

National Assembly for Wales

[Health and Social Care Committee](#)

[Post-legislative scrutiny of the Mental Health \(Wales\) Measure 2010](#)

Evidence from Royal College of Psychiatrists – MHM 19

RCPsych in Wales

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Mr David Rees, AM
Chair of the Health and Social Care Committee
National Assembly for Wales
Cardiff Bay, CF99 1NA

12 September, 2014

Dear Mr Rees

Post-legislative Scrutiny of the Mental Health (Wales) Measure 2010

The Royal College of Psychiatrists in Wales welcomes the Committee's inquiry into the Mental Health (Wales) Measure ("the Measure"). This piece of legislation has dominated debate in the College in Wales since its inception and continues to do so. The international mental health community also has taken an interest in this pioneering legislation; in particular whether a statutory duty of care can ensure that mental health service providers improve the quality of care for their service users. The Measure has altered mental health services and practices in Wales. It is important that its implementation is now scrutinised to ensure that the fundamental principles are adopted and its intentions are being realised.

When the Welsh Government began drafting the legislation, we met with Officials to raise some concerns in particular regarding unintended consequences. We reiterated these in public Consultations on the legislation, regulations and other guidance. We engaged our Members in discussions around the Measure at public events, at a number of conferences and at College faculty and Board Meetings. In 2013, our Members responded to a College survey on their views on how the Measure was being interpreted and implemented throughout Wales. The summary of responses were presented to Welsh Government in April 2014.

RCPsych in Wales has always taken the position that any discussion and planning of the Measure and its implementation should include Psychiatrists. We have representation on the National Partnership Board, which oversees the implementation of the mental health strategy, and

representation on each of the Task and Finish Groups overseeing the implementation of the Measure. We are concerned that dialogue is unbalanced at present, often influenced by the Welsh Government agenda and that there is too much emphasis placed on meeting quantitative targets. Our primary concern is the quality of patient care. There has been much rhetoric about the Measure, but so far we have seen no empirical evidence that there has been an improvement in patient care since its introduction. The College intends to conduct another piece of research into the Measure, focussing on service user opinion on the quality of care received in secondary mental health services.


In the following pages we have provided detailed comments to the Terms of Reference of the Inquiry. We would like to emphasise at this point three main points that are expanded on further in this document:

1. The Measure's one-size-fits-all does not apply to many patient groups; this includes patients in the prison setting, children and young people, older people, and those with Intellectual Disability;
2. The care pathways have become blurred and confused in some areas in Wales since the introduction of the Measure and this has compromised quality of care; and
3. The lack of appropriate and available psychological therapy services in Wales undermines the standing of the Measure.

The debate now must be centred on whether or not we have improved the quality of mental health services as a result of the Measure.

The intentions of the Measure are widely viewed as positive and sensible, and we agree with this. However, the devil is in the detail, and we believe that some of the finer points of the legislation are ambiguous or flawed, and that these have created significant problems in some services. We would welcome robust action to ensure that the true intentions of the Measure can be realised and we hope that this inquiry can go some way to achieving this.

Yours Sincerely,



Professor Rob Poole

Chair of the Royal College of Psychiatrists in Wales

Theme 1 (achievement of stated objectives): The Measure was implemented during 2012. Please answer any of the following questions in relation to the impact of the Measure on which you feel able to comment.

a) Do primary mental health services now provide better and earlier access to assessment and treatment for people of all ages? Are there any barriers to achieving this?

