

Mental Health Bill - Committee Stage

Briefing in support of Baroness Whitaker's communication amendments

January 2024

Introduction

- Communication is fundamental and foundational to human life. It is central to how we express ourselves, how we understand others, and how we interact.
- It is also fundamental and foundational to the aims of the Bill. It underpins the principles to inform decisions and is key to the matters to be addressed.
- Many people accessing mental health services have some form of communication disability, difficulty, or difference. This disability, difficulty, or difference can affect whether they are able to make themselves understood, understand what is being said to them, and how they interact with people.
- Left unidentified and unsupported, communication disability, difficulty, or difference puts people at a range of negative outcomes. This can include inaccessible referrals, assessments, treatment and care, and potentially unnecessary detention, or detention longer than necessary.
- People potentially affected include children, young people, and adults, and those in specific settings where there is a high prevalence of communication disability, difficulty, or difference, for example justice and secure settings.
 - While the evidence base of the extent of communication disability, difficulty, or difference in adults accessing mental health services is limited, one study of 60 randomly selected people accessing such services found that 80% had a difficulty with language and over 60% had a difficulty with communication and discourse.ⁱ
 - For children and young people, NHS Digital research has found that those with a mental health disorder report having speech or language problems five times more than those withoutⁱⁱ; and one study found that 81% of children with social, emotional and mental health needs have significant unidentified language deficits.ⁱⁱⁱ
- Autistic people, people with learning disability, those with a psychiatric disorder, and many others in touch with mental health services (such as people who stammer and those with brain injury, dementia, Developmental Language Disorder (DLD), depression,

or people who have a level of deafness, undiagnosed deafness, or auditory processing difficulties), can communicate in diverse ways or require adjustments to be made so they can communicate in the way that suits them best. This can include, for example, information being given in ways other than verbally, through the use of augmentative and alternative communication. It can also include written information being provided in accessible formats, for example, through the use of easy read materials. Some people may need further support depending on their communication disability, difficulty, or difference, for example, from a speech and language therapist. For some, that may be a speech and language therapist who is a specialist in their condition, for example, some people with deafness may require support from a speech and language therapist specialised in deafness.

- It is welcome that the Bill's Explanatory Notes (Paragraph 130) highlight that a care and treatment plan may also contain other information, for example, how the patient's communication needs will be met. However, this is not sufficient. A care and treatment plan must contain information on a patient's communication needs and how they will be met.
- Therefore, the Bill needs strengthening to make explicit on the face of the Bill both that communication is central to its aims and that communication disability, difficulty, or difference must be identified and supported. This will help to ensure that people receive the best possible treatment and care to support their recovery, including through the necessary reasonable adjustments being made. It will also help to reduce the risks to them - including their being unnecessarily detained - and the wider public. These issues must also be fully covered in the code of practice.
- Beyond that, reassurance is required from the Government to prevent the Bill leading to negative unintended consequences, including on community health services.
- Recognition of the role of speech and language therapists is also required, including that they should be recognised as core part of mental health teams, and not just a service on to which mental health services refer patients.
- These amendments are designed to address the issues identified above and give the Bill the best possible chance of achieving its aims.
- The amendments are being supported by 49 organisations.

Organisations supporting the amendments

- 1 Action for Stammering Children
- 2 Afasic
- 3 Ambitious About Autism
- 4 ASLTIP (Association of Speech and Language Therapists in Independent Practice)
- 5 Association of Youth Offending Team Managers
- 6 Auditory Verbal UK
- 7 BACCH (British Association for Community Child Health)
- 8 BACD (British Academy of Childhood Disability)
- 9 BACP (British Association for Counselling and Psychotherapy)
- 10 BAEA (British Association of Educational Audiologists)
- 11 BASW (British Association of Social Workers)
- 12 BATOD (British Association of Teachers of Deaf Children and Young People)
- 13 Better Communication CIC
- 14 British Dyslexia Association
- 15 Challenging Behaviour Foundation
- 16 Change Communication
- 17 CICS Group (Cochlear Implanted Children's Support Group)
- 18 CLAPA (Cleft Lip & Palate Association)
- 19 Communication Matters
- 20 Disabled Children's Partnership
- 21 Down's Syndrome Association
- 22 Elklan Training Ltd
- 23 Huntington's Disease Association
- 24 Include.org
- 25 Intermediaries for Justice
- 26 Mikey's Wish Foundation
- 27 N-ABLES
- 28 NASS (National Association of Special Schools)
- 29 National Association for Hospital Education
- 30 National Cochlear Implant Users Association
- 31 NatSIP (National Sensory Impairment Partnership)
- 32 Natspec
- 33 NDTi (National Development Team for Inclusion)
- 34 Rett UK
- 35 Royal College of Speech and Language Therapists
- 36 SAPHNA (School and Public Health Nurses Association)
- 37 Signalong
- 38 SMiRA (Selective Mutism Information & Research Association)
- 39 Speakeasy
- 40 Speech & Language Link
- 41 Speech and Language UK
- 42 Square Peg

