next day BRIEFING

NHS Providers

Care Quality Commission Monitoring the Mental Health Act 2021/22

The Care Quality Commission (CQC) has published Monitoring the Mental Health Act in 2021/22, the regulator's annual report on the use of the 1983 Mental Health Act (MHA). The report sets out CQC's activity and findings from engagement with people subject to the MHA and its review of services for people detained using the MHA during 2021/22. This briefing summarises key points from the report, and for a comprehensive view of the findings and conclusions we encourage providers to read the report in full. If you have any comments or questions on this briefing, please contact Ella Fuller, senior policy advisor (ella.fuller@nhsproviders.org).

Key points

- CQC carried out MHA monitoring reviews of 609 wards – 466 were on-site visits and 143 were remote reviews. CQC spoke with 2,667 patients and 726 carers. MHA reviewers took part in Independent Care, Education and Treatment Reviews for 30 patients between November 2021 and April 2022 and for 82 patients overall.
- Workforce issues and staffing shortages remain the greatest challenge for the mental health sector, with pre-existing difficulties exacerbated by the Covid-19 pandemic and staff retiring or leaving for other jobs. This means that people are not getting the level or quality of care they have a right to expect, and the safety of patients and staff is being put at risk, despite services' best efforts to mitigate the impact of shortages on patients.
- Demand for inpatient services has continued to increase in 2021/22. CQC found that gaps in community care are adding to the pressure on inpatient services, with many struggling to provide appropriate places for people to receive inpatient care and treatment. CQC calls for support in the community to be improved and to increase the availability of inpatient beds. CQC found some areas do not have enough beds, increasing the risk of people ending up in inappropriate environments, particularly for children and young people.
- CQC found examples of good practice despite the challenging environment services are operating in. This includes services supporting patients to have a voice in the running of services and being involved in advance care planning. CQC also saw evidence of services continuing to take steps to apply the principle of least restriction and creating therapeutic, recovery-orientated environments.

CQC regularly also found services identifying staff to take a leading role for diversity, promoting an equalities approach across wards and supporting staff and patients.

- The report highlights that too many people, particularly people with a learning disability and autistic people, continue to be cared for in hospital settings far from home, which can increase the risk of closed cultures developing. CQC recognise the knock-on effect of staff shortages, including the use of agency staff and the lack of continuity of care, as inherent risk factors in the development of closed cultures. CQC are particularly aware of the increased risk of closed cultures in services that care for people with a learning disability and people with a mental health condition.
- CQC found progress in tackling long-standing inequalities in mental health care remains inadequate and has called for urgent action to tackle the over-representation of people from some ethnic minority groups who are detained under the Mental Health Act. The regulator also calls for investment in community services and culturally appropriate advocacy.
- CQC have ongoing concerns around the physical environment and condition of wards, and the impact on patients and staff. Many inpatient environments are in urgent need of update and repair. CQC has seen the positive effects of ward refurbishments on patients and staff, with better physical environments improving patient experience and staff morale. CQC also remain concerned about the use of dormitories and urge the government to continue to make funding available until all dormitory accommodation has been replaced.
- While CQC recognise there are systemic issues, such as the shortage of qualified mental health nurses, that require a system-wide response, the regulator states change also needs to be driven at a practical level, between commissioning bodies and providers. For example, integrated care systems and services need to work together to take responsibility for identifying and addressing health inequalities. The regulator states a key part of this will be improving how data to monitor equalities is captured and used.

Staff shortages and impact on patients

Impact on patient care

CQC found staffing shortages have affected patients' ability to access therapeutic care, with issues including a lack of involvement in decisions about their care, a reduction in ward activities and patients' leave being cancelled. CQC have also seen the effect of staffing shortages on services' ability to follow least restrictive practices. The availability of occupational therapists could affect what, if any, therapeutic activities were provided. In some cases, a lack of activities was also due to wards not putting these back in place following the Covid-19 pandemic. CQC heard that patients were not always able to build therapeutic relationships because of the high use of agency staff.

CQC has seen examples of services taking steps to make improvements, including reviewing blanket restrictions, exploring availability of ward activities, improving patient access to staff for support, and increasing staff training to support patients in distress.