1. The provision of primary care mental health services is patchy throughout Wales. Some Local Primary Mental Health Support Services (LPMHSS) appear to have embraced the changes and are well supported by qualified staff, whereas others continue to view the service as belonging to secondary care, or they are ill equipped to deal with the workload. The provision of Lithium clinics is a good example of this. Some GPs feel this should be the responsibility of secondary mental health services.
2. We are concerned that in some local areas the quality of service provision in terms of assessments and referrals is inadequate. We have questioned whether the expertise and experience of staff who conduct assessments is adequate. We are concerned that staffing pressures and an increase in demand for services add to these inefficiencies and therefore impact on the quality of care that patients are receiving. In some areas, we have seen an increase in the number of patients being referred to secondary care services who, prior to the Measure, may not have been deemed as mentally ill. Again, in some areas there appears to be an increase in referrals to these services from GPs. The reason for this should be explored. Staff in some Local Primary Mental Health Support Services are being stretched and waiting times for assessments and referrals have increased. Finally, there has been concern in some areas that the interventions offered are too brief and that there still exists a lack of suitable psychological therapies available to those who need them.
3. In some areas of Wales the merging of Child & Adolescent specific and Adult Primary Care/Early intervention services has diluted the age specific expertise required to carry out developmentally appropriate early intervention and prevention in Children and young people. A recent audit of the Wales Primary Mental Health group highlighted CAMHS as one of the biggest gaps in their competencies. In addition, teacher training and Social Work training have no child development or mental Health component.
4. There is wide concern that Part 1 of the Measure is not designed for children and young people or for service users with an intellectual disability. Requests for early intervention for these patient groups usually come via the Local Authority and not from the GP. In the Health Minister's response to questions during the CAMHS inquiry, he said that there are now a large number of children being referred to CAMHS, and a high proportion of those are being rejected by CAMHS because lower-tier professionals need more support in their ability and confidence in responding to the needs of young people.¹
5. We (along with other concerned organisations) have asked the Welsh Government to revise the list of those who can carry out assessments to include Children's Nurses, Art Therapists and Educational Psychologist. We are pleased that the Welsh Government has taken this on board and will consider amending the current list. This could go some way to address point 5.
6. We feel that the Measure has created an unnecessary barrier between primary and secondary care services in the prison setting and that it is a bad "fit" for prison mental health services. The prison environment is a unique setting which is very different to the community setting in that it provides an environment where primary and secondary care can work together in a multi-disciplinary team for those patients with serious mental illness. The Royal College of GPs and the British Medical Association say that there is urgent need to provide more training, support, resources, and access to therapies in primary care, as a disproportionate number of inmates compared with society in general suffer from poor mental health.² We agree.
7. The legislation does not appear to have had any significant impact on either Primary Care or General Mental Health Services response to the needs of patients with a learning disability. Many GP surgeries send all patients with a learning disability directly to learning

¹<http://www.senedd.assemblywales.org/documents/s29503/17%20July%202014%20-%20Draft.pdf>. 17 July 2014. p.5.

²RCGP and BMA joint response to the Policy Implementation Guidance on Mental Health Services for Prisoners in Wales Consultation, March 2014

disability services, irrespective of the nature of their mental health needs. If they do send people with learning disability to General Mental Health Services they in turn also appear to divert to learning disability services rather than utilising either the new Local Primary Mental Health Support Services or carrying initial assessments before signposting. Although it could be argued that this is a result of the way in which the Measure has been implemented, we have raised concerns that there continues to be uncertainty regarding the eligibility of those with learning disabilities. This uncertainty has meant that, in many areas, Learning Disability Services were not included in discussions over the development of Local Primary Mental Health Support Services. This anomaly has continued, especially in those areas where Learning Disability and Mental Health Services are managed separately.

b) What has been the impact of the Measure on outcomes for people using primary mental health services?

8. Gofal conducted an initial survey of primary care service users in 2012 and a follow-up survey in 2013 to assess any changes in support since the implementation of Part 1 of the Measure. Responses show that improvements have been made in providing advice and information, psychological therapies, and signposting to other services. Fewer people commented in 2013 that no support was offered.³ However the empathy and understanding of staff towards mental health continues to fall below the ideal, with only 57.9% as being very or extremely understanding compared with 53.8% the previous year.⁴ The Duty to Review Interim Report also highlights that primary care staff attitude towards mental health has changed very little. We find this very disappointing.
9. Part 1 of the Measure is being undermined by the lack of availability of alternatives to medication. Access to psychological therapies is poor in many places in Wales and the quality of some services is questionable or inappropriate. There are continued lengthy waiting times for psychological therapy services because so few are available⁵, including social and family interventions. Psychological Therapy services in Wales are struggling within existing resources, and many are already operating at full capacity. In some areas, these services simply do not exist or provide only a limited range of therapies. Individuals with complex needs requiring specialised psychotherapy often wait for up to two years.⁶ We are concerned that the support services needed to ensure that Part 1 of the Measure is implemented to its fullest are simply lacking.
10. We are aware that in some areas the Measure has resulted in an increase in the severity threshold for access to secondary care services. In some Local Health Board areas, a large number of service users in secondary care were moved to primary care services and as a result are now denied interventions that had once been offered to them. For example, service users of memory clinics can no longer receive Occupational Therapy services in some areas because they are now seen within primary care. What we have seen in these areas is a blurring of the definition of primary and secondary care mental health services. We must stress that in some other Local Health Board areas this is **not** taking place. Clearly this is not a consequence of the Measure itself, but of how it has been implemented.

