

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Iechyd, Gofal Cymdeithasol  
a Chwaraeon  
Ymchwiliad i iechyd meddwl yng  
nghyd-destun plismona a dalfa'r  
heddlu  
HSCS(5) MHP22  
Ymateb gan Y Comisiwn  
Cydraddoldeb a Hawliau Dynol

National Assembly for Wales  
Health, Social Care and Sport  
Committee  
Inquiry into Mental health in Policing  
and Police Custody  
  
Evidence from Equality and Human  
Rights Commission

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## Consultation response from the Equality and Human Rights Commission

### Consultation details

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| Title: Mental health in policing and police custody             |
| Source of consultation: Health, Social Care and Sport Committee |
| Date: March 18, 2019  |

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### Introduction and summary

The Equality and Human Rights Commission (the Commission) welcomes the opportunity to respond to the Committee's Inquiry into mental health in policing and police custody.

The Commission's *Is Wales Fairer? 2018* report found that the inappropriate use of police stations as a 'place of safety' for people with mental health conditions has decreased considerably, but there has been a slight increase in detentions under the Mental Health Act 1983.

The Commission's evidence to the UK Government-commissioned Independent Review of the Mental Health Act 1983 highlighted four key priorities for reform:

- Reducing the scope for crises to occur through improved provision of early interventions and support in the community;

- Ensuring greater patient agency and autonomy in decisions to admit and treat people with mental health conditions and the ongoing provision of such treatment;
- Reducing the ill-treatment of people detained under the MHA and improving investigations into ill-treatment and non-natural deaths in mental health settings; and
- Improving data collection to facilitate targeted action to tackle disproportionality in the use of the MHA.

The Commission's Inquiry into non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals in England & Wales in the years 2010 to 2013 found that repeated basic errors; a failure to learn lessons; and a lack of rigorous systems and procedures have contributed to the non-natural deaths of hundreds of people with mental health conditions detained in psychiatric hospitals, prisons and police cells.

### Is Wales Fairer? 2018 evidence on the Mental Health Act 1983, detention, and the inappropriate use of police stations as a 'place of safety'

The Commission's Is Wales Fairer report (2018)<sup>1</sup> finds that the inappropriate use of police stations as a 'place of safety' for people with mental health conditions has decreased considerably, but there has been a slight increase in detentions under the Mental Health Act 1983.

### Use of Mental Health Act and supervised community treatment

Use of Mental Health Act and supervised community treatment In 2016/17, admissions under the Mental Health Act 1983 (excluding place of safety detentions) and other legislation had increased by 3% from 2015/16 to 1,766. Of this number, 94% were detained without the involvement of criminal courts (under Part II of the Mental Health Act 1983). Of those detained without the involvement of criminal courts, 75% were admitted for assessment, with or without treatment (under section 2 of the Mental Health Act 1983). Section 2 admissions increased (in terms of numbers) between 2015/16 and 2016/17, rising from 1,211 to 1,246 (35 or 3%). In 2016/17, there were 206 patients subject to supervised community treatment (SCT) including 17 for whom an independent hospital was responsible. Of this total, 117 were men and 89 were women. There is no breakdown by ethnic group or other protected characteristics (Welsh Government, 2018f)

### Detentions under the Mental Health Act

Under section 136 of the Mental Health Act 1983, the police in England and Wales may remove people from where they are and take them to a place of safety if they

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<sup>1</sup> Is Wales Fairer? 2018, see [here](#).

appear to be 'suffering from mental disorder' and it is considered that their behaviour poses an imminent risk of serious injury or death to themselves, or to another person.

In 2016/17, the rate of adults (aged over 16) per 10,000 detained under the Mental Health Act was 6.95 in Wales and higher for men (7.9) than women (6.1). Between 2010/11 and 2016/17, the rate of adults per 10,000 detained under the Mental Health Act increased slightly from 6.89. 78 In 2016/17, an average of 53 young people were held in youth custody in establishments in Wales, indicating that several young people attached to Youth Offending Teams in England were held in these establishments.

