IRISH MEDICAL ORGANISATION
Ceardchumann Dochtúirí na hÉireann

IMO Submission on the Review of the Mental Health Act 2001

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The Irish Medical Organisation (IMO) is the representative body for all doctors in Ireland and welcomes the opportunity to comment on the recommendations of the Expert Group to Review of the Mental Health Act 2001 under the following headings:

Definitions

The Expert Group recommends the removal of the terms 'significant intellectual disability' and 'severe dementia' from the Act and these will effectively be replaced with a new category of patient that lacks capacity. A clear pathway for how capacity is to be determined is required. Often admissions are made in situations of urgency thus the process for determining capacity must be reactive and hasty and not over-dependent on either court applications or staff members who may be absent.

The IMO would like to see a clear and unambiguous definition of "A Child" that is consistent across all health care services. Under the Mental Health Act 2001, for the purpose of admission to child and adolescent mental health services, a child is defined as a young person under the age of 18 (unless married). On the other hand paediatric emergency departments (including the New Children's Hospital) are only accessible to children under the age of 16 years. Therefore emergency presentation of children between the ages of 16-17 years occurs at the adult general hospitals, most of which, if not all, have no child psychiatry cover[1] yet admission of this age category to adult psychiatric units is a cause for national scandal.

Guiding principles

The IMO welcomes a new set of principles that empower individuals to make decisions about their own mental health and treatment, however the IMO is of the view that the principle of 'best interests' should be included.

Medical Practitioners are obliged to act in the best interests of patients at all times and particularly when caring and treating a) children and young people and b) adult patients who lack capacity where there is no-one with legal authority to make decisions on the patient's behalf. [2] It may not be possible to discover someone's "will and preference" in situations of urgency where risk is high. Also there may be situations where patients may have capacity but place themselves and others at risk, and in such circumstances the best interests of patients and others should be considered (eg. An individual with an emotional disorder who has capacity who wishes to assault, or someone who has capacity but wishes to die by suicide). In such cases, the principle of best interest would need to remain in the legislative framework.

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[1] HSE, RCPI, A National Model of Care for Paediatric Healthcare Services in Ireland Chapter 13: CAMHS https://www.hse.ie/eng/services/publications/clinical-strategy-and-programmes/child-and-adolescent-mental-health-services.pdf

[2] Medical Council, Guide to Professional Conduct and Ethics for Registered Medical-Practitioners (Amended) 8th Edition 2019 https://www.medicalcouncil.ie/news-and-publications/reports/guide-to-professional-conduct-and-ethics-for-registered-medical-practitioners-amended-.pdf

Criteria for detention

Detention should be limited to those who have a severe mental illness but also either require admission to mitigate risk subsequent to that illness, or in cases where the detention will benefit the person. However the circumstances that usually pertain when a decision to admit is taken is often taken at critical moments and diagnosis can take a little more time. There should be an allowance for someone to be admitted who has a mental illness but is being admitted for the purposes of assessment or observation where there is a reasonable grounds to assume that there is risk or the patient may benefit.

Authorised Officers

Authorised Officers have a useful role to play in making an application for involuntary detention where a patient has no family or where there is dispute among family members. However the IMO has concerns that a proposal that Authorised Officers be the only people allowed to make an application for involuntary detention would add an additional layer of bureaucracy and lead to delays in treatment for patients with severe mental illness. In advance of the implementation of this measure, there would need to be a significant increase in the number of Authorised Officers in place across all healthcare facilities in the state to ensure 24-7 availability at a maximum of one hour's notice.

Interdisciplinary approach to care and treatment

The IMO accepts the value of interdisciplinary care where the unique skills and strengths of each discipline must be recognised, respected and maintained. The IMO strongly opposes the proposal to expand the role of other mental health professionals (other than doctors), into the diagnosis and treatment decisions - such as the proposed requirement for a consultant to seek the opinion of another mental health professional before involuntary detaining a patient.

Under the Consultant Contract 2008,[3] a consultant is clinically independent and retains overall responsibility for the care of the patient. While a consultant psychiatrist may consult with other members of the multidisciplinary team with regard to aspects of a patient's treatment including the involuntary detention, any legal requirement to do so undermines the contractual responsibility of the consultant and risks blurring the lines of accountability. This is particularly so where the opinion of another mental health professional differs from that of the consultant psychiatrist.

A multi-disciplinary team approach underpins the model of mental health services in Ireland as per 'A Vision For Change.' However, the IMO would have grave concerns about any proposal for legislation to expand the multi-disciplinary team approach without sufficient evidence to support its effectiveness as the best model to deliver mental health services.