Impact on patient safety

A lack of therapeutic interventions is increasing the risk of violence and aggression on wards. Issues with staffing shortages have affected how well staff are able to respond to these incidents and has led to untrained staff being asked to take on responsibilities they may not be able to carry out safely. The report states that these factors can increase the risks of closed cultures developing.

The steps that services are taking to address the above concerns include arranging training and support for staff, closer monitoring of staffing issues by managers, and more one-to-one protected time for patients and nurses. Other steps included employing additional activity co-ordinators and involving psychology staff in debriefs following incidents.

Staffing and staff wellbeing

CQC state that many of the current measures to address staffing issues are not sustainable and the shortage of qualified mental health nurses is a systemic issue which requires a system-wide response. Services are employing ward managers and other professionals to substitute for nursing cover, which has led to staff taking on responsibilities they may not be qualified for and impacting their safety and wellbeing. Services are also moving substantive staff around hospital sites to provide cover, and staff are working additional shifts.

The report highlights what a number of providers are doing to mitigate staffing issues, including: supporting staff motivation; ensuring better skill mix of staff on duty and more permanent staff, particularly on night shifts; and increasing in-house training requirements. Services are also looking at packages to offer staff for recruitment and retention, including recruiting from overseas. Many services hold frequent safe staffing meetings to review staffing across units and anticipate and request bank and agency cover in advance of need. Some services have a constant 'dynamic' staffing allocation, to expand and reduce teams to mirror the needs of patients on each ward.

Some services continue to maintain cohesive and stable teams. Good management and support of motivated staff and the geographical location of unites are highlighted in the report as particular factor in this. Units that report stable staffing appear most likely be valued by staff and patients.

Pressures on services and patient pathways

Pressure on inpatient services

Demand for inpatient services has continued to increase in 2021/22. Gaps in community mental health care are compounding the rising demand on inpatient services, with bed availability in many services running close to or above capacity leading to delays in admission, transfer and discharge. A lack of beds is also leading to people being cared for in inappropriate environments, such as health-based places of safety or psychiatric intensive care units for prolonged periods. Such delays also create barriers to new appropriate admissions, with knock-on effects across inpatient care pathways. CQC did find some services are managing to accommodate patients without extended delays.

Discharge delays

A lack of beds and gaps in community and social care services are also creating delays in discharging people from hospital. In some services this has led to the development of 'sub-acute' wards whose core purpose is to accommodate patients whose discharge from inpatient care is delayed. In other cases, external delays mean that people have remained detained under MHA powers, potentially past the time when this would be clinically justified. The report highlights that delays in discharge can be made worse where people have been placed in hospitals out of area. CQC are concerned that social work support around planning for discharge and aftercare has reduced during 2021/22.

Children and young people's mental health services

CQC continue to be concerned about the impact of the pandemic on children and young people's mental health services, with services struggling to meet rising demand. This is increasing the risk of children ending up in inappropriate environments, such as acute medical units and general children's wards. In 2021/22, there was a 32% rise in the number of under 18s admitted to adult psychiatric wards, with the main reason being because there was no alternative available. In October 2022, CQC published a brief guide on the care of children and young people in unsuitable hospital settings, which shows the measures the regulator hopes to see to improve the suitability of placements. Some services have been taking steps to manage delays, such as investing in new health-based places of safety to care for individuals while they are waiting for a ward bed.

Pathways for people with a learning disability and autistic people

CQC found care for people with a learning disability and for autistic people is still not good enough. This section summarises various work CQC has undertaken over recent years to raise its concerns about the care and support available for these groups of individuals and the recommendations it has

made for change as a result. It also highlights that CQC welcomes plans in the draft Mental Health Bill to stop using the MHA to detain people with a learning disability or autistic people where this is the sole reason for detention. However, the regulator remains concerned that a lack of early intervention services in the community and community-based, bespoke placements will lead to people continuing to be institutionalised.