- 43 STAMMA
- 44 Symbol UK
- 45 Talking Mats
- 46 The Makaton Charity
- 47 The National Organisation for FASD
- 48 The SENCO Forum
- 49 Unique

Amendment to Clause 1 on Principles to inform decisions

Clause 1, page 1, line 19, at end insert—

“(2) In section 118 of the Mental Health Act 1983 (duty to prepare code of practice, including principles which the person making it thinks should inform decisions under the Act), after subsection (2B) (inserted by subsection (1)) insert—

“(2BA) The statement of principles must set out how in fulfilling the principles and addressing the matter specified in the table, a patient’s communication disability, difficulty, or difference will be identified and supported.””

Why this amendment is necessary

Communication is central to providing high-quality mental health care. The proposed amendment aims to ensure that communication is fully and appropriately incorporated in the Mental Health Bill, guaranteeing that everyone—regardless of their communication needs—has equal access to mental health services. Effective communication is crucial for understanding mental health issues, navigating treatment plans, and expressing needs and concerns. Addressing communication needs should be an integral part of mental health care and policy. By embedding communication at the heart of the legislation, the amendment seeks to create a more inclusive, accessible, and effective mental health care system.

Amendment to Clause 10 on Nomination of the responsible clinician

Clause 10, page 16, line 13, at end insert—

“(ii) at the end of paragraph (b) insert—”

“and may include a speech and language therapist.”

Why this amendment is necessary

Clinical teams in inpatient and community settings are formed of multiple disciplines, including speech and language therapists who provide input on communication and swallowing challenges that significantly impact mental health treatment and recovery. As a member of the multidisciplinary team, speech and language therapists should be eligible to train for the role of responsible clinician. However, at present they are excluded from this opportunity.

Speech and language therapists bring unique insight and expertise in supporting people with communication and swallowing issues, all of which are critical aspects of mental health treatment and recovery. They are often the lead clinician in someone’s care, making essential decisions and developing tailored interventions to address communication challenges that may affect a person’s ability to engage in therapy, express their needs, or navigate their treatment plan. Allowing speech and language therapists to train as responsible clinicians would better integrate their expertise into treatment planning and decision-making, which would improve outcomes for people with communication and swallowing difficulties. This would ensure that communication needs are prioritised and fully integrated into treatment planning and decision-making. It would also contribute to addressing the shortage of responsible clinicians.

Amendment to Clause 11 on Making treatment decisions

Clause 11, page 17, line 33, at end insert—

“(g) consider and adjust for a patient’s communication disability, difficulty, or difference.”

Why this amendment is necessary

It is essential to strengthen and amplify the voice of people in decisions about their care and treatment. New provisions such as the “clinical checklist” where the clinicians have to make decisions on people’s wishes and feelings and encourage them to participate in treatment decisions will only be effective if communication needs are first recognised and supported. Too often, people are denied a voice in their own care and treatment decisions because their communication challenges are unidentified or inadequately addressed. Ensuring that

communication needs are fully recognised and supported, including through the necessary reasonable adjustments, is fundamental to enabling people to actively participate in decisions about their care.

Amendment to Clause 20 on Care and treatment plans

Clause 20, page 29, line 20, at end insert—

“(4A) The information authorised or required to be included in, or attached to, a care and treatment plan by virtue of regulations under subsection (3) must include—

(a) information about a patient's communication disability, difficulty, or difference;

(b) information about how any communication disability, difficulty, or difference will be identified and supported.”

Why this amendment is necessary

It is not currently specified in the care and treatment plan that a key component should be how people's communication needs will be addressed. This should be explicitly included in the Bill to ensure that the communication needs of individuals are safeguarded and addressed from the outset. By adding this provision, vital information regarding communication support will not be overlooked, and people will receive the appropriate care and support to actively take part in decisions about their treatment and recovery. Alongside this, the expert input of speech and language therapists needs to be recognised.

Amendment to Clause 39 on Information about complaints for detained patients

Clause 39, page 52, line 25, at end insert—

“(2AA) Any information, verbal or written, given to a patient under subsections (2) and (2A) must be provided in an accessible and inclusive format.”

Why this amendment is necessary

This amendment seeks to ensure that any information provided to people about complaints must be provided in an accessible and inclusive format, whether verbal or written. Furthermore, it stipulates that hospital managers must take such steps as are practicable to ensure that the person understands the information. It is critical that communication barriers are addressed

here. This would guarantee that people, regardless of their communication needs, can effectively engage with the complaints process and have their concerns heard and addressed.

