SUMMARY

Monitoring the Mental Health Act in 2018/19
The human rights of people detained under the Mental Health Act 1983 (MHA) are of critical concern to us as we review what we have found through our monitoring of the MHA in the last year.

Taking away a person’s liberty so that they can be treated in hospital has a major impact on that person’s life, work and family and it is therefore essential that this is carried out in a manner that respects their fundamental rights. The reality is that this is frequently not the case.

The impact of being detained is particularly acute when people have to go far from home to receive the treatment they need. When a person is admitted to hospital under the MHA, this should be to a location as close as possible to their normal place of residence, their families and other support systems. Unfortunately, patients continue to be hospitalised out-of-area, sometimes over a hundred miles from home, usually because there are no beds in the local hospital. Worryingly, this is frequently being accepted without challenge.

People from Black and minority ethnic (BME) groups experience a higher use of the MHA. There have been many attempts to explain this and the reasons why this is happening are not completely understood. A person from a BME group who has been subject to the powers of the MHA is likely to experience this as a discriminatory act. There is little evidence that this situation is improving or that there is a system-wide commitment to effect change.

Our most vulnerable patients need the greatest protection. The reality is that this is not always how the system responds. In the last year, some horrific human rights abuses have been revealed for people with a learning disability and autistic people. These patients have found themselves in care settings far from home, hidden from view and experiencing few of the protections they should receive as detained patients, breaching the MHA Code of Practice principles of respect and dignity.

We have commissioned two separate reviews of our regulation of Whorlton Hall, which will include recommendations for how regulation of similar services can be improved. We will use the outcomes of these reviews to further develop our approach to MHA monitoring visits. An innovative approach to how we communicate with non-verbal patients to understand their experience and concerns is required, and we will be considering how we improve our approach to this in the upcoming year.

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There is little point in monitoring the MHA if there is no action taken to highlight concerning issues and to drive improvements. We continue to integrate the regulatory work we undertake as CQC and the work of our MHA monitoring functions, allowing us to take enforcement action where we find concerns. We intend to focus more clearly on the human rights aspects of the working of the MHA during MHA monitoring visits, particularly in services where there is a risk of a closed culture developing. Information gained from our MHA monitoring visits is always used to inform our regulatory hospital inspections and to hold the system to account.

A white paper detailing future reform of the MHA is due to be released this year. This is a real opportunity for a more human rights-based approach to the use of the MHA. We are working with our partners to inform the development of the new MHA, to ensure that future legislation and practice supports people to have a real say in their care, that they are treated equitably, and that their rights are protected.

Kevin Cleary
Deputy Chief Inspector of Hospitals and lead for mental health

A personal experience of being detained

I guess it’s easy to have preconceptions about people who have been sectioned… it’s the stuff of whispered conversations and horrified fascination, that even a growing acceptance of mental illness can’t wash away. But the reality is of course much more mundane, more messy and human than any comic-book characterisation can ever be.

During my years of acute illness, I met so many people, like me, just trying to survive. I spent the best part of six and a half years, away from my partner and two young children… the care I received ranged from the excellent to the abusive. I was detained under an array of sections, by the police, while restrained on the floor in A&E, and many times in hospital. I’ve been shipped out-of-area by ambulance, sedated and mute with fear, and transported more than once locked in the back of a police van, handcuffed, my legs held together with Velcro tape…

I want people detained in hospital, people like those I met, who were my friends, to be given a voice, to be valued and respected and supported to build or rebuild fulfilling lives.
What we found in 2018/19

The Mental Health Act 1983 (MHA)

The Mental Health Act 1983 (MHA) is the legal framework that provides authority 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 (CTO) and guardianship.

When a person is detained in hospital under the MHA, whether this is necessary for their health or to protect themselves or others from harm, it is a serious interference of some of their basic human rights. People who are detained are, by nature, vulnerable to potential coercive mistreatment, abuse and deprivation of their liberty. As a result, it is essential that services make sure that people receiving treatment feel safe, and that they are treated with dignity and respect.