The use of police cells as a place of safety under section 136 is declining. In 2016/17, a police cell was used as a place of safety 117 times in Wales (Home Office, 2017b), compared with 541 times in 2014/15 (National Police Chiefs' Council, 2015).

In 2016/17, there were no cases of a police cell being used as a place of safety for a person aged under 18 in Wales (Home Office, 2017c), compared with 16 uses in 2014/15 (National Police Chiefs' Council, 2015). In 2016/17, 4% of those detained in police stations in Wales were taken there because there was no capacity in a health-based place of safety. For more than half the cases in 2016/17 (55%), the reason was recorded as 'other' or 'not known' (Home Office, 2017c). This contrasts sharply with the situation in England, where 'no capacity' was recorded as a reason in 52% of cases and 'other' or 'not known' was recorded as a reason in 31% of cases.

### Is Wales Fairer? 2018 recommendation:

Police forces in Wales should keep accurate and detailed reports on the use of police cells as a 'place of safety' under the Mental Health Act.

### Our Findings and recommendations to the Independent Review of the Mental Health Act 1983

In November 2018 (updated in December 2018), the Commission submitted evidence to the UK Government-commissioned Independent Review of the Mental Health Act 1983 (MHA), which was set up to look at how the legislation in Act is used and how practice can improve.

The Commission has previously highlighted our concerns about equality and human rights issues arising under the MHA. These concerns are broader than the Committee Inquiry's specific Terms of Reference that relate to policing and police custody, but remain relevant.

In our submission to the Review, we highlighted four key priorities for reform:

- Reducing the scope for crises to occur through improved provision of early interventions and support in the community;

- Ensuring greater patient agency and autonomy in decisions to admit and treat people with mental health conditions and the ongoing provision of such treatment;
- Reducing the ill-treatment of people detained under the MHA and improving investigations into ill-treatment and non-natural deaths in mental health settings; and
- Improving data collection to facilitate targeted action to tackle disproportionality in the use of the MHA.

Our full submission is available on our website, which the Committee may wish to consider<sup>2</sup>.

## Legal Framework

### Domestic human rights and equality law

Through its incorporation of the European Convention on Human Rights, the Human Rights Act 1998 requires that the following rights must be complied with in the operation of the MHA:

- The right to life (Article 2), which requires the State and public bodies to protect life; act on positive obligations to protect life, for example where a public authority is aware of a real or imminent threat to someone's life or where the person is under the care of a public authority; and in particular circumstances carry out official investigations into deaths, especially deaths in State institutions or police custody.
- The prohibition of torture, inhuman or degrading treatment (Article 3), which requires the State and public bodies to refrain from the most intrusive and risky forms of control and treatment used in care and treatment settings, such as use of physical restraint and medication without informed consent; refrain from subjecting anyone to torture, treatment or punishment that is inhuman or degrading; act on obligations to prevent, and protect those at risk against this type of treatment; and investigate allegations of torture and inhuman or degrading treatment.
- The right to liberty (Article 5), which requires the State and public bodies to ensure there is a clear procedure prescribed by law before authorising a deprivation of liberty (and permits a person to be lawfully detained if they are of "unsound mind"); ensure the deprivation of liberty is necessary and proportionate; provide for a speedy determination of the lawfulness of the detention by a court and to compensation in the event of unlawful detention; and ensure there is a procedure for regular review of the necessity for the detention.

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<sup>2</sup> For our full submission, see [here](#) under December 2018.

- The right to respect for a private and family life (Article 8), which requires the State and public bodies to protect the right to personal autonomy, dignity, physical and psychological integrity; and ensure that any restrictions on these rights are limited to occasions where they can be legally justified. Acts undertaken in relation to the care and treatment of a person who lacks capacity to consent will almost invariably interfere with these rights sufficiently to engage Article 8, even if the acts are considered to be in the individual's best interests.
- The right not to be discriminated against in the enjoyment of ECHR rights (Article 14).

