Stronger Code: Better Care - Revolving Doors Agency's response to proposed changes to the Mental Health Act 1983 Code of Practice

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About Revolving Doors Agency

Revolving Doors Agency is a charity working across England to change systems and improve services for people who face multiple and complex needs, including poor mental health, and come into repeated contact with the police and criminal justice system. We work with policymakers, commissioners, local decision-makers, and frontline professionals to share evidence, demonstrate effective solutions, and change policy, while involving people with direct experience of the problem in all of our work.

Introduction

This response has been developed in consultation with members of the Revolving Doors National Service User Forum – a group of people who have experienced multiple and complex needs, including poor mental health, and in some cases have experienced numerous detentions under the Mental Health Act. We welcome this review of the Mental Health Act codes of practice, and support many of the changes suggested in the consultation document which reflect the issues raised by members of our Forum.

Key points addressed in this response include:

- **The need to ensure adequate consideration of those facing multiple and complex needs,** including those who are considered sub-threshold for secondary mental health services, and released following assessment under the Act. These individuals often fall through gaps in services, despite their significant need.
- **Improved monitoring of outcomes for all those experiencing intervention under the Act,** stressing the need for commissioners to lead improved data collection on needs and outcomes for all those experiencing detention, including those who are released immediately after assessment. Providers and commissioners should also be directed to monitor and reduce the number of people experiencing repeated detention under the Act.
- **A clearer statement of what 'good' aftercare and support would look like**, suggestions to help commissioners and providers understand what needs to be in place to strengthen the welcome focus on aftercare already included in the Code.
- **Embedding a more 'human' approach,** stressing the importance of empathy in staff attitudes and behaviour and highlighting opportunities where mentors and volunteers with direct experience of metal health problems could be used to enhance the service provided.

Responses to selected questions

Introduction

Question 1: In your opinion do you believe that the additions to the Code provide sufficient assurance that all commissioners, local authorities and health and care professionals will understand what is expected of them? If not, what more should be included in the Code?

Many of those experiencing interventions under the Mental Health Act are likely to face multiple and complex needs alongside their mental health problems, including substance misuse issues, insecure housing, contact with the criminal justice system, and poverty. As such, in accordance with action 1 on promoting recovery in the government's *Closing the Gap* strategy on mental health, it is crucial that services delivered under the Mental Health Act are closely linked in with a range of other health and social care support services locally.

As well as their direct responsibilities under the Act, NHS and local authority commissioners have an important role to play in working together to ensure these services are available. We welcome the addition of guidance for these commissioners in the Code. In particular, we welcome the emphasis on joint-working in the core principles of *'purpose and effectiveness'* and *'efficiency and equity'* outlined on p.12, and the focus on ensuring a broad range of interventions are available to enable earlier intervention and prevention of mental health crisis, and to promote recovery on release.

However, this emphasis could be strengthened throughout with a clear role for commissioners highlighted in a number of areas, particularly in relation to people who face multiple and complex needs and often fall through gaps in support services. We suggest that commissioners should be advised to:

- Conduct regular reviews of support pathways for those released from detention under the Act, working with partners to plug gaps in support and provide the multi-agency approach that many will need to support their recovery
- Ensure referral and aftercare arrangements covering a broad range of health and social care needs are in place for those released after assessment under s2, s135, or s136 of the Act, who are not included in the aftercare arrangements required under section 117 and covered in chapter 33 of the revised Code
- Aim to reduce the number of people experiencing repeated detentions under the Mental Health Act through developing specific and targeted local strategies for repeat detainees
- Involve patients and service users at all stages of the commissioning cycle, ensuring that their contribution has a meaningful impact on service design.

As noted in the response to question 3 below, there is also further scope to provide an example for commissioners of what 'good' aftercare services for clients with complex needs could look like, for example commissioning 'one stop shop' community services that those released with no further action from secondary mental health services could be referred into.

It would also be useful for members of the public and service user groups who wish to hold commissioners and local authorities to account to have a clearer expression of commissioning responsibilities related to the Act expressed in the guidance, perhaps through a table in an appendix which also includes these broader commissioning responsibilities. Clinks and Revolving Doors Agency

have published a guide for members of the public and VCSE services to understand the role of different health commissioners, and this could be linked to via the additional guidance section.[1]

Question 2: Should the proposed Code provide more guidance about appropriate governance arrangements for monitoring duties and powers under the Act? If so, what guidance should be included?

There is currently insufficient data available nationally on outcomes for people experiencing many aspects of the Act, in particular those who are released after assessment. Regarding police powers under s135 and s136 for example, CQC's annual monitoring reports only include outcomes for those detained in hospital-based places of safety for assessment, and there is insufficient monitoring of outcomes for the significant number of people who are released after assessment.

Guidance for commissioners and those responsible for governance locally should include good practice in term of data collection and outcomes monitoring. In particular, we suggest that local agencies should be responsible for monitoring:

- The number of repeat detentions locally
- The health and social care needs of all those experiencing a detention under the Act, including how these needs overlap
- Outcomes for all those detained under the Act, including further detail on the support and follow-up that is provided for those released after assessment with no further detention
- Close attention to user satisfaction measures, which CQC can use to compare between areas.

