measures are taken to reduce admission, regardless at what point an individual is at in the consideration of their situation. This should also help ensure that culturally appropriate supports are considered and engaged during this process.
- **Strengthen emphasis on section 13 consideration through the Code of Practice**. It should be recognised that AMHP consideration is an independent piece of preventative work, separate from an assessment interview (colloquially, "Mental Health Act assessment") which forms potentially only one part of the consideration as a whole.
- **The Code of Practice should be amended to clarify what partner agencies can reasonably be expected to do during the period of section 13 consideration**, including steps to take before making a referral to an AMHP, responsibilities to the individual as to the referral being made, remaining involved during this the period of consideration; including, providing information, support and co-operation for as long as it may take to determine the most appropriate course of action.
- **A 'sufficiency' requirement for section 12 doctors should be included in the Code of Practice** as is it currently for AMHPs. Our research indicates major issues with the non-availability of medical input nationally into these processes and requires urgent redress.
- **Those carrying out assessment interviews and decision making under the Mental Health Act should be required to show consideration of the potential trauma and harm caused by the impact of compulsory detention and enforced treatment**. This should include the trauma associated to the use of section 135(1) warrants and assessing the person in their home. It should be a requirement to demonstrate how the benefits of compulsion are expected to outweigh the multiple potential negative impacts.
- **In order to support a reduction in the length of long-term hospital stay, we believe that AMHPs involvement should be a requirement for treatment extensions**, in order to ensure the same level of independent scrutiny as exists for the initial application.

Many of the barriers faced by AMHPs in securing the most appropriate outcome for an individual often cause unnecessary delay and places the individual at potential risk. While local authorities have a duty to provide sufficient AMHPs to consider a person's situation in relation to compulsions, no other part of the system has such a statutory direction and it is this that we are seeking to help further minimise both admissions and compulsion.

Thank you for this opportunity to clarify our position on a number of areas.

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29th November 2022