Legislation: Review of the Mental Health Act, 2001[1]

1. In March 2015, the expert group report on review of the Mental Health Act (MHA), 2001 was published by the Department of Health. Mental Health Reform (MHR) welcomes a number of the recommendations made by the Expert Group, including:

- Introducing the principle of autonomy to guide mental health legislation
- Extending the definition of a voluntary patient to refer solely to individuals who have capacity to consent to treatment and admission
- Ensuring that individuals will be presumed to have capacity
- Individuals should only be detained in an approved centre where it is likely to benefit their condition
- Protections for individuals who lack capacity, including the introduction of a new category of patient (the intermediate patient) who will not be detained but will be guaranteed the full protections of a detained person
- The right to information for both voluntary and involuntary patients, for example information on their rights to consent to, or refuse proposed treatments
- That all patients (voluntary and involuntary) must give informed consent to treatment
- The introduction of advance healthcare directives which would apply to mental health on an equal basis with general health
- To establish individual care planning on a statutory footing and extend this obligation to all individuals engaged in mental health services
- Removal of 'unwilling' from the section on administration of ECT, to ensure that individuals who have decision-making capacity will not be administered ECT on the basis that they are 'unwilling'. Any individual must give their consent in order for ECT to be administered
- That seclusion and restraint should be used only as a last resort, only where there is no other alternative and always in accordance with the rules drawn down by the Mental Health Commission
- The affirmation of the right of a voluntary patient to leave an approved centre

2. Given the lengthy duration of the review to date and the seriousness of the gaps in human rights protections for people receiving inpatient mental health treatment, there is a need for the implementation of the abovementioned recommendations by the Irish Government as a matter of priority. MHR has called for the urgent removal of 'unwilling' from the current legislation. Until new legislation to amend the Act is drafted, people who have capacity to make decisions about their own care can be given treatment, including ECT against their capable will.

3. MHR is concerned that there are a number of gaps in the Mental Health Act review. Such gaps include the following;

4. The Expert Group makes certain recommendations on the role of the advocate for individuals in inpatient settings; however the review does not recommend that the right to

[1] UPR, 2011, Recommendation No. 107.16 from Ireland's UPR Review of 2011: Adopt laws to deal with the situation of persons not enjoying the highest level of physical and mental health with regards to the 2001 Act on Mental Health and bring its provisions in line with the CRPD (Spain).

advocacy be placed on a statutory footing. There is a need for Irish legislation to ensure that individuals engaged in mental health services have the right to advocacy supports in addition to their current right to legal representation before a tribunal. To complement this right, the Government should ensure the establishment of a range of advocacy services through allocated funding.

5. There is currently no right to advocacy under the Mental Health Act, 2001 and the statutory advocacy service envisaged in the Citizens Information Act, 2007 has not been implemented. The National Advocacy Service, established under the Citizen's Information Board provides advocacy services to people with disabilities with complex needs living in the community, and the Irish Advocacy Network provides advocacy supports to individuals in inpatient services; however, these services are provided on an administrative basis and fall far short of meeting the need for advocacy supports. There is a need for the right to advocacy to be defined within the legal framework on mental health. There is also no national advocacy service for children and young people using public mental health services in Ireland.

6. Mental Health Reform is disappointed that the Expert Group did not recommend an independent route for individuals engaged in mental health services to make a complaint as has previously been called for by MHR.

7. A number of service users and family supporters have told MHR that they have difficulty making a complaint about mental health services. Of particular concern, some reported being afraid to make a complaint for fear of consequences to their future use of services. There is currently no statutory independent complaints route for people engaged in mental health services in Ireland who must, in the first instance, complain to the public mental health service provider. Only after having made a complaint to the HSE and received a dissatisfactory response, can an individual then seek redress through the Office of the Ombudsman. This is a highly problematic situation given that mental health service users, unlike other health service users, can be involuntarily detained in health services. There is a need for an independent body to be given a direct role in receiving, investigating and resolving complaints about mental health service delivery.[2]

8. The Expert group does not make any recommendation on criminalizing the ill treatment, neglect, exploitation or abuse of individuals engaged in mental health services. The previous mental health legislation of 1945 included a section (253) which criminalised the ill treatment or neglect of an individual in a psychiatric institution. The current Mental Health Act repealed this section and omitted any replacement. MHR sees no rationale for the repeal of this provision.

