

CQC and the Mental Health Bill

The Mental Health Act 1983 (MHA) is the legal framework that provides authority for hospitals to detain and treat people who have a mental illness and need protection for their own health or safety, or the safety of other people. The MHA also provides more limited community-based powers, community treatment orders and guardianship.

CQC has a duty under the MHA to monitor how services exercise their powers and discharge their duties when patients are detained in hospital or are subject to community treatment orders or guardianship.

While some important amendments were made to extend the rights of people with a mental illness in the [Mental Health Act 2007](#), there are still concerns that much of the current legislation is over 40 years old and does not reflect modern understanding of mental illness.

In 2017, the government commissioned a review of the MHA and how it affects patients, professionals and the public. The independent review, led by Professor Sir Simon Wessley, was the first review of the legislation since the Mental Health Act 2007 changes. [The review's final report](#), published in 2018, identified 4 key principles that should be used as a 'basis for all actions taken under the act' and form the foundation of the 2024 mental health bill:

- choice and autonomy

- least restriction
- therapeutic benefit
- the person as an individual.

We welcome the introduction of the Mental Health Bill, which was introduced in the House of Lords in November 2024 and will bring about important reforms to increase the safeguards for people who are detained. This is a key factor in enabling the system to improve mental health care and provide better outcomes for people, ensuring people are cared for in a way that maximises their choice, control and independence and promotes their dignity, privacy and human rights.

The new statutory principles embedded within the Bill, and accompanying changes to the Code of Practice, will provide for a sharper focus on the rights and experiences of mental health patients, people in custody who have a mental disorder, autistic people and people with a learning disability.

While the Bill is introducing many significant and long-awaited amendments, we will be monitoring a number of areas closely to ensure they translate into positive changes for people:

- **Over-representation of Black people detained under the Mental Health Act and placed on community treatment orders (CTOs).**

This is a longstanding inequality and everyone involved in the delivery and oversight of mental health services must put measures in place to address it. We welcome the ambitions in the Bill to decrease the overall use of community treatment orders and the racial disparity in their application, but it will be important to keep these reforms under review following implementation to measure their true impact.

- **Ongoing problems with care pathways and a lack of community provision for autistic people and people with a learning disability.**

This can lead to them being inappropriately detained in hospital, which can have a devastating impact. We are pleased to see important amendments to the MHA included in this Bill, which will increase the safeguards for people who are detained. However, we are concerned that, even with the changes, there may still be a risk that people may be detained in suboptimal hospital placements. It will therefore be important to monitor implementation to ensure people are safeguarded from unintended consequences.

- **Persisting abusive and closed cultures in too many mental health services.**

The likelihood that a service might develop [a closed culture](#) is higher if an inherent risk factor is present. There are many inherent risk factors such as workforce retention and staffing shortages, which remain one of the greatest challenges for the mental health sector. While we have seen many services challenge and reduce the use of restrictive practices, there is still significant work to be done.

- **Impact on our second opinion appointed doctor (SOAD) service.**

The SOAD service is an important safeguard for people who are detained under the MHA. While we welcome the increased safeguards included in the Mental Health Bill, we remain concerned about our ability to deliver the service in the longer term. Proposals in the Bill will result in a substantial increase the numbers of second opinions required while reducing the timeframes for delivery of some second opinions. Additional funding, and workforce availability, is needed to deliver the future second opinion service, which the Department of Health and Social Care (DHSC) has accepted in its impact assessment for the Mental Health Bill. However, as we highlight in the section on workforce, ongoing challenges with workforce availability means that additional funding alone will not be enough to address the issues facing the service.

- **Protecting patients' rights.**

Our power to investigate MHA complaints complements our monitoring and regulatory role, as we use the intelligence from MHA complaints to inform wider work and to uphold the rights of people subject to the MHA. Measures in the Bill to improve how providers tell people how to complain will be beneficial to patients in ensuring their rights are protected. We will ensure our MHA complaints process is aligned with the Mental Health Bill in its final and published form after it gains Royal Assent. We commit to working with the Parliamentary and Health Service Ombudsman to direct complainants correctly and consistently to the appropriate oversight body, and ensure our process is accessible and responsive for people using services and their representatives.

Where appropriate, we discuss the Mental Health Bill and anticipated changes in more detail throughout the report in the context of our findings from 2023/24. But, as highlighted in our 2022/23 report, legislation alone won't bring the changes needed. Better funding, improved community support and investment in workforce are essential to improving mental health care and providing better outcomes for patients.