c) What has been the impact of the Measure on care planning and support for people in secondary mental health services?

11. We are aware of two major projects currently underway looking specifically at Service Users' views of Care and Treatment Plans. We look forward to the results of the Public Health Wales project on service users' goal-based outcome measures as mentioned in the Duty to Review Interim Report.
12. We have anecdotal evidence that some service users are concerned that the form is not fit for purpose. It was not designed for children and young people; where the language used on the form is inappropriate. The recovery model underpinning the CTP is inappropriate for older people. Some of the domains within the CTP can be seen as inappropriate at best or

³ Gofal, *People's Experiences of Primary Mental Health Services in Wales – A Year On*, April 2014, p. 12.

⁴ Gofal. *Ibid.* p.6

⁵ Welsh Government, *The Duty to Review Interim Report: Post-Legislative Assessment of the Mental Health (Wales) Measure 2010*, April 2014, p. 12

⁶ Alwyn, Tina et. al. *Review of access to, and implementation of, psychological therapy treatments in Wales*, Welsh Government, 2014, pp 6-7.

intrusive at worst. Finally, the forms are now official documents, which can intimidate those who are worried about, for example, their employment status. Conversely, it is important to note that many service users have been pleased to have a CTP, especially where they did not have a CPA Care Plan in the past

d) Has there been a change to the way in which service users in secondary mental health services are involved in their care and treatment?

13. Many service users complete their CTP with their Care Co-ordinator. However we are aware that patient groups are concerned with the way in which Care Coordinators involve or consult them during CTP preparation. For example we are aware that some service users are sent their Plans in the post to be filled out independently despite the requirements outlined in the Code of Practice. We are concerned that this is happening and the issue should be addressed. We must stress that the College recognises the importance of a systematic approach to care and treatment. We endorse the regulations set out in the Measure and the guidance as set out in the Code of Practice regarding the completion of Care and Treatment Planning.

14. Many Psychiatrists feel uncomfortable with the design of the CTP because it does not adhere to the medical model that we are trained to follow. The holistic approach taken dictates that CTP discussion can also centre on personal aspects of the patient's life, such as housing, transport, education. Many Consultants feel unqualified to offer advice in these areas. There has been further criticism that only one of eight domains covers treatment. The use of a one-size fits all form alienates some patient groups who do not feel that some elements apply to them.

15. The College plans to undertake a survey of service users in secondary care mental health services. We are aware that specific research is being undertaken around the CTP. We want to obtain the views of service users regarding the overall quality of patient care but will include a section on CTP.

e) What impact has the Measure had on service users' ability to re-access secondary services? Are there any barriers to achieving this?

16. Part 3 of the Measure appears to have had a positive impact on service users' ability to re-access secondary services swiftly. In our survey, we asked our Members to comment on self referral and 41% said they are more likely to discharge a patient knowing that there is a safety of re-entering the system. Only 3.3% said they are now less likely to discharge.

f) To what extent has the Measure improved outcomes for people using secondary mental health services?

17. We are concerned that too much emphasis has been placed on meeting the quantifiable targets of the Measure and to date there has been a lack of focus on whether or not the quality of patient care has improved as was intended by the legislation. There is therefore no hard evidence to show whether the quality of care has improved or deteriorated. The College conducts a number of audits such as the Prescribing Observatory for Mental Health (POMH-UK) and the National Schizophrenia Audits, which Local Health Boards could sign up to to ensure that quality standards are being met. The College also has developed a social inclusion framework which could be utilised and adapted for different 'patient groups'.