Over the last year, we have seen a continued improvement in the number of people being given information about their rights, and being offered the support of an Independent Mental Health Advocate (IMHA). However, we remain concerned that people detained under the MHA are still not receiving the care and treatment they require, in a way that respects their human rights.

- We carried out 1,190 visits, met with 4,436 detained patients, spoke with 179 carers, and required 4,477 actions from providers.
- Our Second Opinion Appointed Doctor service carried out 14,354 visits to review patient treatment plans. This changed treatment plans in: 22% of visits to detained patients to consider electroconvulsive therapy (ECT) treatment; 31% of visits to consider medication for detained patients; and 18% of visits to consider medication treatment for patients on community treatment orders (CTO).
- We received 2,276 enquiries about the way the Mental Health Act was applied to patients and investigated complaints from six people.
- We were notified of 195 deaths of detained patients, of which 136 were known to be of natural causes, and 16 deaths of patients on CTO, of which nine were known to be natural causes. A total of 39 deaths were known to be of unnatural causes for both detained patients and CTO patients.
- We were notified of 923 absences without leave from secure hospitals.
Five key areas of concern:

1. The use of human rights principles and frameworks

- These must be applied and their impact on people continuously reviewed and updated to improve people's experience, and to make sure that people are protected and respected.

- The human rights principles of Fairness, Respect, Equality, Dignity and Autonomy (FREDA) incorporate articles used in the Human Rights Act 1998 and underpin all international human rights treaties. However, too often we have found that these principles are not being applied to the care and treatment of detained patients.

- More needs to be done to understand and address issues of inequality, both for Black and minority ethnic (BME) people and people in other equality groups.

- Oversight of the MHA at board level must include how human rights and equality issues for all patients will be monitored and addressed, as well as ensuring that care and treatment is given in the least restrictive way, through the implementation of a reducing restrictive interventions programme.

2. Involvement in care

- People must be supported to give their views and offer their expertise when decisions are being made in their care and treatment. Providers must take this seriously and look for evidence that this is being done across their service.

- Despite improvements, in 2018/19 we recommended that patient involvement needed to improve in 26% of care plans that we reviewed.

- In 11% of care plans we reviewed, there was no evidence of patient involvement at all.

- While over the last three years patients in nearly all wards visited (99%) have had access to IMHA services, we found that how providers encourage patients to make decisions in advance needs to improve.

11% of care plans showed no evidence of patient involvement.
3. People in long-term segregation

- People in long-term segregation can experience more restrictions than necessary, as well as delays in receiving independent reviews. This is particularly true for people with learning disability and autistic people.

- Too many people with a learning disability and autistic people are in hospital because of a lack of local, intensive community services.

- A better system of care is needed for people with a learning disability and autistic people who are, or are at risk of, being hospitalised, segregated and placed in overly restrictive environments.

- All patients who are segregated from their peers must be safeguarded through regular and independent review of their situation, and the principle of least restriction needs to be applied more robustly.

4. Access to care and treatment

- People are not always receiving the care and treatment they need, with services struggling to offer appropriate options, both in the community and in hospital.

- There has been a 14% fall in the number of mental health beds from 2014/15 to 2018/19. While this is in line with the national policy, people are not always getting the help they need to avoid crisis situations and hospital admissions, leading to detention under the MHA.

- Between June 2018 and March 2019, coroners made us aware of at least seven deaths of people who were assessed as requiring admission, but for whom no mental health bed was available.

- A lack of availability of health based places of safety means that despite a decline, police stations are still being used as a place of safety.
5. The interface between the MHA, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards is complex and difficult to navigate

- It is difficult for patients, families and carers to understand how the MHA, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards all work together, and what rights and safeguards they have under the different frameworks.

- Professionals need to keep up-to-date with any legal changes that may affect these frameworks, and what these changes may mean for patients.

- As a matter of urgency in current reforms to law, the codes of practice for the MHA, the Mental Capacity Act MCA and Deprivation of Liberty Safeguards must be updated and provide clear guidance on these complex interface issues.
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