



Stronger Code: Better Care.

Consultation on proposed changes to the Code of Practice: Mental health Act 1983

Consultation response

Introduction

The Children's Society is a leading charity committed to improving the lives of thousands of children and young people every year. We work across the country with the most disadvantaged children through our specialist services and children's centres. Our direct work with vulnerable groups including disabled children, children in or leaving care, refugee, migrant and trafficked children, means that we can place the voices of children at the centre of our work.

We run 11 projects supporting young people in care and 13 specialist projects working with children who run away or go missing and/or are at risk or victims of sexual exploitation. We also run services that deliver emotional support, psychological interventions and counselling for children who have experienced domestic abuse and/or sexual exploitation. Many of the children we support are very vulnerable young people who come into contact with mental health services.

We welcome this consultation on changes to the Mental Health Act 1983 Code of Practice. It is crucial that children and young people who require mental health interventions receive help that is timely and of high standard. Our submission is informed by learning from our direct work with vulnerable children and young people. We have chosen to respond only to questions where additional clarifications are needed in relation to how the Code will apply to children.

Summary of key points

- We welcome the updated chapter 19 which explains how the Code applies to children and young people.
- The Code provides quite detailed interpretation of how the law applies to children and young people and acknowledges throughout that children require a different approach. We do feel however, that there should be a more detailed description of what 'good services' look like in relation to children at different stages of a child or young person's journey through mental health support under the Act. It is particularly important in relation to certain aspects of the law, such as assessments (including under Section 136 of the Act) or information sharing, where good practice standards should be adhered to.
- The relevant local authority Children's Services must work more closely with mental health services to ensure good quality after care and support for children. The Code needs to include more information on how this can be achieved. One principle that would be beneficial to include is 'planning for co-ordinated after care and support'.

- It is also important for the Code to highlight what the good practice should look like in relation to certain groups of children, such as looked after children, children who have experienced abuse or exploitation, young separated migrants, who may not have the usual social networks around them and therefore the 'good practice' in relation to them will be different. It should specifically cover issues such as children's voice, planning for discharge from mental health settings, and visits.
- The Code should state that children should always be placed in appropriate settings located close to friends and family. Additional information should be provided detailing how this can be achieved for looked after children in out of area care placements.
- Interventions should be made in the best interests of the child, but each individual child needs to be considered on a case by case basis where their life is viewed from many angles, and not just from the perspective that they are a child.
- We welcome that the Code highlights the importance of information made available in the format that is age appropriate and/or available for children, young people and adults with communication needs. There needs to be a copy of the Code in a young person friendly language with information for young people on what 'good service' they should expect from mental health practice.

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.

We welcome the updated chapter 19 which explains how the Code applies to children and young people. We particularly welcome that the chapter explains how the children and young people should be treated differently from adults and the inclusion of important reference to the United Nations Convention on the Rights of the Child, The Children Act 1989, The Children Act 2004, the Working together guidance and other relevant guidance. It is also important that relevant inserts are made throughout the guidance on how it applies to children and young people.

However, our practice reports that children and young people's experiences of mental health services vary considerably depending on the area they live and on the working relationships between the mental health services and relevant other services, including the children's services and the police. These relationships have significant impact on the quality of services children receive.

Recommendation 1: *The Code provides quite detailed interpretation of how the law applies to children and young people and acknowledges throughout that children require a different approach. There should however, be a more detailed description of what 'good services' look like in relation to children at different stages of a child or young person's journey through mental health support under the Act. It is particularly important in relation to certain aspects of the law, such as assessments (including under Section 136 of the Act) or information sharing where good practice standards should be adhered to.*

Here are some of the issues that we believe could be looked at in more detail in the Code.

- Assessment

The Children's Society is concerned about the lack of health based places of safety for assessment of children and young people detained under Section 136 of the Mental Health Act 1983 as shown in the recent report from the Care Quality Commission¹. The practice of taking

¹ <http://www.cqc.org.uk/media/new-map-health-based-places-safety-people-experiencing-mental-health-crisis-reveals-restrictio>

children to police cells in the absence of health based places of safety for assessment is inappropriate practice.

Recommendation 2: *We welcome that the Code specifies that the commissioners should ensure that appropriate places of safety are available in those circumstances but good services standards should be explained in relevant sections so that patients and their families and carers know what constitutes good service and what is inappropriate service.*

Recommendation 3: *Where police cells are used to detain young people under the Act, even if it is for a short period of time, it is important for the Code to explain what good service would look like in this case, for example the appropriately trained professional should be there to explain to a young person what is happening, why the police cell is used and that they are not being criminalised.*

- Confidentiality and sharing information

We welcome the inclusion in Section 19 of an explanation about the rights to confidentiality for a young person and an approach the mental health professionals should take to share information where they believe a child or a young person is at risk of harm. We agree that both points are very important.

