



Report on behalf of the Leeds Mental Health Act Steering Group.

Date: 21 October 2008

Subject: Implementation of the Mental Health Act 2007

Electoral Wards Affected:

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Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity ☒

Community Cohesion ☐

Narrowing the Gap ☐

Eligible for Call In

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Not Eligible for Call In

(Details contained in the report)

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EXECUTIVE SUMMARY

The legislation governing the compulsory treatment of certain people who have a mental disorder is the Mental Health Act 1983 (the 1983 Act). The main purpose of the 2007 Act, which comes into force on **3rd November this year**, is to amend the 1983 Act. It is also being used to introduce "deprivation of liberty safeguards" through amending the Mental Capacity Act 2005 (MCA); and to extend the rights of victims by amending the Domestic Violence, Crime and Victims Act 2004.

The 1983 Act is largely concerned with the circumstances in which a person with a mental disorder can be detained for treatment for that disorder without his or her consent. It also sets out the processes that must be followed and the safeguards for patients, to ensure that they are not inappropriately detained or treated without their consent. The main purpose of this legislation is to ensure that people with serious mental disorders which threaten their health or safety or the safety of the public can be treated irrespective of their consent where it is necessary to prevent them from harming themselves or others.

The changes to the Mental Capacity Act provide for procedures to authorise the deprivation of liberty of a person resident in a hospital or care home who lacks capacity to consent. It introduces the principles of supporting a person to make a decision when possible; acting at all times in the person's best interests in the least restrictive manner; and will apply to all decision-making in operating the procedures in the future.

The changes to the Domestic Violence, Crime and Victims Act 2004 introduce new rights for victims of mentally disordered offenders who are not subject to restrictions.

Purpose Of This Report

- 1.1 To advise on the main changes to the Mental Health Act.
- 1.2 To advise on the progress of the Implementation Self Assessment Tool (ISAT) which was submitted to the Department of Health at the end of June this year. This was a series of questions, 69 in total, that had to be answered by the health community in each area. The ISAT for Leeds was submitted by the Leeds Partnership Foundation Trust (LPFT) but in collaboration and consultation with the Local Authority.
- 1.3 To advise on the state of preparedness across the partnership.

2.0 Background Information

The following are the main changes to the 1983 Act made by the 2007 Act:

- 2.1 Definition of mental disorder: it changes the way the 1983 Act defines mental disorder, so that a single definition applies throughout the Act, and abolishes references to categories of disorder.
- 2.2 Criteria for detention: it introduces a new “appropriate medical treatment” test which will apply to all the longer-term powers of detention. As a result, it will not be possible for patients to be compulsorily detained or their detention continued unless appropriate medical treatment is available.
- 2.3 Professional roles: it is broadening the group of practitioners who can take on the functions currently performed by the approved social workers (ASW) and responsible medical officer (RMO). ASW’s will become known as Approved Mental Health Professionals (AMHP) and be open to other professions such as Occupational Therapists and Nurses after appropriate training.
- 2.4 Nearest relative: it gives to patients the right to make an application to displace their nearest relative and enables county courts to displace a nearest relative where there are reasonable grounds for doing so. The provisions for determining the nearest relative will be amended to include civil partners amongst the list of relatives.
- 2.5 Supervised Community Treatment (SCT): it introduces SCT for patients following a period of detention in hospital. It is expected that this will allow a small number of patients with a mental disorder to live in the community whilst subject to certain conditions.
- 2.6 Mental Health Review Tribunal (MHRT): it introduces an order-making power to reduce the time before a case has to be referred to the MHRT by the hospital managers. It also introduces a single Tribunal for England, the one in Wales remaining in being.
- 2.7 Age-appropriate services: it requires hospital managers to ensure that patients aged under 18 admitted to hospital for mental disorder are accommodated in an environment that is suitable for their age (subject to their needs).
- 2.8 Advocacy: it places a duty on the appropriate national authority to make arrangements for help to be provided by independent mental health advocates.
- 2.9 Electro-convulsive therapy: it introduces new safeguards for patients.