The Equality Act 2010 protects people with protected characteristics (age, disability, race, sex etc.) against direct and indirect discrimination, failure to make reasonable adjustments for disabled people, discrimination arising as a consequence of disability, harassment and victimisation.<sup>3</sup> It also requires government and public bodies (including NHS commissioners in England, service planners in Wales, and public services provided by private providers) to have due regard to the need to eliminate discrimination, to promote equality of opportunity for people with protected characteristics and to foster good relations between people who share a protected characteristic and those who do not. Where adverse impact for people sharing a particular protected characteristic(s) is detected, having considered these three aims, public bodies need to consider whether there are ways they could reasonably mitigate that impact.

### International human rights framework

The UK is also a signatory to a number of international human rights treaties. Largely the treaties have not been incorporated into domestic law, so they are not directly enforceable in UK courts, but they represent legally binding obligations in international law.

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>4</sup> the UK State is expected to recognise everyone's right to the enjoyment of the highest attainable standard of physical and mental health and create conditions to ensure medical services provide for this (ICESCR Article 12). Paragraph 8 of General Comment 14 on ICESCR<sup>5</sup> states that the right to health includes "the right to control one's health and body (...) and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation".

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<sup>3</sup> For more information, please see [here](#).

<sup>4</sup> For more information, please see [here](#).

<sup>5</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 14 - Right to the highest attainable standard of health (2000). Available [here](#):

Under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),<sup>6</sup> the UK State is expected to: involve service user organisations in the development and running of services (Article 4(3)) and provide for peer support (Article 26); ensure disabled people are equally entitled as non-disabled people to all legal protections (Article 5); provide support to people who are disabled to ensure they can exercise their legal capacity (Article 12); ensure that the existence of a disability shall in no case justify a deprivation of liberty (Article 14); secure the right for disabled people to live independently (Article 19); and secure the highest attainable standard of health (Article 25).

Under the United Nations Convention on the Rights of the Child (UNCRC),<sup>7</sup> the UK State is expected to: respect and ensure every child can enjoy all UNCRC rights without discrimination (Article 2); ensure that the best interests of a child must be the primary consideration of all actions concerning children (Article 3); ensure that a 'mentally disabled child' should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Article 23); and recognise the right of a child who has been placed by the competent authorities for the purposes of care or health treatment to a periodic review (Article 25 CRC).

Under the United Nations Convention for the Elimination of All Forms of Racial Discrimination (UNCERD),<sup>8</sup> the UK State is expected to eliminate racial discrimination and, when necessary, take steps to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full enjoyment of their human rights (Art 2).

Under the United Nations Convention Against Torture (CAT),<sup>9</sup> the UK State is expected to ensure that any person who alleges they have been subjected to cruel, inhuman or degrading treatment has the right to complain to, and to have their case promptly and impartially examined by, its competent authorities (Article 13); and ensure victims of cruel, inhuman or degrading treatment are fairly compensated, including the means for as full rehabilitation as possible (Article 14).

Under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>10</sup> the UK State is expected to take all appropriate measures to eliminate discrimination against women in the field of

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<sup>6</sup> For further information, please see [here](#).

<sup>7</sup> For further information, please see [here](#).

<sup>8</sup> For further information, please see [here](#).

<sup>9</sup> For further information, please see [here](#).

<sup>10</sup> For further information, please see [here](#).

health care in order to ensure, on a basis of equality of men and women, access to health care service (Article 12).

### Preventing deaths in detention of adults with mental health conditions

In 2015, the Commission published a report of our Inquiry into non-natural deaths of adults with mental health conditions in prisons, police custody and psychiatric hospitals in the years 2010 to 2013<sup>11</sup>. Our report included a range of recommendations.

The Inquiry found that repeated basic errors, a failure to learn lessons and a lack of rigorous systems and procedures have contributed to the non-natural deaths of hundreds of people with mental health conditions detained in psychiatric hospitals, prisons and police cells in England and Wales.

As a result, the Commission created, for the first time, an easy-to-follow Human Rights Framework<sup>12</sup>, aimed at policy makers and front-line staff across all three settings, which includes 12 practical steps to help protect lives

### About the Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more about the Commission's work at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

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<sup>11</sup>For full report, see [here](#).

<sup>12</sup> To view the Framework, see [here](#).