9. In light of the history of abuse in various institutions in Ireland, it is important that provision is made in legislation to emphasise the unacceptability of abusive behaviour. Furthermore, given the widespread presence of users of mental health services in community-based services including day hospitals, day centres and HSE-supervised community residences, such a provision should also be extended to cover all mental health services. This should be introduced into draft legislation.

[2] MHR's briefing paper on improving the system for making a complaint about mental health services sets out the concerns about the existing system in detail and makes specific recommendations (available at https://www.mentalhealthreform.ie/mhr-position-paper-on-improving-the-complaints-system-for-the-mental-health-services/.

10. The Expert Group made a number of recommendations with respect to the role of the family, including that “where it is deemed appropriate, there should be proactive encouragement for the patient at all stages to involve his/her family/carer and/or chosen advocate in the admission process and in the development of the care and treatment plan with the patient’s consent”. However, the Expert Group did not recommend any legislative change to reflect the role of family members/supporters, despite calls by Mental Health Reform.

11. Family members often play a valued role in supporting the recovery of their relative who has a mental health difficulty. Family members also can be impacted directly or indirectly by their relative's mental distress and the treatment he/she receives. The current mental health legislation makes family members largely invisible in the process of mental health care. While continuing to respect the rights of the individual to privacy, it would be helpful if the legislation set out the duties of health service providers to provide general information to family members as well as to assess their own needs for support. Family members should be involved in discharge planning where the individual concerned is being discharged to the family’s home and the individual has given their permission.

Social exclusion of people with mental health difficulties

12. People with mental health difficulties continue to experience significant social exclusion in Ireland, facing prejudice, unemployment and difficulties in accessing housing.

Housing

13. In Ireland, there has been recent initiatives to address the housing needs of people with mental health difficulties , including the Housing Strategy for People with Disabilities 2011 – 2016 (which includes a dedicated chapter on people with mental health disabilities), the Department of Environment’s 20 Point Action Plan on Homelessness (which includes commitments to people with mental health difficulties) as well as commitments by the Health Service Executive (HSE) to ensure that people engaged in mental health services are adequately supported in accessing housing accommodation.

14. Despite the publication of the aforementioned policies, little has changed in terms of the actual experience on the ground for people with mental health disabilities who are having increasing difficulties in finding and securing accommodation. In June 2015, Mental Health Reform consulted with a number of mental health social workers operating in mental health services across the country. There was a general consensus among the social workers consulted that people with mental health difficulties are experiencing significant social exclusion in terms of housing due to rent supplement and housing assistance payment caps. Current rent supplement caps are out of line with market rates and rental tenants are competing for limited housing stock.

15. In addition, there is currently no dedicated funding stream for tenancy sustainment support for individuals with a mental health disability and no national programme to transition people from HSE to local authority-controlled housing.

16. **Recommendations**: **The Irish Government should**

- **Ensure that rent supplement and housing assistance payment caps are in line with the private rental market so that people on rent supplement/HAP have a realistic chance of securing housing in the private rental market.**

- **Support individuals with mental health difficulties to transition from HSE supported accommodation into mainstream housing in the community**
- **Provide a dedicated funding stream for tenancy sustainment support for individuals to transition from HSE supported accommodation**

Employment[3]

17. People with a mental health disability are nine times more likely to be out of the labour force than those of working age without a disability, the highest rate for any disability group in Ireland.[4] [5] Yet, half of adults with a mental health disability who are not at work have said that they would be interested in starting employment if the circumstances were right.[6]

18. The current system of supports for people with mental health disabilities has not been successful in facilitating access to employment. Challenges for people with a mental health difficulty in this area include ineffective links between mental health and supported employment services, concerns around the flexibility of welfare benefits, as well as the prejudice and discrimination surrounding mental health difficulties in work environments.