18. In our Member survey, we asked if they felt that the outcomes for service users have improved. Only 5% had reported a positive change, 48.5% reported a negative change and 46.5% have noticed no change. One of the reasons given for the negative response was the increase in paperwork has resulted in less time for the patients.

g) To what extent has access to independent mental health advocacy been extended by the Measure, and what impact has this had on outcomes for service users? Are there any barriers to extending access to independent mental health advocacy?

19. As far as we are aware, there appear to be very few problems in accessing IMHAs for relevant patients. However, we understand that extended IMHA services are not available for those with Intellectual Disability unless the person is detained under the Mental Health Act. While some barriers have been removed, such as initial guidance that IMHAs do not extend their role to non-detained learning disability patients, there remain anomalies. The Measure clearly places a responsibility under Part 4 on IMHAs to review the care of our patients with Learning Disability receiving treatment for Mental Disorder in hospital, this

same responsibility also appears to be placed on IMCAs in relation to Deprivation of Liberty safeguards. Our requests for clarification on roles have not yet been met.

h) What impact has the Measure had on access to mental health services for particular groups, for example, children and young people, older people, 'hard to reach' groups?

20. We have found that there is now greater unwillingness to provide care for certain patient groups. Those with dual diagnosis often fall between primary and secondary care. Community Drug and Alcohol Teams are not resourced by Welsh Government to case manage those with serious mental illness (SMI), but there is no guarantee that patients with SMI and substance misuse will be deemed as 'relevant patients' by the CMHT. This 'structural discrimination and stigma'⁷ existed prior to the introduction of the Measure. We are concerned that it has since worsened but need empirical evidence to support this.

i) To what extent has the Measure helped to raise the profile of mental health issues within health services and the development of services that are more sensitive to the needs of people with mental health problems?

21. Anecdotal evidence suggests that current financial constraints are having the effect of diverting organisational attention from mental health, and that any positive impact of the Measure is obscured by this.

j) To what extent has the implementation of the Measure been consistent across Local Health Board areas?

22. There is little consistency in both how the Measure has been interpreted and in the processes that have been established.

k) Overall, has the Measure led to any changes in the quality and delivery of services, and if so, how?

23. As stated previously, there is little evidence on which to base conclusions on this matter.

Theme 2 (lessons from the making and implementation of the legislation): The proposed Measure was scrutinised by the Assembly during 2010 and implemented during 2012. Please answer any of the following questions in relation to the making and implementation of the Measure on which you feel able to comment.

a) During scrutiny the scope of the Measure was widened from adult services to include services for children and young people. What, if any, implications has this had for the implementation of the policy intentions set out in the Measure as it was proposed, and as it was passed by the Assembly?

b) How effective were the consultation arrangements with stakeholders and service users during the development, scrutiny and implementation of the Measure?

c) How effective were the consultation arrangements with stakeholders and service users during the development, making and implementation of the associated subordinate legislation and guidance?

d) Has sufficient, accessible information been made available to service users and providers about the Measure and its implementation?

24. There is still confusion amongst service providers regarding some fundamental aspects of the Measure. Firstly, the definitions of 'relevant patient' and 'secondary care mental health services' are often vague and confusing and appears to be guided by practicalities and not explicit guidance. These definitions also differ considerably across Wales. In Welsh Government's report, *Duty to Review Interim Report*⁸, the greatest divergence relates to

⁷ Krayner, A. et al. *Service provision for people with mental health and substance misuse problems – the relationship between stigma and social exclusion*, 2012.

⁸ Welsh Government, p. 21. Para. 2.7.2.

adult patients previously seen on an annual or biannual basis by one clinician – depending on where they are receiving treatment, they are classed as either a primary or secondary care patient. Again, we are concerned that the needs of service users are being reclassified so as to avoid statutory obligations. There is also confusion around what were traditionally known as “secondary care mental health services” but are now relabelled ‘primary care’, such as outpatient clinics or memory clinics which continue to be run by secondary care mental health professionals.

