



The Children's Commissioner for Wales' response to the Proposed Mental Health (Wales) Measure

Stage 1 Scrutiny. Legislative Committee 3.

The Children's Commissioner for Wales is an independent children's rights institution established in 2001 in line with the Paris Principles. In exercising his functions, the Children's Commissioner for Wales must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare.

As Commissioner I have repeatedly raised concerns in relation to Child and Adolescent Mental Health Services (CAMHS). There is a clear need to consider policy and practice issues within CAMHS provision in order for the Welsh Government to implement their commitment to the UNCRC in Wales.

Introduction

The Welsh Government's Child and Adolescent Mental Health Strategy is outlined in the National Assembly document *Everybody's Business: Child and Adolescent Mental Health Services* dated September 2001.¹

In the National Service Framework (NSF) for Children and Young People, chapter 4 focuses on Children and Young People with Mental Health Problems and Disorders and 'sets the standard' for CAMHS and other services. This refers back to *Everybody's Business*, the 4 tier approach and focuses on a multi-agency approach, reduction in escalation and early identification of Mental Health problems.

I maintain that the principles and direction of *Everybody's Business* are still appropriate. The issue has always been a lack of service delivery planning and insufficiently robust performance management. If amended to include under-18s, this Proposed Mental Health (Wales) Measure has the potential to close the policy implementation gap, which I have discussed on numerous occasions, resulting in tangible service improvement on the ground.

Everybody's Business is 10 years old and the NSF is due to be reviewed, so in my opinion, the development of this Proposed Measure is timely.

As currently drafted, the Proposed Measure precludes under-18s from part 1 to 3 of the Measure. It is unclear to me why this should be the case. The only explanation provided within the Explanatory Memorandum in relation to Part 1 (and it is assumed that the same rationale applies to Parts 2 and 3) notes:

¹ <http://www.wales.nhs.uk/publications/men-health-e.pdf>

“These services are aimed at individuals aged 18 or over who are experiencing mild to moderate and stable severe and enduring mental health problems. Similar services are provided to individuals under 18 through Child and Adolescent Mental Health Services within Wales”²

Various reports over recent years have identified that many services are indeed provided and that, in some cases, there have been improvements in CAMHS. However reports, including *Somebody Else’s Business*³ published by my predecessor, as well as the joint report by the Wales Audit Office and the Healthcare Inspectorate Wales (HIW), supported by Estyn and the Care and Social Services Inspectorate Wales (CSSIW) ‘*Services for children and young people with emotional and mental health needs*’⁴ (which I will refer to throughout this paper) have identified serious service delivery weaknesses, leading in some cases to breaches of the UNCRC for children and young people in Wales.

It would seem to me that the proposed Measure is aimed at addressing clear policy implementation gaps in relation to mental health services for adults. It would be reasonable to expect that children and young people are afforded the same ability to hold to account.

I accept that there is an argument that the legislative framework to deliver much of the proposed Measure’s stated objectives is in place, namely;

- Mental Health Act 1983
- NHS and Community Health Act 1990
- Health Act 1999
- NHS (Wales) Act 2006.

This is also true of child and adolescent mental health services in Wales. Additional legal duties are imposed by virtue of The Children Acts of 1989 and 2004. The existing legislation and duties are overlapping and complex.

The challenge for those charged with these statutory duties is one of implementation – in particular their translation into service delivery, the availability of trained and skilled practitioners to deliver that service and appropriate and clear care pathways of care.

If CAMHS were included within the statements in the Explanatory Memorandum, I would concur with the sentiments outlined in the rationale for the need to legislate. The position taken is that the frameworks within which we operate do not always deliver and put the citizen at the centre of service delivery.

I believe that, as long as under-18s are included within the provisions, that the Proposed Measure has the potential to address some of these delivery issues in relation to early intervention, care planning and advocacy.