[3] Consultant Contract 2008 https://www.hse.ie/eng/staff/resources/terms-conditions-of-employment/ccontract/consultant-contract-2008-25th-june-2019.pdf

The NICE guideline document on the treatment and management of psychosis and schizophrenia in adults (Updated edition 2014)"[4] states that *"Despite the fact that CMHTs [Community Mental Health Teams] became the mainstay of community mental healthcare, there is surprisingly little evidence to show that they are an effective way of organising services"* and *" As such, evidence presented here for or against the effectiveness of CMHTs in the management of psychosis and schizophrenia is insufficient to make any evidence-based recommendations"*

The report of the Mental Health Commission in 2006[5] into multi-disciplinary team working highlighted the difficulties that are experienced in the functioning of multi-disciplinary team approach in Ireland. While not insurmountable, 16 years later, many of the issues remain. Sectorised multi-disciplinary teams as constituted currently can create postcode lotteries and difficulties in access to essential services, especially at times of a recruitment and retention crisis. The IMO calls on the Mental Health Commission to engage an independent body to carry out an in depth analysis of the role of multi-disciplinary teams and to assess if they are the best model of service delivery taking into account the issues that have been previously identified by the Mental Health Commission.

Mental Health Tribunals

The IMO has concerns that there is insufficient clarity as to the purpose of the "psychosocial" report. The word "psychosocial" is ambiguous and not sufficiently defined nor is there a requirement that the "mental healthcare worker" hold statutory regulation. The IMO would have a fear that subjective non-diagnostic factors may be included which could lead to paternalistic choices being made by the tribunal and prolong the time spent under involuntary detention.

Capacity

Capacity under the Mental Health Act should be aligned with The Assisted Decision Making (Capacity) Act 2015 which recognises a functional approach to determining capacity at the time of decision -making. However The Assisted Decision Making (Capacity) Act 2015 has yet to be fully commenced and the practical implications of the legislation have yet to be assessed.

Consent to Treatment

The Medical Council Guide to Professional Conduct and Ethics for Registered Medical-Practitioners provide clear guidance in relation to informed consent. Similarly an "*An advance healthcare plan or directive has the same status as a decision by a patient at the*

[4] Psychosis and Schizophrenia in Adults The NICE Guideline on Treatment and Management (Updated Edition 2014) https://www.nice.org.uk/guidance/cg178/evidence/full-guideline-490503565
[5] MHC 2006 Multidisciplinary Team Working: From Theory to Practice https://www.mhcirl.ie/file/discusspapmultiteam.pdf

actual time of an illness and should be followed provided that: the request or refusal was an informed choice in line with the principles in paragraph 9;…"[6]

There is no legal clarity as to what action a medical professional should take if he/she suspects (for example, through the course of a conversation with the Designated Healthcare Representative) that an Advance Healthcare Directive has been made without the Directive Maker having received the information necessary to make an informed choice. To expect a medical practitioner to comply with an Advance Healthcare Directive when no medical advice or input has been provided poses a significant ethical and legal challenge for practitioners.

It is essential that Directive-makers consult with a medical professional before making an Advanced Healthcare Directive, ideally such consultation should be with a medical professional who has in-depth knowledge of the relevant condition(s) to which the Advance Care Directive will apply and who is likely to be responsible for complying with the Directive.

Inspection, regulation and registration of mental health services

All agencies providing mental health care in Ireland should be required to achieve accreditation to international standards. The IMO is calling for the remit of the Mental Health Commission to be expanded to allow for the inspection of all agencies, voluntary and private, providing mental health care including those providing psychotherapy and counselling services.

Provisions Related to Children

As per 4.1 above, The IMO would like to see a clear and unambiguous definition of "A Child" that is consistent across all health care services. Under the Mental Health Act 2001, for the purpose of admission to child and adolescent mental health services, a child is defined as a young person under the age of 18 (unless married). On the other hand paediatric emergency departments (including the New Children's Hospital) are only accessible to children under the age of 16 years. Therefore emergency presentation of children between the ages of 16-17 years occurs at the adult general hospitals, most of which, if not all, have no child psychiatry cover[7] yet admission of this age category to adult psychiatric units is a cause for national scandal.

All children should be treated in facilities that are most appropriate to their age.

[6]Medical Council, Guide to Professional Conduct and Ethics for Registered Medical-Practitioners (Amended) 8th Edition 2019 https://www.medicalcouncil.ie/news-and-publications/reports/guide-to-professional-conduct-and-ethics-for-registered-medical-practitioners-amended-.pdf

[7] HSE, RCPI, A National Model of Care for Paediatric Healthcare Services in Ireland Chapter 13: CAMHS https://www.hse.ie/eng/services/publications/clinical-strategy-and-programmes/child-and-adolescent-mental-health-services.pdf

Provisions Related to the Mental Health Commission

When inspecting Mental Health Services, the Mental Health Commission should assess the budget allocation received by that service to ensure that services are adequately funded. The Mental Health Commission should also identify areas of national policy where the recommended services have not yet been delivered to patients.

The IMO would be pleased to discuss the details of our submission further as required.