UK Government Consultation on Reforming the Mental Health Act

Response from Adferiad Recovery

1. About us

1.1 Adferiad Recovery is a newly-formed Welsh charity, the result of a merger between Hafal, CAIS and WCADA on April 1st 2021. Adferiad Recovery is a charity and company limited by guarantee which speaks for people with a serious mental illness (including schizophrenia, bipolar disorder, and other conditions involving psychosis or loss of insight), people affected by addiction, and people with co-occurring diagnoses, and for their families and carers, as well as for a wider group of vulnerable people for whom we provide services.

1.2 Adferiad Recovery is governed by its Members - who are mainly service-users and carers - who elect our Trustees who are themselves mainly users and carers. Adferiad Recovery delivers services in England and Wales. This response to the consultation is based on discussions with our Members – that is people who are highly likely to have first-hand experience of the Act.

1.3 We have also worked closely with Jo Roberts, an outstanding long-term champion of those affected by the Act with extensive personal experience. Jo has conducted a dialogue with users in Wales and beyond over many years, most recently in her monthly "Jo's Blog". Jo has also published "Jo's Law" which makes constructive suggestions about how a new legal framework could be developed to replace the Mental Health Act: her ideas are her own but they are a valuable source of ideas and we have learnt much from her experience.

1.4 We have considered all aspects of the White Paper, including those which are specific to England, as options for Wales. This response is of course directed not only to the UK Government but also to the Welsh Government: we explain more about this in the following two sections.

2. The White Paper is good news for patients and families…in England.

2.1 Professor Sir Simon Wessely's Independent Review made thoughtful and realistic suggestions for improvement to the current Act and to wider policy. The White Paper responds positively to the Review and we generally support the resulting proposals as far as they go. We are concerned that the Review and White Paper beg questions about whether the historical and still accepted legal response to serious mental illness in England and Wales, as represented by the 1983 Act, is fit for our times – but more about this below. Implementing the proposals in the White Paper will make a significant, positive difference to the lives of patients in England.

2.2 Meanwhile any response which Welsh patients and families might want to make has to be qualified by realisation that most of the White Paper either does not apply at all to Wales or will not necessarily apply. Even in relation to those areas which are unambiguously "undevolved", specifically in relation to criminal law, the Welsh Government might want to seek agreement that the UK Government either amends the proposals to accommodate Wales better or legislates differently for Wales in order to accommodate distinctive Welsh policy and devolved legislation – and we note that the White Paper acknowledges that.

2.3 In Jo Robert's words, *the truth is that if (for Wales specifically) the UK Government legislates only on undevolved matters (mainly in relation to criminal law) and the Welsh Government doesn't do anything itself then most patients and families in Wales will not notice any difference at all.*

2.4 At this stage we do not know the new, post-election Welsh Government's intentions. We appreciate the position here: the Welsh Government cannot be expected necessarily to have anticipated any of these proposals. But patients in Wales are in the complicated position of responding to a White Paper which may end up not having much to do with them. Nevertheless we have encouraged patients to respond: in addition to the "undevolved" matters there is much in the White Paper of interest to them. Frankly they do not want to miss out on good ideas in the proposals but they, and the Welsh Government surely, will look for some *different* but equally good solutions and for improved or altogether *new* solutions.

2.5 Before addressing the proposals in the White Paper we should consider the prior issue of the Welsh Government's position.

3. The Role of Welsh Government

<u>Our Call for a Review</u>

3.1 The Welsh Government should take the lead on all policy *and legislative* issues on mental health in Wales. In relation to policy this is just a matter of devolution; in legislation the position is less clear-cut but still clear enough: the preponderance of responsibility is devolved and "undevolved" criminal law should be at the service of Welsh policy and fit in with Welsh legislation – if necessary tailored specifically for Wales as noted above. It is arguably overdue for the Welsh Government to take on fully its responsibilities for mental health law: this is a question of fulfilling patients' and the public's expectations of devolution.

3.2 We believe that the time is now right for the Welsh Government to develop its own Mental Health Act with a target of legislating in the next two years. To that end the Welsh Government should now re-examine the mix of legislation – *and the wider policy position* - in play for patients with high needs, specifically the Mental Health (Wales) Measure 2010 and the Mental Health Act 1983 and its Welsh secondary legislation and the services offered to all patients at secondary level and upwards. There are several reasons why the time is right for this:

- The publication of this UK Government White Paper
- The experience of about 10 years of the Mental Health Measure
- The "bedding in" of new powers since the Wales Act 2017
- The appetite for a new deal for those who need support following the coronavirus pandemic

3.3 This is not just a question of "tidying up" the legislation although that is also a consideration. We urge the Welsh Government to initiate a process of fundamental review with patients and families and professionals to build on its record with the Mental Health (Wales) Measure.
A review should focus on the specific group of those with serious mental illness - those who are currently most likely to become subject to the Mental Health Act (and who might in future, through improved policy and practice and increased resources, be able to avoid the need for compulsion).

3.4 Patients with high needs feel side-lined in any case, quite aside from consideration of legislation. Wales' current mental health strategy places much of its focus on wider mental health and wellbeing matters which have limited impact on the lives of those with a serious illness; the pandemic has understandably drawn further attention onto population-wide wellbeing issues. Those with high needs will not receive sufficient attention from a general review.