Is there a need for a proposed Measure to deliver the following aims:

² <http://www.assemblywales.org/ms-ld8002-em-e.pdf>

³ <http://www.childcom.org.uk/uploads/publications/5.pdf>

⁴ http://www.wales.nhs.uk/documents/CAMHS_eng.pdf

providing local primary mental health services at an earlier stage for individuals who are experiencing mental health problems to reduce the risk of further decline in mental health, and in some cases, reduce the need for inpatient treatment and compulsory detention;

As previously noted, there may be statutory provisions which should deliver on the objectives stated in Part 1, in relation to local primary health support services, but I believe that so many concerns have consistently been expressed, as reflected in the Explanatory Memorandum, I see a clear rationale for introducing a Measure.

Whilst not advocating that they would be the same services, I don't see why CAMHS should not be included within the joint schemes between the local Health Boards and the local authority area to deliver local primary mental health support services. It could provide for more robust and consistent strategy, leading to greater equity in service delivery.

The definitions of primary mental health support services (set out in section 5) and the principles which they serve, sit comfortably within the stated aims and objectives noted in *Everyone's Business*⁵.

The report '*Services for children and young people with emotional and mental health needs*' notes:

"Comprehensive services are still not in place despite some important developments with services that focus on prevention, early intervention and supporting those with less severe problems.

"Services targeted on children and young people at risk of developing mental health problems and early intervention services for those who subsequently develop problems are underdeveloped in many parts of Wales.

"Our conclusions on the nature and quality of these services are that: some staff who work on a day-to-day basis with children do not acknowledge that they have a role to play in supporting children and young people with emotional or mental health problems, whilst others provide active support...

*"Progress has been made in introducing primary mental health workers but meeting the target number of primary mental health workers is a challenge in many areas, the role of these workers varies, and the provision of consultation and advice from specialist CAMHS to other professional staff needs to be strengthened."*⁶

Specifically, in relation to GPs, the report stated:

"Our survey of Local Health Boards (LHBs) indicates that few GPs have a special interest in CAMHS. Only 3 of the 16 LHBs that responded were aware of any GP with such a specialist

⁵ <http://www.wales.nhs.uk/publications/men-health-e.pdf>

⁶ http://www.wales.nhs.uk/documents/CAMHS_eng.pdf

interest within their area. Furthermore, these GPs did not appear to be accredited; rather they had a general interest in children and young people's mental health.

"No LHB was aware of any practice nurses with a specialist interest in CAMHS. The LHB survey also identified a lack of clarity and guidance on the role of GPs in managing children and young people with mental health problems."

This would suggest to me that CAMHS services need to be included within the provisions of Part 1 of the Proposed Measure.

If this were to be the case, we would seek assurances that Section 5 which defines that which is deemed primary mental health support services would reflect the range of services which should facilitate a gateway for mental health provision (to all ages, such as GPs) but would also ensure that age specific services for children and young people will be included within joint working partnerships.

These would include school (and other) counselling services, parenting and family intervention services, school nurses, health visitors, school staff, education welfare services and community paediatric teams amongst other services.⁷ There would also need to be a consideration of the role of the youth justice system.

In many ways it could be argued that many of the CAMHS structures lend themselves favorably to the principles of part one of the Proposed Measure as there are potentially a number of gateways to services for children and young people.

Ensure that all individuals accepted into secondary mental health services in Wales have a dedicated care coordinator and receive a care and treatment plan

The Adult Mental Health Services Strategy and Care Programme Approach (CPA) apply only to adults. On inception in 1999 the CPA was clearly intended to apply only to adults (with transferable principles), and the Welsh Government document "Mental Health Policy Guidance: The Care Programme Approach for Mental Health Service Users" (February 2003) states that the CPA principles also apply to people aged 16-18. Children under 16 are therefore excluded. A recent review⁸ of the CPA in Wales states that the CPA is the cornerstone of the government's mental health strategy in Wales but makes no mention of CAMHS except in relation to transition to adult services. I believe that the CPA concept could be applied to CAMHS.

As noted in the explanatory memorandum, the CPA has been subject of targets under the NHS performance management regime in Wales and the Annual Operating Framework also contains national targets relating to the CPA.