25. Secondly, and as a direct effect of the above point, there is some confusion around the access pathways to primary mental health support services. It is not always clear who should be treating whom. This appears to be driven by interpretation of ambiguous guidance by individual managers.

e) How effective was the support and guidance given to service providers in relation to the implementation of the Measure, for example in relation to transition timescales, targets, staff programmes etc?

f) Did any unforeseen issues arise during the implementation of the Measure? If so, were they responded to effectively?

26. Several unforeseen consequences have arisen as a result of how the Measure has been interpreted on the ground and by the Local Mental Health Partners. As mentioned previously, the terms ‘relevant patient’ and ‘secondary mental health services’ have been interpreted differently across Wales, which has resulted in a group of service users being denied vital support to meet their needs.

27. We raised concerns in 2009 that Part 2 of the Measure could act as a barrier to acceptance by secondary care, increase the level of bureaucracy, and most importantly increase stigmatisation of Mental Health Services as services regulated by formal legal requirements. No other medical discipline providing complex care is required by law to carry out the principles of care planning and coordination. Unfortunately, we now see in some areas of Wales the threshold to secondary care services has increased, perhaps to avoid the statutory requirement of CTP. Many service users were moved to or are now placed in primary care services where they are unable to receive needed treatment or therapies. This is taking place routinely in certain health boards and we believe that this should be reviewed immediately.

28. Our survey showed that for many of our members, the introduction of CTP had led to a marked increase in bureaucracy, impacting directly on the time able to spend on patient care. We were told by some Members working in General Adult Psychiatry that they had cancelled clinics in order to complete paperwork. It is possible that since our survey was conducted, the number of people requiring initial CTP has reduced (in 2011 no-one had a CTP) and with it the level of bureaucracy.

29. We have seen a reluctance of professionals from all backgrounds to take on the lead role of Care Coordinator. This is most likely due to the time commitment involved. We know that many Psychiatrists are concerned about the CTP form itself; that it does not follow the medical model instead using a holistic approach to care which some feel is misguided. Although the concept of holistic care is widely promoted, it has significant problems. Expecting medical staff to advise on housing or benefits places them in a dilemma as these matters are usually outside of their expertise. Furthermore, the idea that ALL measures that help people to recover from mental illness should be under the control of statutory services is in conflict with the fundamental concepts behind Recovery.

30. Certain patient groups have been unintentionally disenfranchised by the legislation. People with Intellectual Disability ... Children and young people do not fit under part 1 of the Measure. The MH(W)M regulations deny certain professionals the right to act as Care Coordinator, such as Children’s nurses, which has impacted greatly on those using Tier 2/3 Services.

g) Are there any lessons which could be learned, or good practice which should be shared, for the development and implementation of other legislation?

Theme 3 (value for money): The Welsh Government prepared and laid an Explanatory Memorandum to accompany the proposed Measure when it was introduced, including a Regulatory Impact Assessment. Please answer any of the following questions on which you feel able to comment.

a) Were assumptions made in the Regulatory Impact Assessment about the demand for services accurate? Were there any unforeseen costs, or savings?

31. We feel that there was inadequate attention paid to the diversity of mental health services that are provided.

32. There was an assumption that processes appropriate to one service user group would be appropriate to all.

33. There was an assumption that psychiatrists' misgivings arose from professional self-interest rather than realistic warnings of adverse consequences, which have now come about.

b) Have sufficient resources been allocated to secure the effective implementation of the Measure?

34. Many specialist services have been decommissioned to provide staff for primary care. Whilst sometimes this is appropriate, we are worried that this appears to particularly have affected community rehabilitation teams.

c) What has been the impact of the Welsh Government's policy of ring-fencing the mental health budget on the development of services under the Measure?

35. We are aware that Welsh Government have brought forward by one year their review of the ring-fenced funding for mental health. We are looking forward to the results of this review.

d) What work has been done to assess the costs of implementing the Measure, and to assess the benefits accruing from the Measure?

e) Does the Measure represent value for money, particularly in the broader economic context? What evidence do you have to support your view

36. We have inadequate evidence to make a judgement on this matter.