Recommendation 4: *Based on learning from our direct work with vulnerable young people we believe that good practice guidance is needed on how the principle of confidentiality and information sharing should be communicated to a child or a young person to ensure that they understand from the beginning what information may be shared further. It is an important issue that defines where trusting relationships can be developed between a practitioner and a patient and which impact on how a child or a young person co-operates with the treatment.*

- Independent Mental Health Advocates (IMHA)

Recommendation 5: *We agree that IMHA need to have good knowledge of relevant children's legislation but think that the Code should be expanded to include what specifically this should cover. Some of the key areas of knowledge where we see a lack of good practice are the child's entitlement to education whilst in mental health settings, the rights of children who are looked after for review of the care and planning for discharge, the right for children to have their wishes and feelings heard when important decisions are made about their lives (not only those related to mental health support they receive).*

- Co-ordinating with Children's Services

Our staff report that for many young people, treatment under the Mental Health Act can only be as good as the exit plan put in place upon leaving a secure ward. Cases where Children's Services and medical professionals have worked closely upon a young person's exit from the system have been the most effective in ensuring positive mental health over the long term.

Recommendation 6: *The relevant local authority's Children's Services need to be informed of an admission as soon as possible. At the moment this is left to the discretion of AMHP but we feel that even if Children's Service do not have a role to play in the treatment process they should be heavily involved in planning the young person's exit from hospital by signposting them to services and providing additional support to go along with that support already offered on exit through health professionals.*

- Children's Rights

We welcome that the Code emphasises the rights of children and gives them a significant voice in their treatment when it is applied properly. In our experience however this is not always the case when the Act is implemented.

In many of the cases we have been involved in, the young person being treated under the Act involuntarily has not be adequately informed of their right to tribunal and it has only been due to the hard work of our staff that they have been able to access this appeals process. In our

experience the very process of applying for tribunal and seriously considering the best course of treatment for them, has helped the young person in question to accept their treatment under the Act and confront the realities of their poor mental health.

Recommendation 7: *We welcome that the Code highlights the importance of information made available in the format that is age appropriate and/or available for children, young people and adults with communication needs. There needs to be a copy of the Code in a young person friendly language with information for young people on what ‘good service’ they should expect from mental health practice.*

- Looked after children including unaccompanied asylum seeking children

The level of mental health needs among looked after children are very high. Research shows that around 60% of looked after children and 72% of those in residential care have some level of emotional and mental health problem². A high proportion experience poor health, educational and social outcomes after leaving care³. Looked after children and care leavers are between four and five times more likely to attempt suicide in adulthood. From our direct work with looked after children we know that they often find it difficult to access mental health support and that the planning and co-ordination between the mental health services and social services is not working in many cases. This jeopardises their recovery and future life chances.

We welcome that the guidance explains certain aspects that have to be considered when a looked after child gets mental health support (for example, about involving people with parental responsibility in assessments, decisions about young person’s capacity to make decisions or decisions on treatment). However, the Code needs to go further to explain what a good service for looked after children would be like at all stages of getting support under the Act.

Recommendation 8: *It is also important for the Code to highlight what the good practice should look like in relation to certain groups of children, such as looked after children, children who have experienced abuse or exploitation, young separated migrants, who may not have the usual social networks around them and therefore the ‘good practice’ in relation to them will be different. It should specifically cover issues such as children’s voice, planning for discharge from mental health settings, visits.*

- Discharge from mental health settings

We would particularly like to see clear guidance on what good practice would look like in planning for discharge from a mental health setting of a looked after child or a young person. From our practice we know that while the reviews may happen with a focus on mental health support they receive, there is a lack of efficient communication between the mental health practitioners and social care practitioners to ensure that care planning review ensure smooth transition for a young person from a mental health settings to care settings.

For example, in one case we know of a 17 year old was placed in Bed and Breakfast accommodation after the discharge from mental health hospital, which made him both vulnerable to abuse and also had a negative impact on his mental health. Such inappropriate transition arrangements can be prevented if there is a greater focus on all aspects of planning for discharge while young people are in mental health settings.

Much of our experience working under this Act is due to our work with unaccompanied migrant children and asylum seekers. Many of our case studies highlight how, regardless of the success of treatment, when a young person is released to temporary shared accommodation which is often overcrowded, noisy and lacking in privacy, their mental health can quickly regress.

- Visits to looked after children in mental health settings

² NICE: *Promoting the quality of life of looked-after children and young people*. NICE public health guidance 28. 2010.

³ DCSF: *Children looked after in England (including adoption and care leavers) year ending 31 March 2009*.