⁷ See Part 1 'Services that focus on prevention, early intervention and supporting those with less severe problems' in http://www.wales.nhs.uk/documents/CAMHS_eng.pdf

⁸<http://www.wales.nhs.uk/sites3/Documents/438/Review%20of%20CPA%20in%20Wales%202009.pdf>

The Memorandum accepts that delivery in respect to the CPA framework is variable and that statutory care and treatment planning will lead to improved outcomes for the patient. I would argue that the same patchy delivery is evident when measured against the NSF for children and young people.

It seems to me inequitable that under-18s will not be afforded the same statutory assurance that the services will be configured around the patient's needs. Whilst there will be clear accountability structures firmly based within the Proposed Measure for over-18s via the CPA, the same will not be true under the NSF for children and young people.

Patients under the age of 18 are entitled to the same care and treatment planning provisions under part 2 of the proposed Measure as those aged over 18.

On a practical level, a clear role for a care coordinator, ensuring a coherent approach to multi-agency assessment and care planning with the child or young person's rights at the core would facilitate the seamless and child centered approach needed.

Service users previously discharged from secondary mental health services have access to those services when they believe their mental health may be deteriorating;

This policy intention seems logical and provides for the services being responsive to the needs of the patient rather than the system, though it is likely to empower practitioners to discharge with fewer concerns relating to relapse. Again, I see no reason why this provision should not be extended to under-18s.

Consultation will be required in relation to the regulations which will dictate the timescales involved. That is, how long following a discharge would the patient be able to re-access the services.

There are practical considerations which would need to be taken into account as there may be unintended consequences to be examined, for instance in relation to transition.

An issue which should be looked at in the context of discharging was raised during a CAMHS scoping exercise undertaken by my office. It related to when a child is discharged within a tier 4 (CAMHS) setting, without having previously accessed any CAMHS provision. On discharge into community provision, it was found that due to the LHB not having prior knowledge of the child or his / her treatment it led to funding complications and interruption to the child's care.⁹

Extending mental health advocacy provision beyond current arrangements

I believe that a point worth noting is that whilst Part 4 does extend to those under the age of 18, it is my understanding that any person under the age of 18 who is mentally unwell, having been assessed via *The Framework for the Assessment of Children in Need and their Families*, under the Children Act 1989, would be deemed a child in need and therefore eligible for an advocate (notwithstanding the Welsh Government's commitment to provide universal access to advocacy

⁹ <http://www.childcom.org.uk/uploads/publications/5.pdf>

services for all children and young people). In effect, the Proposed Measure is introducing a threshold for advocacy which runs contrary to other children's legislation.

Whilst this Part of the Proposed Measure does not strengthen in statute the rights and welfare of those accessing CAMHS, if it focuses minds in relation to the levels and appropriateness of advocacy provisions for under-18s, enabling a bridging of what is currently a policy gap it is to be welcomed.

I refer again to 'Services for children and young people with emotional and mental health needs', which, on advocacy, noted:

*"Our review indicates that developing suitable advocacy services for children and young people with mental health problems will be a significant challenge, because: in one NHS trust area there are no advocacy services for children and young people; in some areas services are available only for specific groups, such as looked after children, or are promoted only to those with complex problems; we found very few examples where service users had accessed advocacy services; and there is often a lack of staff awareness about local advocacy provision."*¹⁰

This raises questions as to how these public services are enabling children and young people to access their right to express their views freely and to be heard in all matters affecting them under Article 12 of the UNCRC¹¹.

Are the sections of the proposed Measure appropriate in terms of achieving the stated aims?

Part 1 section 2:

We share the concerns of other consultees at the discretion applied in relation to the identification of the treatments which should be made available for their area as well as the securing of those provisions. It notes also that the scheme must identify the extent to which each of the partners is to provide local services.

Whilst appreciating the need for local sensitivity in providing services, by not stipulating even the minimum levels of service which should be ensured and without a requirement for approval by Welsh Ministers or wider means of consultation, there is a danger that the Proposed Measure will not address the issue of variability of service provision which seems to be the rationale for introducing such a measure.