19. Mental Health Reform has previously advocated that the Department of Social Protection, the Department of Health and their agencies should work together to put in place an evidence-based approach to supported employment that meets the needs of people with mental health disabilities.

20. This approach to supported employment should be extended to any person with a mental health disability who wants to get back into work regardless of 'job readiness' (i.e. removing the current 'job ready' eligibility criterion). The approach should ensure that the supported employment programme is closely integrated with the individual's community mental health team (with the individual's permission), engage in job search rapidly, ensure that support is time-unlimited and have a benefits system that supports the individual to transition from benefits into work. It should also ensure that the benefits system is flexible enough so that individuals can transfer to and from benefits and work at different stages of their life so as to meet their mental health needs and ultimately support their recovery.

21. Recommendation: The Irish Government should adopt the internationally evidence-based criteria of the Individual Placement and Support approach to supported employment, to ensure that people with mental health difficulties, who want to work, are adequately supported to take up and sustain employment.

[3] UPR, 2011, Recommendation No.106.15 (as set out above). The right to housing is protected in a number of human rights instruments, including (but not limited to) Article 23 Universal Declaration of Human Rights; Articles 6 & 7, International Covenant on Economic, Social and Cultural Rights and Article 1, European Social Charter.
[4] Watson, D., Kingston, G. and McGinnity, F. (2012) Disability in the Irish Labour Market: Evidence from the QNHS Equality Module, Dublin: Equality Authority/Economic and Social Research Institute, p.19.
[5] According to Census 2011 data, only 43.8% of the working age population of people with a mental health disability are in the labour force compared to 61.9% of the overall population over age 15.
[6] CSO National Disability Survey 2006 – Volume 2, Dublin: The Stationery Office, p.86

Prejudice and discrimination[7]

22. In recent years the See Change stigma reduction partnership has been an important means of stimulating public discussion about mental health in Ireland and has begun to have an impact in reducing negative attitudes towards people with mental health difficulties. While there has been some improvement in attitudes around mental health generally, attitudes towards people with severe mental health difficulties do not appear to have improved, leading to their continued social exclusion and hindering their recovery.[8] [9] [10]

23. Mental Health Reform has called for a review by Government of the Employment Equality Acts 1998-2008 to ensure that they provide adequate protection against discrimination on the grounds of a mental health disability. The Employment Equality Acts 1998-2008 expressly prohibit discrimination on the grounds of a mental health disability. However in a study by DCU 36% of participants reported having experienced unfair treatment in finding a job and 43% in keeping a job. Amnesty International Ireland concluded that it is likely discrimination by employers against people with a mental health disability is occurring in Ireland.[11] [12]

24. Recommendation: The Irish Government should review the equality legislation to ensure that it is adequately protecting people with mental health difficulties from discrimination in employment.

Under- developed community based mental health services[13]

25. Despite some developments in mental health services in recent years, including an increase in the proportion of multi-disciplinary staff and investment in community based services, inequity remains in the mental health services with wide variation in the resources available in different services across the country. Between 2008 and 2015, there was a loss

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[7] UPR, 2011, Recommendation No. 106.57: Ensure the principle of equality and non-discrimination while guaranteeing the enjoyment of the right to health (Brazil).The right to housing is protected in a number of human rights instruments, including (but not limited to) Article 1 & 2, UDHR; Article 26, ICCPR; Article 2, ICESCR and the Convention on the Rights of Persons with Disabilities.

[8] National Disability Authority (2011) Public Attitudes to Disability in 2011 available at https://www.ucd.ie/t4cms/Public_Attitudes_to_Disability_in_Irelandfinal%20Report%20 2011.pdf.