Amendment to Clause 41 on Information for conditionally discharged patients

Clause 41, page 54, line 4, at end insert—

“(6) Any information, verbal or written, given to a patient under subsection (1) must be provided in accessible and inclusive format.”

Why this amendment is necessary

This amendment seeks to ensure that any information provided to people must be provided in an accessible and inclusive format, whether verbal or written. Furthermore, it stipulates that hospital managers must take such steps as are practicable to ensure that the patient understands the information. It is critical that communication barriers are addressed here. This would guarantee that people, regardless of their communication needs, can effectively engage with the information about their discharge and have their queries heard and addressed.

Amendments to Clause 42 on Advance choice documents

Clause 42, page 54, line 15, at end insert—

“(c) making the advance choice document available in an accessible and inclusive format.”

Clause 42, page 54, line 15, at end insert—

“(c) providing help to people with communication disability, difficulty, or difference to create advance choice documents.”

Clause 42, page 55, line 15, at end insert—

“(c) providing help to people with communication disability, difficulty, or difference to create advance choice documents.”

Why these amendments are necessary

While the Bill grants people the right to an advance choice document, it does not grant them the right to have that document in a format they can understand. Given the advance choice document is a key tool for expressing preferences about future care, especially for those at risk

of detention under mental health legislation, it is essential that people have the right for this to be in a format they can understand and engage with. We recommend that the Bill be amended to clearly establish the right for people to create an advance choice document in an accessible format. This would empower people to make informed decisions about their future care in advance, ensuring that their wishes, feelings, and preferences are respected.

Furthermore, the Bill proposes duties for Integrated Care Boards (ICBs), NHS England, and Local Health Boards (Wales) to inform people at risk of detention about their right to make such a document. It is crucial that people are not only informed but also empowered to engage in this process. This can only be achieved through supporting communication, ensuring that everyone can actively participate. For people to fully express their wishes and decisions, their communication needs must be adequately supported, enabling them to make informed choices about their care.

Speech and language therapists must be integrated into this process, recognised as a core part of the mental health workforce, to ensure that people can effectively express their wishes, preferences, and decisions, and to train other professionals in the recognition of and adjustment for communication disability, difficulty, or difference. This would help to uphold people's rights and ensure that their voices are heard and respected, regardless of any communication barriers they may face.

Addressing potential unintended consequences: the urgent need for investment in community mental health services

Community mental health services are already stretched and struggling to meet rising demand. As the demand for community-based care grows, especially with the Bill's proposed changes, there is a significant need to bolster both community services and the workforce that supports them.

As more people are diverted from hospital admissions and supported in community settings, there will be increasing demand for community-based mental health services. These services must be adequately funded and resourced to provide comprehensive care, ensuring that people who no longer need to be in hospital can receive the right level of support within their

communities. This shift demands both enhanced infrastructure and increased capacity in services that can manage complex mental health needs in less restrictive environments.

The ongoing reform to reduce the number of people with learning disabilities and autistic people being detained in hospitals requires a corresponding increase in community services, care, and housing. These people often have highly specialised needs that must be met through appropriate support services in the community. This includes not just mental health services, but also housing options, social care, and tailored support services to ensure that people with learning disabilities and autistic people can live independently, safely, and meaningfully within their communities. These services are under pressure, and ICBs must address the gaps to ensure people can access the care and support they need.

Allied health professionals, such as speech and language therapists have an important role in mental health care and in supporting people with learning disabilities and autistic people. These professionals help provide holistic, person-centered care and are essential to supporting the long-term well-being and recovery of people in the community.

Baroness Tyler of Enfield amendment to Clause 4

Baroness Tyler of Enfield has tabled a communication amendment.

Amendment to Clause 4 on People with autism or learning disability

Clause 4, page 7, line 12, at end insert—

“(v) ensuring communication needs are met where the patient may have additional or alternative communication needs”

Member’s explanatory statement

This amendment ensures that the communication needs of patients are considered as part of a care and treatment review meeting.

We support this amendment. Many autistic people and people with learning disability have communication disability, difficulty, or difference. This amendment would improve support for them, ensuring that any communication needs are considered as part of a care and treatment review meeting. This amendment could also help to improve support for the many other people

accessing mental health services who have some form of communication disability, difficulty, or difference not related to autism or learning disability.

For more information, please contact: peter.just@rcslt.org

References

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- ⁱⁱ NHS Digital (2018). *Mental Health of Children and Young People in England, 2017: Multiple conditions and wellbeing*. [Online]. Available at: <https://files.digital.nhs.uk/42/9E0302/MHCYP%202017%20Multiple%20Conditions.pdf>
- ⁱⁱⁱ Hollo, A, Wehby, J.H. and Oliver, R.M. (2014). Unidentified Language Deficits in Children with Emotional and Behavioral Disorders: A MetaAnalysis. *Exceptional Children*, 80(2), 169-186.