I also note in Part 1, Section 4 that there is no requirement for mental health assessments to be undertaken within a set timescales. I appreciate the argument that services should be delivered against clinical need rather than deadlines and targets, however I would seek reassurance that the principle aim of timely intervention is not jeopardized by this omission.

Part 1, section 2(4)(c): Non registered individuals

I am concerned at the degree of discretion provided in relation to primary mental health assessments to be carried out when an adult is not a registered patient.

¹⁰ http://www.wales.nhs.uk/documents/CAMHS_eng.pdf

¹¹ <http://www2.ohchr.org/english/law/crc.htm>

As previously stated Part 1 in its entirety should include those under-18s and if the relevant amendments were made, should stipulate that the partners must and not 'may' provide those assessments via their schemes. Otherwise, it could place gypsy traveler and asylum seeking children and young people at a disadvantage, as well as homeless young people. These are extremely vulnerable groups and discretion could provide for discrimination within the system. This is also true of parents and guardians of these vulnerable groups.

Part 1, section 5(1)(e) and subsection (1)(e): Carers.

I would like assurances that young carers issues will be fully considered by the partners under Part 1 of the Proposed Measure. The support and information should be relevant and appropriate to all carers within the support structure and this will often include children and siblings of patients with mental health issues. The implications of the Proposed Carers (Wales Measure) currently at stage 1 of the legislative process should be considered. I would like to reiterate my concerns around the Proposed Carers (Wales) Measure that it does not fully incorporate the needs of all young carers as currently drafted. This could have a detrimental affect on the provisions and objectives within the Proposed Mental Health (Wales) Measure.

What are the financial implications of the proposed Measure for organisations, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.

I fully accept that including CAMHS within the Proposed Measure would have significant resource implications. Regardless of this Measure, CAMHS has been subject to much scrutiny in terms of the levels of investment needed to improve standards of service delivery. At this juncture however, in light of the Welsh Government's work developing a Children and Young People's Mental Health and Wellbeing action plan (partly in response to the recent joint report by HIW and Wales Audit Office and which is due to be published in May), I don't feel it would be appropriate to comment on what those financial implications could be, whilst we await the Minister's action plan. What is clear, however, is that there will be significant training needs to enable delivery of this Proposed Measure, especially in relation to the engagement of the primary care sector and in advocacy services.

Are there any other comments you wish to make about specific sections of the proposed Measure?

In my opinion, children and young people should not, by virtue of being under 18, be precluded from legislation which could address their needs. I made the same comment in scrutinising the Proposed Carers (Wales) Measure.

The clearest example that making such distinctions could lead to a culture of gate-keeping and silo working is transition services within mental health services. The National Assembly for Wales' Health, Wellbeing and Local Government Committee reported in their inquiry into Community Mental Health Services:

“Some people who start having problems in adolescence would benefit from continuing to receive care from the same team into early adulthood, without being passed on to another agency or another part of the service. Traditional ways of delivering care and treatment for children and adolescents with mental health issues and then adults are getting in the way. There needs to be a more creative and open approach to removing age criteria completely and looking at the needs of individual service users.”¹²

I provided evidence to that Committee and was pleased to see the following recommendation:

“We strongly recommend the establishment of a mental health service specifically for young people aged 17-25 that would facilitate a transition to adult services at a time that is appropriate for each young person and is based on clinical judgement rather than service configuration.”¹³

This proposed Measure could potentially be a mechanism to facilitate this, but the Measure needs to be flexible enough to do this and restricting the Measure to over-18s is insufficient.

An additional comment I would also like to make is in relation to awareness raising. I am on record as saying that awareness of mental health and perceptions of what this entails is a key component in addressing many of the issues. I believe it’s also worth noting another of the Committee’s recommendation:

‘We recommend that the Welsh Government initiates a programme of work to raise awareness amongst children, their families and professionals, of mental health issues and the services available to children and young people. [Recommendation 18]’¹⁴

Part 1 of this Proposed Measure has the potential to address this recommendation via accessible and appropriate information.

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Keith Towler
Children’s Commissioner for Wales

¹² <http://www.assemblywales.org/cr-ld7697>

¹³ *ibid*

¹⁴ *ibid*