[9] See Change (2012) Irish attitudes towards mental health available at http://www.seechange.ie/wpcontent/themes/seechange/images/stories/pdf/See_Change_Research_2012_Irish_attitudes_towards_mentl_health_problems.pdf

[10] MacGabhann, L, Lakeman, R, McGowan, P, Parkinson, M., Redmond, M, Sibitz, I, Stevenson, C, Walsh, J, (School of Nursing, Dublin City University) (2010), *Hear my voice: The experience of discrimination by people with mental health problems*, Dublin: Amnesty International Ireland.es/seechange/images/stories/pdf/See_Change_Research_2012_Irish_attitudes_towards_mentl_health_problems.pdf

[11] Amnesty International Ireland (2010) *Hear my voice: challenging mental health prejudice and discrimination,* Dublin:
Amnesty International Ireland, p.49.

[12] Successive national surveys of public attitudes towards people with a mental health condition undertaken by the National Disability Authority in 2001, 2006 and 2011 have shown that the general public have more negative attitudes towards people with a 'mental health difficulty' than any other disabling condition. In the most recent survey, people were least comfortable working with or living near someone with a 'mental health difficulty' than someone with any other disability.

[13] UPR, 2011 Recommendation 106.29.: Maintain the strategies of holistic health and provisions of health care, with special emphasis on vulnerable groups, despite the budget cuts due to the economic crisis (Chile); UPR, 2011 Recommendation 106.56. Make available adequate budgetary allocations, despite financial constraints, for the continued provision and improvement of education and health services which are essential to protect the rights of the poorest and the most vulnerable members of society (Sri Lanka).
The right to health is protected in a number of human rights instruments, including (but not limited to) the UDHR; Article 12, ICESCR; Article 24, UNCRC and Article 25, UNCRPD.

of over 1,000 mental health staff[14] and staffing levels were only 77% of the recommended level in A Vision for Change (AVFC, the national mental health policy), as of January 2015.

26. In child and adolescent mental health services, the situation is more severe with just over half of the staff required in post in January 2015.[15] By the end of December 2014, there had been 290 child and adolescent admissions, of which 31% (89) were to approved adult mental health inpatient units.[16] In April 2015, 3,078 children were waiting to be seen by CAMHS, of which 459 children were waiting to be seen for more than 12 months.[17]

27. People with mental health difficulties continue to experience difficulties in accessing appropriate crisis supports and mental health services are still not uniformly providing the basic model of care that includes 24/7 crisis intervention, home-based and assertive outreach treatments with crisis houses, as the norm in all areas.

28. Long-term recovery and social inclusion supports remain relatively under-developed, with mixed performance against national mental health policy recommendations. There is a need for dedicated supports to meet the needs of individuals requiring long-term recovery and social inclusion supports, not provided for by generic community mental health teams.[18]

29. Furthermore, the innovative, peer-run services recommended in AVFC remain sparse and lacking in secure funding. On an individual level, MHR hears mixed reports about service user and family supporter involvement in recovery planning and many people engaged in the mental health services do not feel that they have a voice or that they are listened to.

30. Special categories of mental health service provision, not typically provided by generic mental health teams, including services for people who are homeless, people who are deaf, people with a dual diagnosis and people with co-morbid mental health and intellectual disabilities has received the least amount of development since 2006, compared to other areas of the mental health service. (see A Vision for Change: A Coalition Analysis of Progress, chapter 9, available at https://www.mentalhealthreform.ie/a-vision-for-change-9-years-on/)

Recommendation: The Irish government should continue to invest in the development of community mental health services in to be used in part to ensure staffing levels within the national mental health policy are met; the development of peer supports; the development of specialist long-term recovery and social inclusion supports for people with severe and enduring mental health difficulties; the development of mental health services for people with co-morbid mental health and intellectual disability, people with dual diagnosis (mental health and substance misuse difficulties), people experiencing homelessness and people with eating disorders in addition to the development of 24/7 crisis intervention services, to be made available in every area of the country.

[14] Mental Health Reform (2015) A Vision for Change: A Coalition Analysis of Progress, p. 25
[15] Ibid, p. 30
[16] HSE Performance Assurance Report December 2014, p. 57.
[17] HSE Performance Assurance Report April 2015, p. 88
[18] In a review of the Galway/ Roscommon community mental health services published by the HSE in 2014, the review group commented that, "..... progress has been slow in many parts of the country, with many mental health services having either no community rehabilitation and recovery teams or only token services."