

Mental Health Units (Use of Force) Bill 2017-19

2nd Reading, House of Lords, 7 September 2018

NHS Providers is the membership organisation and trade association for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS foundation trusts and trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate. NHS Providers has 99% of all trusts in membership, collectively accounting for £74 billion of annual expenditure and employing more than one million staff.

- Alongside the review of the Mental Health Act, we welcome the attention the Mental Health Units (Use of Force) Bill draws to ensuring high quality care for those with mental health conditions.
- In particular, we fully agree that restraint should only be used as a last resort and welcome support in reducing the use of inappropriate force in mental health care. In pursuing reductions in restraint and force, it is important to note the context in which mental health services are operating. As in other parts of the NHS, mental health trusts are facing rapidly rising demand at the same time as substantial financial pressures and staffing shortages.
- Any implementation of new legislation needs to be done alongside improved resourcing to ensure adequate training and sufficient staffing to enable alternative approaches to be pursued and embedded. As the Care Quality Commission found in its report, *Monitoring the Mental Health Act in 2016/17*, "changes to legislation alone may not have a major or immediate effect".¹ It is therefore important that any legislation changes are introduced alongside support and guidance in adhering to legislation and bringing about cultural change.
- It is also important that the appropriate resources are commissioned, including a consideration about the required level of staffing and training, to support the delivery of a safe service.

Clauses 3 and 5

We would urge committee members to clarify the intentions and expectations around certain clauses. For example, there is no indication of how the police will be brought into the proposed requirements for mental health unit policies (clause 3). The Bill goes into detail on the requirements for training (clause 5) and implementation of policies surrounding use of restraint in mental health units, but there is no mention

¹ http://www.cqc.org.uk/sites/default/files/20180227_mhareport_web.pdf

of requirements for additional training for police officers. Further consideration of the positioning of cameras would also be welcome in guidance. We would also welcome further clarity on training standards to avoid variability. CQC are currently looking at developing a standard around restraint training but this is not available yet.

Applying the legislation in practice

It is also important to note that many of the requirements set out in the Bill are already in place through existing laws which protect against assault or use of force. We believe that a focus needs to be brought to ensuring that existing legislation is successfully applied in practice, and any further legislative requirements are properly aligned and resourced to ensure clarity and avoid confusion and unintended consequences. For example, the Mental Health Act 1983 Code of Practice requires additional training around the use of force, and this is further emphasised in clause 5 of the Bill. While an important requirement, to be effective it needs to be enacted in the spirit and letter of the law, it depends on practical support.

Clause 6: Recording of Use of Force

Trusts are supportive of the requirements set out in clause 7 on recording of use force and welcome a move to clearer, more systematic reporting. However, the clause includes a requirement to include in that record whether “a reasonable person would believe the use of force to have contributed to the death or serious injury”.² We would be concerned to ensure that such a requirement does not pre-empt the findings of any investigation. It needs to be possible to record use of force without prejudice and we are concerned that adding a civil law standard of “what a reasonable person would believe” to a potential criminal case seems to go against the principle of reasonable doubt. Moreover, in introducing investigatory powers, it is important to recognise and preserve the role of the independent coronial system, and avoid driving unwarranted bureaucracy and cost into the system.

There are examples of good practice by mental health trusts already making progress on these issues, but we are clear there is still room for improvement. Where progress is being made this needs to be supported and shared, and we must ensure that mental health is given the resources it needs to avoid the use of force in mental health units.

² https://publications.parliament.uk/pa/bills/cbill/2017-2019/0008/cbill_2017-20190008_en_2.htm