3.0 Main Issues

- 3.1 The Implementation Self Assessment Tool (ISAT) identified all the changes that the Department of Health (DoH) would ideally like to be in place by November and is rated by a “traffic light” system of Red, Amber and Green. This timetable raised significant challenges for all Local Authorities and whilst progress was initially difficult, the progress report submitted to the DoH at the end of June 2008 (Appendix 1) was very encouraging, with almost half of the questions (34) now in Green/Amber. The majority of areas that are not green come under the heading of “Clinical Systems and Processes” as these await government guidance before they can be completed appropriately. Work is continuing to prepare the implementation plan in anticipation of government guidance on these matters and be ready to put in place the necessary arrangements to have an effective and working service.
- 3.2 Commissioning of services is another ISAT issue that requires attention and needs to be progressed through the steering group.. As an example, from April 2009 there will be a need to provide an Independent Mental Health Advocacy Service (IMHA) but guidance as to how this will be commissioned have yet to be issued.
- 3.3 The most pressing concern for the Steering Group has been to re-train the ASW workforce to become AMHP’s by November 2008. A series of training courses were delivered during July 2008 which has now satisfied this requirement.

4.0 Implications For Council Policy And Governance

- 4.1 To oversee and monitor the changes brought about by the Act a Mental Health Act Steering Group has been set up, which is multi agency, and this will report to the Mental Health Modernisation Board, chaired by the Primary Care Trust (PCT).
- 4.2 A Project Mandate has been produced which identifies all stakeholders and key personnel and all agencies have signed up to this.
- 4.3 The Steering Group has set up 6 multi agency workstreams covering the following areas: Workforce development; Policies and Procedures; Deprivation of Liberties safeguards; Advocacy; Age Appropriate Services; and Communications. Considerable progress has been achieved to date.

5.0 Legal And Resource Implications

- 5.1 The Local Authority is legally required to provide an AMHP service but whilst acting in this capacity the professional is independent of their employing body.
- 5.2 This arrangement worked well whilst ASWs were employed by the Local Authority but if nurses and other professionals become AMHPs as described in 2.3 above, the question of governance and funding for their time, training and supervision will need to be considered by both Leeds Partnership Foundation Trust and the Local Authority.
- 5.3 Community Treatment Orders are new and will require the involvement of an AMHP at certain points in the process. It is unclear at this stage how much additional work this will involve but it should be possible to manage this within existing resources. If, however, these new Orders become more popular it will certainly put additional pressure on the current workforce.
- 5.4 There is a strong relationship between the Mental Health Act and the amendment to the Mental Capacity Act which introduces a new procedure where people being

cared for in care homes and hospitals cannot be deprived of their liberty without proper authorization. Both Acts require properly trained professionals, such as AMHP's to assess what are in people's best interests. Again, it is difficult to know, at this stage, exactly how much additional work will be required but using the Department of Health scoping tool leads us to believe that there will be approximately 2000 requests for assessments under this section of the Act.

- 5.5 Leeds currently has 68 Approved Social Workers and given the pressures described previously in this report we expect our numbers of newly trained AMHPs to increase. This will be assisted by an extension in the provision of the new Act that allows other practitioners/clinicians to train as AMHPs and work alongside local authority employed staff. However, responsibility for the AMHP's service and the authorisation of AMHPs remains with the local authority.

6.0 Conclusions

- 6.1 The new Act will commence on the 3 November this year and the work on the ISAT shows that considerable progress has already been made by the reduced numbers of RED responses, but much work still remains which it is anticipated will be completed by the Workstreams of the Steering Group.
- 6.2 All current ASWs will be re-trained as AMHPs by the time the Act is introduced so the Local Authority will be able to fulfill its statutory duty.
- 6.3 A risk remains as whether we have sufficient numbers of staff for the additional duties that the Act imposes as we are unsure how many other practitioners/clinicians may wish to become AMHPs.

7.0 Recommendations

- 7.1 Members are asked to note this report, and consider any recommendations they may wish to make to the City Council's Executive Board, who are scheduled to consider a similar report at their November board meeting.

Documents listed

Mental Health Act 1983

Mental Health Act 2007

Mental Capacity Act 2005

Domestic Violence, Crimes and Victims Act 2004