<u>And a second best approach…</u>

3.5 The worst possible outcome now would be that the Welsh Government could ask the UK Government to confine its legislation to the narrow, "undevolved" area of law and then do little or nothing itself. So, if the Welsh Government were not able in a reasonable amount of time to legislate to match and/or improve on the UK Government's legislative proposals, then it would be better that they agree that the UK Government should legislate to cover Wales beyond the reserved area of law – so that Welsh patients can at least benefit from those aspects of the positive proposals in the White Paper.

3.6 ***But in this case we would expect to see a commitment from the Welsh Government to undertake to take the lead on further legislation for Wales and to start that process with the review described above.***

4. Key issues

<u>The principle of reciprocal rights before compulsion is needed</u>

4.1 *We support the White Paper's proposals for improved criteria for detention and enhanced safeguards for detained patients*.

4.2 However, the opportunity is missed of establishing the principle of compensatory, reciprocal rights for patients, including rights for patients before compulsion may be required. This was

explored by the Expert Committee chaired by Professor Genevra Richardson in 1999 and has some reality in Wales, in particular in the rights accorded in the Mental Health (Wales) Measure – more about this below. We believe this remains a cornerstone of establishing fairness for patients and also represents a practical means of reducing the use of detention.

A legal duty to reduce the use of compulsion

4.3 A legal duty must be placed on health and social services to establish and work towards ambitious targets to reduce use of compulsion by providing care and treatment earlier before a crisis occurs, working harder to agree voluntary treatment with patients through negotiation, and achieving earlier discharge safely by providing improved ongoing support in the community

Improved environments for detained and voluntary patients.

4.4 *We recognise the ongoing work, set out in the White Paper, to improve the patient environment in England.*

4.5 In Wales there should be minimum standards in hospitals for those detained including private rooms, gender segregation if chosen, access to phone and email, and education and recreational opportunities available every day.

4.6 There should also be a minimum, guaranteed choice of treatments available to all patients, including psychological therapies

Extending choice

4.7 *We support the White Paper's proposals for advance choice documents.*

4.8 *The White Paper proposes reasonable reforms to CTOs but we believe that alternatives to detention should be for patients to propose.*

4.9 The law should never be used to compel people to accept a particular course of care and treatment at a particular place – or to accept a substandard environment.

4.10 Patients should be given rights to make choices about their care. A choice of hospital location should routinely be offered – for example whether to go to a local hospital or travel further to a specialist unit.

4.11 Further, all patients subject to compulsion (or their Nominated Person) should have the option to access a personal health budget (based on the cost of in-patient care) with which to design and purchase their own treatment and care package at an independent hospital *or in the community* - subject to the package meeting the threshold of sufficiently reducing risk. As well as enhancing human rights these arrangements could transform the whole culture of specialist services: as Jo Roberts says:

4.11.1 *"Without choice there is no incentive for in-patient and other services to provide a good service or even show respect to patients – and this lies at the heart of the problem. With choice the patient is in charge and they can reject bad services and seek out those which show them respect.*

And there is a huge therapeutic bonus too. Good "compliance" (too often meaning being forced to accept a poor service imposed on patients) becomes much more likely where patients have chosen the service or treatment – and so recovery is accelerated."

Improved and enforceable Care and Treatment Plans

4.12 *The White Paper proposes rights to a Care Plan somewhat similar to those already legally prescribed in Wales.*

4.13 The Mental Health (Wales) Measure provided patients in receipt of secondary mental health services (and above that level) with the right to a holistic Care and Treatment Plan.

4.14 In practice Plans have generally been produced but they have fallen well below the standards prescribed in the Code of Practice. Improvements are needed in both legislation and practice to ensure that review of the Plans is specifically linked to the details within the Code of Practice and services need to be held accountable for delivering the Plans.

4.15 In policy terms the Welsh Government needs to do more than ensure adherence to the law: it should ensure that all secondary mental health services should be commissioned *by reference* to these Plans.

Black, Asian and minority ethnic patients

4.16 *We support the proposals in the White Paper in relation to advocacy pilots and recruiting a diverse workforce*

4.17 Black people are four times more likely to be detained under the Mental Health Act than White people but the solutions to this problem are much wider than the functioning of the Act.

4.18 We recognise the disadvantages faced by Black, Asian and minority ethnic patients and families not just from the Mental Health Act but from wider mental health services.

4.19 The proposals in the White Paper will not be enough, particularly in relation to Black people: there is a need to develop a new service model for Black people which reflects their community in terms of staffing, management, and culture and which transforms the experience of Black patients with recovery-based support in place of routine compulsion.

Carers and families

4.20 *We support the White Paper's proposal to replace the Nearest Relative system with a Nominated Person.*

4.21 Carers and families – or others chosen by the patient – are typically part of the team which works with the patient: and support for carers and families should form part of the package of support for the patient.

4.22 Where the patient does not wish carers and family to be involved services should nevertheless always take note of carers' and families' evidence and views – this need not involve any breach of

the patient's confidentiality.

A review of criminal law

4.23 *The White Paper lacks ambition in reserved, justice matters.*

4.24 We share Jo Roberts' longstanding concern that there remains a lack of clear differentiation between crime and illness. It is barbaric that people who are very seriously ill are treated as criminals; other civilised countries understand that we should distinguish clearly between crimes committed purposefully and harm caused unwittingly by people whose illness has overwhelmed their judgement.

4.25 What is needed is a fundamental review of mental health and the criminal law. There should be an end to the injustice of holding people who are seriously ill responsible or partially responsible for harm they do when they are psychotic. But there is no need to increase risk: mental health legislation provides for compulsion where necessary to keep people safe.

5. Contact

For more information on the above points please contact:

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