The guidance should explain in sections on visits and also involving of appropriate adults when decisions on admissions to the hospital are made that for young people in the looked after system it is important to explore the support they from their foster carers or advocates as these people may play more prominent role in young people's lives due to their life circumstances.

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

We welcome the five proposed guiding principles included in the document. We particularly welcome the focus on empowerment and participation which is very important from the perspective of children and young people who from our practice we know are often not fully included in decisions about their care or asked for their opinion.

***Recommendation 9:** One principle that we believe would be beneficial to include is 'planning for co-ordinated after care and support'. As explained in our answer to the question above it is important for young people to have plans in place that do not only focus on their mental health needs but go wider and address the whole range of issues that require co-ordination between health and other services. This addition should be a priority.*

Question 8. What additional information in relation to provision of independent mental health advocates would it be helpful to include.

We welcome the focus on improving access to advocacy services for patients and would welcome specific references to the right of children to be supported by advocates when important decisions are made about their lives.

We also welcome the greater focus on the role of local authorities in commissioning of advocacy services for all patients including those who have additional or complex needs who can respond to the diversity of detained patients. From our work with young people we know that there is a lack of advocacy services in general and a lack of specialist advocacy services that can meet the needs of children.

***Recommendation 10:** Whilst we agree with the importance of access to properly trained mental health advocates for young people being admitted under the Act we also feel the guidance should encourage Accredited Mental Health Practitioners (AMHPs) to reach out to those with pre-existing relationships with the young person. A youth worker, teacher, social worker, or similar, who knows the child well, but in a professional and impartial manner, could offer useful support in enabling young people get receive mental health support.*

In one case the intervention of a Children's Society member of staff, who knew the young person in question well was vital in ensuring that the young person was admitted under the Mental Health Act rather than being returned to an abusive home environment by professionals who, whilst having the young person's best intentions at heart, did not understand the personal circumstances involved.

Question 9. How should the Code be updated to reflect the use of electronic media in a patient's correspondence and communications under section 134?

There are a number of issues that we believe it would be helpful to highlight in relation to the access to electronic media by children and young people. The access to electronic media for young people has its benefits and possible risks that those providing mental health support to young people should be aware of and address.

Our Good Childhood Report 2014 found that children with access to the internet enjoy a small, but statistically significant increase in their emotional wellbeing compared to those who do not⁴. At the same time another research showed that use of electronic media is linked to the risk of cyber-bullying⁵. For some young people we are working, for example those who have experienced abuse or neglect, the risk of being inappropriately targeted via electronic media is higher.

Recommendation 11: *The code as it stands could be adequately applied to electronic communication in addition to traditional mail. It is very important for professionals to understand and assess the risks of young person's access to the internet on case by case basis to make informed decisions. At the same time the importance of having online access to friends and family should not be underestimated. We also think that it is important that the decisions made should always be appropriately discussed and explained to young people.*

Question 10. How can the Code be more specific about aspects relating to the right to have visitors and access to family and friends?

For children and young people the right to have access to family and friends should be strongly honoured by medical professionals within the rules set out by both the Act and the Code. We would however encourage AMHP to be flexible. For example school age friends may only be able to visit at unusual hours to fit in around their education. Good relationships with friends and family are key to a child's well-being and should be facilitated with rules that are flexible.

Question 12. In your opinion what additional guidance is required in relation to the rights and roles of families and carers?

For many parents, the idea of the 'zone of control' or the discovery that they are in fact not able to make some decisions on behalf of their child may prove very distressing. If children and young people are to receive the quality care they need, in a timely fashion, more work needs to be done to inform parents of the process, their rights and those of the child.

Recommendation 12: *Just as purposely made materials are provided for young people to help them understand and consent to their treatment, parents need to be offered clear, comprehensive and understandable information from the beginning of the process so that they can play a constructive role in obtaining the treatment needed by their child.*

Question 15. Considering the options above, what further guidance should be included in relation to where individuals should be geographically located, when detained, within the remit of the current legislative framework?

It is very important to ensure that children and young people with mental health needs are placed locally. We believe that the Code should make it clear as well include a clear statement for commissioners of services of their responsibility to commission adequate number of placements for to meet the need in relation to children and young people.

