

# Consultation response

## The King's Fund response to proposals for reform of the Mental Health Act

We welcome the opportunity to contribute to the open consultation on the government's proposals for reform of the Mental Health Act (MHA).

The proposed reforms are extensive and cover many parts of the Act. For the purpose of this consultation The King's Fund is submitting evidence in response to the question:

**'How could CQC support quality and safety of care by extending its monitoring powers?'**

Our experience of seeking to understand quality of care in mental health services has highlighted the key role of the Care Quality Commission (CQC) in [identifying common issues such as workforce shortages](#) (Gilbert 2018) that have an impact on mental health care. However, regulatory action taken by CQC continues to highlight the high risk that closed cultures pose to the safety and dignity of mental health care.

The King's Fund believes that extending the powers of CQC to look at information from a range of sources in order to identify where there could be concerns with service provision is positive step. However, the Fund's view is that the ability of CQC to carry out its role in monitoring the MHA is fundamentally undermined by the [quality of data available on use of the MHA \(Raleigh 2018\)](#). Changes to data collection made by the Department of Health and Social Care, which ended central data collection through KP90 in 2015/16, replacing it with the Mental Health Services Data Set (MHSDS), have proven unsuccessful in consistently and accurately capturing this data.

In the first year of these changes fewer organisations submitted data using MHSDS (128 in 2016/17 compared to 172 in 2015/16), with coverage significantly lower among independent sector providers (14 compared with 46) than among NHS providers (114 compared with 126). Moreover, among organisations that did submit data, many returns were incomplete.

Four years on these issues remain. NHS Digital's [latest report on use of the MHA in 2019/20](#) (NHS Digital 2020) states that incomplete data and quality limitations mean it is unable to confirm how many people are subject to the Mental Health Act, or whether there

are variations in the levels of use of the MHA. Notably there is an undercount at England level – meaning that people who are subject to detention under the MHA are unaccounted for by the State. This fundamentally undermines the ability of CQC to carry out its duty under the MHA to monitor how services exercise their powers and discharge their duties when people are detained in hospital or subject to community treatment orders or guardianship. Furthermore, any future efforts to evaluate the impact of reforms to the MHA on rates of detention will be undermined by the lack of robust data.

## References

Gilbert H (2018). 'Funding and staffing of NHS mental health providers: still waiting for parity'. Blog. The King's Fund website. Available at: [www.kingsfund.org.uk/publications/funding-staffing-mental-health-providers](http://www.kingsfund.org.uk/publications/funding-staffing-mental-health-providers) (accessed on 23 March 2021).

NHS Digital (2020). 'Mental Health Act statistics'. NHS Digital website. Available at: <https://digital.nhs.uk/data-and-information/data-tools-and-services/data-services/mental-health-data-hub/mental-health-act-statistics> (accessed on 23 March 2021).

Raleigh V (2018). 'Uses of the Mental Health Act: is the data fit for purpose?'. Blog. *BMJ* website. Available at: <https://blogs.bmj.com/bmj/2018/01/04/veena-raleigh-uses-of-the-mental-health-act-is-the-data-fit-for-purpose/> (accessed on 23 March 2021).