Question 3: In your opinion should any parts of the Code be more specific to determine what 'good' services looks like? If so, please indicate which parts should be more specific and how.

In order to inform our response, we asked members of our service user forum what a 'good' service looked like when subject to assessment and treatment under the Mental Health Act. Key themes that they identified are included in textbox below.

Many of these key concerns are addressed in the revised Code, and we welcome in particular the strong emphasis on reducing the use of restraint and restrictive interventions and ensuring plans are made for aftercare.

However, overwhelmingly what came through from our consultation (and which corroborates a range of recent reports looking at institutional care more broadly) was the need for a more *human* service, treating not just clinical need but responding to a range of factors holistically and with empathy. People did not just need treatment for their mental health problem, they needed the whole package – friendship, kindness, advice and practical support, and empathy. There is greater scope to reflect this throughout the Code.

[1] Available here: http://www.clinks.org/sites/default/files/basic/files-downloads/clinks_navigatinghealth_FINAL.pdf

Characteristics of a "good service" under the Mental Health Act 1983

Initial contact and assessment

- Use of de-escalation techniques over restraint – restraint as a last resort
- Staff access necessary information (e.g mental health history, NHS records) early, rather than telling story "over and over again".
- Process clearly explained, and service user involved from start. Key question – *"what do you think would help you?"*

Treatment

- Psychologically informed environment – including physical environment promoting calm atmosphere.
- Advocacy and access to mentors as well as clinical support staff.
- Less reliance on medication, more access to therapy
- An individually tailored approach, treating a range of problems at once
- Trauma informed
- A range of activities and therapies available (e.g art therapy) Having a say throughout, with regular reviews of care.
- Staff showing empathy
- Regular opportunities for visitors.

Release and ongoing support

- Links into "one stop shop" that identifies and addresses full range of needs Flexible support, able to access when needed.
- Support in finding appropriate housing
- Developing an individually tailored plan for recovery, with a range of support available Access to peer support and mentoring.

Areas where clearer recommendations could be provided on what a 'good' service looks like include:

- **Availability of mentors** – Close links with the community and voluntary sector should be encouraged, enabling volunteers and mentors (including peer mentors with experience of mental health services) to play more of a role in the care provided under the Act. The Code provides strong guidance on the importance of advocacy, but mentors could provide a more holistic support role than the technical role of an advocate, including befriending, supporting recovery, and providing ongoing support in the community on release.
- **Use of "one stop shop" linking services on release –**Clearer guidance could be available for commissioners and practitioners on what services should be in place to improve aftercare. In particular, there should be stronger guidance around linking those who are released after assessment (and do not qualify for the provision of aftercare under s117) into support. Our Forum members' called for a 'one stop shop', navigating support for all their problems at

once. Existing services providing this kind of support to different groups in a number of areas include 'Linkworker' services and Women's Centres.[2]

Using the Act

Question 5: To what extent do the proposed guiding principles set the correct framework for care, support and treatment under the Act? Are there any additional principles which may be beneficial?

Members of our Forum broadly agreed that the five proposed principles set the correct framework for care, support and treatment under the Act. We welcome the clearer articulation in the revised guidance on adopting the least restrictive approach, as well as the focus on joint-working and ensuring access to a range of support services outside of mental health support that are crucial to recovery. We particularly welcome the increased focus on empowerment and participation, as ensuring that service users are able to take a lead in shaping their own care is a key part of improving services and encouraging a lasting recovery.

Key principles that Forum members felt must be included throughout the guidance included:

- Recovery focused
- Collaboration across services to provide holistic, ongoing support
- Patients leading their recovery/treatment
- Taking a strengths-based approach, and exploring horizons and opportunities that will help to build a positive future.
- Empathy and understanding

Where not already explicit, these suggestions could be used to strengthen the existing principles. Specific suggestions are discussed below:

Empowerment and participation

An additional paragraph could be included under this principle (p.11 of draft Code), targeting commissioners by suggesting that people with experience of detention under the Mental Health Act should also be involved at all stages of the commissioning cycle, and in the design, delivery, and reviewing of services provided under the Mental Health Act.

Respect and dignity

Forum members agreed that respect and dignity for patients, families and carers represented a crucial principle. However, this could be extended to include a specific reference to *empathy*. Forum members consistently highlighted the importance of staff showing empathy and *"treating [them] like a human being"*, with small acts of kindness and understanding going a long way to help them to feel more calm or more supported when they were at their most vulnerable. It was felt that this was so important that it should be explicitly referenced in the guiding principles.

[2] For further information on the linkworker approach, see Anderson, S., (2010) *Summing Up* London: Revolving Doors Agency. Available here: http://www.revolving-doors.org.uk/documents/summing-up/

Purpose and effectiveness

The emphasis on a recovery-focused approach here is welcome, as is the guidance under this heading (paragraph 1.11) that *"Commissioners, providers, and professionals must consider the broad range of interventions and services needed to promote recovery after a patient leaves hospital, including housing and employment opportunities"* (p.12).

