

Opening Statement of Mental Health Reform (MHR) to the Joint Committee on Children, Equality, Disability, Integration and Youth on the Assisted Decision-Making (Capacity) (Amendment) Bill 2021

15th February 2022

Introduction

Ba mhaith liom buíochas a ghlacadh leis an gCathaoirleach agus le baill an Choiste as an gcuireadh teacht in bhur láthair inniu. Thank you Chair for inviting us here today. I am Fiona Coyle, the CEO of Mental Health Reform and I am joined by Ber Grogan, our Policy and Research Manager.

Mental Health Reform (MHR) is Ireland's leading national coalition on mental health with over 75 member organisations working for progressive reform of mental health services and supports in Ireland. Mental Health Reform is a member of the Disability Participation and Consultation Network (DPCN) and other key disability stakeholder fora.

We welcome the opportunity to take part in the Pre-Legislative Scrutiny (PLS) of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021. This legislation can be and must be instrumental in giving a voice to people with mental health difficulties in decisions that directly affect them, including in their own mental health care and treatment. The importance of individuals being listened to and being active partners in their own mental health care is a core component of our national mental health policy. In line with the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the rights of people with mental health difficulties or psychosocial disabilities must be protected.



There are three key proposed areas relating to mental health which form the focus of our contribution this afternoon:

1. **Part 4 of the Mental Health Act 2001**
2. **Provisions for 16 & 17-year olds**
3. **The Codes of Practice and Mental Health**

1. **Part 4 of the Mental Health Act 2001**

As this legislation currently stands persons detained involuntarily under Part 4 of the Mental Health Act 2001 are excluded. They do not have the right to have their advance wishes about treatment respected.

Without changes to this legislation, people who are detained in hospital for mental health treatment have no legal right to have their advance wishes respected, even though they had capacity to make decisions about their mental health care and treatment at the time of making their advance healthcare directive. There is no other group of individuals that are specifically excluded from this legal right. This exclusion is in violation of international human rights standards including the UNCRPD.

Research shows that advance healthcare directives can reduce involuntary admissions, promote recovery and be cost effective¹. It is essential that advance healthcare directives should be provided for all people on an equal basis, including those who are detained in hospital for mental health treatment.

¹ Morrissey F., "Advance Directives in Mental Health Care: Hearing the Voice of the Mentally Ill", (2010) 16 (1) Medico-Legal Journal of Ireland 21.



Section 85(7) and section 136 of the 2015 Act need to be amended to ensure provisions around designated healthcare representatives can operate and to ensure parity of treatment for those with mental health difficulties.

2. Provisions for 16 & 17-year olds

MHR has highlighted a lacuna between the Heads of Bill to Reform the Mental Health Act 2001 and the Assisted Decision Making (Capacity) Act 2015. MHR greatly welcomes Part 8 of the Mental Health (Amendment) Bill, which is set to provide for 16 and 17 year olds to give or withdraw consent to treatment in mental health services if they are deemed to have capacity. The Heads of Bill state that the Assisted Decision Making (Capacity) Act 2015 would apply for the purposes of conducting the necessary capacity assessments. However, the Act and the Amendment Bill before the Committee does not provide for decision supports for under 18s.

We hope that a remedy will be found as a matter of urgency to ensure that the rights of young people (16-17) in making decisions on their mental healthcare are protected.

3. The Codes of Practice and Mental Health

MHR notes the significant amount of work being undertaken by the Decision Support Service (DSS). Section 103 of the Act provides for the development of codes of practice. It is important that mental health is given prominence in all documents. We would like the Committee to note that the 'draft code of practice on supporting decision-making and assessing capacity' did not contain any sample scenarios for people with mental health difficulties. We respectfully request that the





Committee recommends the inclusion of mental health in all aspects of the implementation of this Act.

MHR supports the calls of our colleagues in Disabled Persons Organisations (DPOs) and others that the codes of practice be reviewed within a year of their implementation. This will also give an opportunity to align the codes with the reformed Mental Health Act.

4. In conclusion

Finally, MHR would like to commend your colleagues on the Sub-Committee on Mental Health who are undertaking pre-legislative scrutiny to reform the Mental Health Act 2001. We would also like to acknowledge Minister of State Mary Butler and her Officials on the work they have done in this area. With this important piece of interlinking legislation, we now also wish to acknowledge this Committee, Minister of State Anne Rabbitte and her Officials on their work. Too often, mental health difficulties are seen as 'separate and different', and the same rights and protections are not extended to people who use mental health services as to others. We urge you to ensure that mental health is not sidelined in the discussions and recommendations as part of this process.

Go raibh maith agaibh.

The Scheme to Support National Organisations (SNNO) is funded by the Government of Ireland through the Department of Rural and Community Development



Rialtas na hÉireann
Government of Ireland



pobal

government supporting communities

Mental Health Reform, Coleraine House, Coleraine Street, Dublin 7, D07 E8XF.
Registered Charity Number: 20078737. CHY Number: 19958. Company Registration Number: 506850.