Separate consideration should be given to placement of children in care who are in care placements outside their local area. There around 65,000 children in care and around a third of them are placed outside the boundaries of their local authorities. We know from our direct work with these children and young people that they very often they feel isolated, and being outside their usual support networks, family and friends, can become vulnerable to abuse. While only a small number of children in out of area care settings will require mental health interventions, it is

⁴ The Children's Society, Good Childhood Report 2014, p35 <http://www.childrenssociety.org.uk/what-we-do/research/well-being-1/good-childhood-report-2014> [Last Accessed September 3rd 2014]

⁵ NSPCC Statistics on Bullying, March 2013, http://www.nspcc.org.uk/Inform/resourcesforprofessionals/bullying/bullying_statistics_wda85732.html [Last Accessed September 3rd 2014]

important to ensure that when decisions are made about detaining children under the Mental Health Act, proper consideration is given to locating children in care close to their families and friends if it is appropriate.

Our other concern is that all children should only be placed in appropriate settings. Our practitioners still report that too many of the children they work with have been placed in inappropriate wards throughout the mental health service. For example, we have worked with one 17 year old placed on an adult ward with a sexually aggressive female. He escaped from the ward on three occasions due to the distress this placement was causing him. Those being admitted under the Mental Health Act are the most vulnerable and they must not be subjected to an inappropriate placement.

Recommendation 12: *The Code should state that children should always be placed in appropriate settings located close to friends and family. Additional information should be provided how this can be achieved for looked after children in out of area care placements.*

We also strongly support that where such placement is not available the consideration should be given to how families and friends can be supported to visit young people. If the most appropriate bed is not available locally then thought will need to be given about how best to support friends and family in visiting the young person admitted under the Act. This may include providing to families to meet their travel costs.

Recommendation 13: *In relation to looked after children it is also important for the Code to specify that participation and empowerment principle should apply to the issue about visits to young people in inpatient settings. For some young people it may not be appropriate or beneficial to have visits from close family but there may be other people in their social networks whose visits would be welcome by the young person and beneficial for their recovery.*

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?

We welcome that there is a new chapter on the police powers and places of safety. While it is important that the Code provides clear guidance on how powers that are provided by the legislation can be exercised appropriately by the police it is also important for the Code to respond to the issue identified in the A Criminal Use of the Police Cells report which is about the lack of health-based places of safety.

It is not acceptable that young people can be held in cells for up to 24 hours to undergo assessment. Not only this is a terrifying entry into the system governed by the Mental Health Act but it also carries the stigma of criminalisation which could well further damage fragile mental health.

Recommendation 14: *the Code should state that Local Authorities, the police and NHS bodies need to work closely together, across boundaries, to ensure that beds can be created at short notice so as to completely phase out the use of police cells as quickly as possible. This multi-agency approach needs to be complimented by a clear and precise protocol for finding an appropriate bed in the local area.*

Recommendation 15: *Holding a child or young person in a police cell for up to 24 hours awaiting assessment for their mental health is completely unacceptable. If police cells are to be used, it must be made clear to the young person in question that they are not being criminalised and other arrangements must be made as quickly as possible.*

Many of the young people we work with feel misunderstood by the police and often assume they have gained criminal records through the experience. The consequences on their self-esteem and resilience can be huge as they consider the consequences a criminal record can have on future employment opportunities, for example.

Involvement of the police is often, in our practitioners view, not helpful. One of our practitioners is co-located with the police and has often felt that the police's default setting is to ignore obvious concerns about mental health, or to assume that going home is the best outcome for a distressed young person. Locating assessments within this atmosphere of misunderstanding cannot be conducive to rational, well thought through outcomes.

Question 20. Does the Code provide sufficient information in relation to individuals where additional safeguards or considerations may be required, e.g. due to age, or disability? Please note any instances where information is not sufficient.

It is important that the needs of each child are assessed and understood through a variety of angles that are important and should not be just seen from one perspective. Particular needs may arise as a result of a combination of factors related to child's ethnicity, disability, sexual orientation, immigration status or parenthood.

One of the groups of children whose needs professionals do not always understand are migrant and asylum seeking children. Many of them arrived in this country unaccompanied and destitute. Some of the examples reported by our practitioners are provided below:

A) young migrants being refused admission, despite wanting to voluntarily section themselves, because NHS professionals claimed that the help the young person in question needed was too specialist and could only be offered by a refugee or migrant project.

b) A young migrant, discharged under the Mental Health Act with a crisis team in place was unable to contact his team because he did not have access to a telephone.

c) a young migrant released into dormitory style accommodation unable to sleep at night due to his poor mental health and lack of privacy. He quickly regressed and then required further interventions that could have been avoided.

Recommendation 15: *Interventions should be made in the best interests of the child, but each individual child needs to be considered on a case by case basis where their life is viewed from many angles, and not just from the perspective that they are a child.*

Recommendation 16: *The Code needs to include additional information on the needs of separated migrant children.*

For further information please contact Iryna Pona, Policy Adviser

iryna.pona@childrenssociety.org.uk

or Richard Crellin, Policy Officer

Richard.crellin@childrenssociety.org.uk