

Mental Health Act reform: a voice when it matters most

The Mental Health Act 1983 governs involuntary treatment for mental illness. The Act is outdated and requires significant reform to protect human rights and deliver more person-centred healthcare. The government is currently working on a revision to the Act.

What needs to happen

Make sure a reformed Mental Health Act strengthens people's legal rights to an advocate, this means:

- Legislating for 'opt-out' advocacy so people automatically get support from an advocate when they are admitted to hospital
- Extending the right to an advocate to voluntary patients as is already the case in Wales

Only three quarters of the over 2000 people with a learning disability or autistic people currently detained in hospital have support from an Independent Mental Health Advocate.



Advocates help people have more choice and control over their care

Around 100,000 people are admitted annually to hospital for mental illness in England. This can involve severe restrictions on personal liberty (for example physical, chemical or mechanical restraint). The Independent Mental Health Advocate (IMHA) is there to support people in these challenging circumstances, to make sure they have a voice in their care and treatment. For example, informing them of their rights to apply to the Mental Health Tribunal to review their detention.

Only a minority receive support from an advocate

The current duty on healthcare staff to inform people about advocacy is too weak. In its recent monitoring report, the Care Quality Commission (CQC) “found wards where staff did not routinely refer any eligible patients to an IMHA”. An effective way to tackle this problem would be legislating for ‘opt-out’ where people automatically get referred for support from an advocate, rather than having to ask for one, but can still choose to opt-out.

Why can I get an advocate in Wales but not England?

People who are in hospital voluntarily can still be on locked wards and subject to restrictions and coercion. An advocate can help them to know their rights and make sure they have a voice in their care and treatment. For example, helping them express their wishes concerning medication or therapy. Voluntary patients have had the right to an advocate in Wales for over ten years but this has still not happened in England.

Support your constituents’ right to person-centred mental healthcare

The government supports ‘opt-out’ and advocacy for voluntary patients in principle but implementation is “subject to future funding decisions”. We urge you to make sure a reformed Mental Health Act strengthens people’s legal rights to advocacy within the legislation itself so there’s no risk of postcode lotteries or people missing out on essential support when they need it most.

“You gave me a voice, ensuring that I was heard in a system where I felt ignored.”

- Adam, who had support from an advocate



What do others think?

“We think there should be a right to advocacy based on an opt-out approach. A person in a mental health crisis, who is significantly unwell, or whose disability affects their ability to understand and communicate, needs the services of someone who sees things from their perspective and understands their rights. We regard this provision as essential.”

Independent Review of the Mental Health Act, December 2018

“The law should be able to compel services to refer patients to advocacy immediately on admission, and that the service should run on an ‘opt-out’ basis. This was recommended by the independent review of the Mental Health Act and we hope to see it taken up in future reform.”

Care Quality Commission, November 2020

“The Department should commit to expanding Independent Mental Health Advocates support so that all children and young people admitted to hospital informally have the same legal right to an Independent Mental Health Advocate as those admitted under legislation without qualification. This advocacy should all operate on an opt-out basis.”

Health and Social Care Select Committee, November 2021

Tori’s story: what difference can an advocate make?

17-year-old student Tori was detained in hospital under the Mental Health Act when her self-harm became a threat to her life. She asked for advocate Eve’s help, because she was worried that the hospital would discharge her before she felt safe and ready. With Eve’s help, she was able to understand her rights and have her wishes respected in decisions around her discharge.

Tori’s previous discharge arrangements had come at a very difficult time for her, and before she was due to be sent home, she had attempted to take her own life. Since then, she didn’t feel she had been given any meaningful help at hospital to improve her mental health. She told Eve that she didn’t know how she would cope if she left hospital, and that she was terrified of going home.

Eve supported Tori to raise her concerns with staff, and to ask for a plan which included therapeutic sessions at home once she’d left hospital. Eve accompanied Tori to her discharge meeting, where she helped her to feel confident in expressing her own views and to feel listened to by the medical team.

After the meeting, Tori felt positive about her discharge. She was excited to be going home and was looking forward to restarting her studies. Thanks to support from her advocate, Tori understood her rights, knew how to get involved with decisions about her care and treatment, and had regained the confidence and self-esteem she needed for a successful return home to her family.



More about the Mental Health Act and advocacy

If you want more information about your constituents' experiences of the Mental Health Act and advocacy or to talk about how you can support reform of the Mental Health Act as an MP, please contact: Stephen Hinchley, Senior Policy and Public Affairs Officer, VoiceAbility

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