This section could be further strengthened with specific reference to the multiple and complex needs faced by many of those detained under the Act, including many of those who are of deemed 'sub-threshold' for further support from secondary mental health services following assessment, but who nonetheless face significant health and social care needs and are likely to face further detentions or other contacts with costly emergency and/or coercive services (including police and criminal justice services) if their overlapping problems are not addressed.

Protecting patient's rights and autonomy

Question 7: In what ways could the Code say more to help ensure that people have a say in their own care and that their wishes and feelings are taken into account?

We welcome the strengthening of this area of the code, which provides particularly clear guidance around the need to keep patients informed. However, there is potential to specify further what good practice in giving people a say in their care involves. This should include:

- Patients involved in developing a care plan
- Regular reviews of care plan and treatment, so patient does not feel tied to something agreed to when in crisis situation
- Planning around release, so that patients can identify services that they feel they most require
- Involvement of people with experience of detention under the Act at a strategic level, with the voice of 'experts by experience' involved in commissioning and in the design, delivery, and monitoring of services.

While these are addressed to an extent at different points in the Code, the guidance would benefit from bringing them together to provide a clearer statement of what good patient involvement looks like. Further information on involving service users is available in our service user involvement guide.[3]

For patients to have a real choice and say over there care, there must also be options available to them. Forum members stressed the need for a range of services that fit their strengths and interests which would help to promote and sustain recovery, including art therapy, sport therapy, and links with peer support groups. Commissioners have an important role in working with partners and ensuring that these options are available.

Question 17: To what extent do the changes to Chapter 16 on police powers, address concerns around the use of sections 135 and 136? What further changes are required?

[3] See http://www.revolving-doors.org.uk/documents/service-user-involvement-guide/.

Responding to people suffering a mental health crisis is a challenging area for the police and partner agencies. Our research conducted as part of the Big Diversion Project in the North East[4] corroborates findings in recent reports such as the Adebowale report and the joint inspectorate report *A Criminal Use of Police Cells* in identifying a number of practice issues that persist in many areas, in particular:

- access to ambulances and appropriate transport;
- access to appropriate heath-based places of safety;
- waiting times for assessments;
- training for police staff;
- a perceived overuse of s136 and a lack of alternatives need to strengthen partnership working.

Members of our service user forum reported significant inconsistences in their experience of interventions under s136, with one forum member subject to repeated crisis interventions having been detained in all potential places of safety (including police custody) at different times. Where they are used, police vehicles, police cells, and handcuffs made individuals feel criminalised.

The changes to chapter 16 of the Code make an important contribution to wider work on tackling these issues. We welcome the comprehensive guidance provided on what should be included in local partnership policies; the clarification of guidance on intoxicated detainees, stressing that a health-based place of safety should still be preferred; and the focus on *"preparing multi-agency care plans for people who are repeatedly detained under s136"* (p.120).

Areas that we feel could be clarified further in the guidance include:

- **Detention period:** There is scope to set a clearer ambition regarding the length of time detained under s136. While the maximum period is 72-hours, the Code rightly states that detentions *"should not need to be this long"* (paragraph *16.28, p. 118)*, and would benefit from setting a clear aim that detentions across all places of safety should not exceed 24 hours.
- **People released with no further action:** Many people repeatedly picked up on s136 face multiple and complex needs, and are released with insufficient support in place because they do not qualify for further support from mental health services. These individuals often represent 'frequent flyers', and are likely to return to police custody under arrest or under another section in the future. We welcome the guidance that local policies should cover arrangements for *"the release, transport, and follow-up of people assessed under section 135 or 136 who are not then admitted to hospital or immediately accommodated elsewhere" (p.120)*, however we feel that this could be strengthened to stress that all those who experience a section 136 detention *must* be linked into a community support service that can provide a more holistic assessment of their health and social care needs and offer appropriate support.
- **Early intervention and alternatives to section 136**: We welcome the guidance that *"when considering the use of police powers to detain people under the Act, less restrictive alternatives to detention should be considered. Health and/or social care professionals may be able to identify alternative options"* (p. 117). However further guidance could be offered

[4] See http://www.revolving-doors.org.uk/partnerships--development/programmes/big-diversion-project/

to commissioners and senior leaders on the kinds of services and arrangement that could be in place to help reduce overuse of the section and find appropriate alternatives.[5] This issue was highlighted by members of our Forum, who felt that an emphasis on neighbourhood policing, with police officers building strong links with community services and getting to know local people, was also crucial to improving both crisis responses and responses to other mental-health-related incidents. The role of mental health liaison officers was identified as an important part of this landscape.

For further information, or to discuss these issues with members of our National Service User Forum, please contact:

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[5] The New Directions scheme in Warrington provides one example that could help to inform the guidance, with funding from the Local Authority providing a link between neighbourhood police and mental health services and helping to respond to individuals with low-level problems who are at risk but would not normally be helped until their condition had deteriorated much further. See http://www.revolvingdoors.org.uk/partnerships-development/projects/warrington/ for further information.