CQC reiterates its commitment to improving the quality of care in community-based settings and ensuring any new service meets its 'Right support, right care, right culture' guidance. This section also highlights the new legal requirement introduced by the Health and Care Act 2022 that requires all CQC registered providers to ensure their staff receive learning disability and autism training at a level appropriate to their role from 1 July 2022.

Deprivation of Liberty Safeguards (DoLS)

CQC remain concerned that ongoing problems with the DoLS process mean that some people are at risk of being unlawfully deprived of their liberty, with no safeguards, rights or protection in place. Lack of training for staff in mental health hospitals is a particular ongoing area of concern.

Addressing inequalities and cultural needs

Some services are taking a positive approach to addressing inequalities. This includes services identifying members of the staff team to take a leading role for diversity, promoting an equalities approach across wards and supporting staff and patients.

Over-representation of people from ethnic minority groups

Urgent action is needed to tackle the longstanding over-representation of people from some ethnic minority groups and, in particular, the over-representation of black people detained in hospital or on community treatment orders. This section includes graphs that show black people are 4 times more likely to be detained than white people, people living in the most deprived areas are at much greater risk of being detained, and the inter-relation between ethnicity and deprivation.

This section also highlights rates of CTO use for black or black British individuals are over 11 times the rate for white individuals. CQC express concern about how the government's objective to reduce the disproportionate use of CTOs for people from some ethnic minority groups will be achieved as the underlying causes are multifactorial. CQC will continue to evaluate whether reform of the MHA will improve this situation, as well as work with stakeholders to build on existing research to drive change.

CQC highlights the development of an Advancing Mental Health Equalities Strategy and Patient and Carers Race Equalities Framework (PCREF) as providing national support to enable providers and integrated care systems to address health inequalities at a local level effectively. CQC is working to reflect the PCREF model's expectations as the regulator develops its approach to regulation and monitoring.

CQC also highlights the importance of services being inclusive of patient needs alongside efforts to tackle racism, for example, by translating care plans into languages other than English and meeting people's religious and cultural needs. CQC has seen many services struggling in this area, but it has seen some examples of good practice. Many services have identified a lead for promoting equality and diversity across wards and taking responsibility for supporting staff and patients.

Culturally appropriate advocacy

This section stresses the importance of culturally appropriate advocacy being available and how this could be sourced. It also shares some further detail on three pilots that have been testing different models of culturally appropriate advocacy in both inpatient and community settings since 2021. CQC hope that continued funding will be made available to strengthen the evidence base and inform the design of longer-term pilots.

Inpatient services as a safe space for LGBT+ people

CQC have frequently heard ward managers and others describe their service as a safe space for lesbian, gay, bisexual and transgender (LGBT+) people. The regulator has also found greater visibility and focus on LGBT+ as an equality issue. However, CQC continue to find examples of poorer practice and conclude that further work is needed to ensure LGBT+ people feel respected and safe.

Ward environments

CQC have ongoing concerns around the physical environment and condition of wards, and the impact of these on patients and staff. Many inpatient environments are in urgent need of update and repair, but are facing additional waits due to the backlogs in repairs created by the Covid-19 pandemic. CQC has seen the positive effects of ward refurbishments on patients and staff, with better physical environments improving patient experience and staff morale.

CQC continue to have concerns around the use of dormitories and urge the government to continue to make funding available until all dormitory accommodation has been replaced. The broader current arrangement of many wards continues to create challenges for patients, including a lack of space for patients to eat together and lack of lockable spaces for people's belongings. Older wards can lack space and ventilation and be unsuitable for people with physical disabilities. Many wards also still have inadequate wifi access and coverage.

CQC have also raised concerns about environmental problems such as noise, echoes and harsh lighting limiting the therapeutic experience of all patients in some wards and the particular impact these have on autistic people and people who have accessibility needs, such as hearing aids. The report highlights one service that fitted dimmer-switches in bedrooms and corridors, repainted the wards and closed corridor doors at night in response to CQC feedback.

Patient-centred care

Involving patients and carers

CQC found some good practice around advance planning for future care. However, the regulator has ongoing concerns about how well people and their carers are being involved in care planning processes, and the quality of people's care plans. CQC have seen some very good practice of services supporting patients to have a voice in the running of services. However, some carers have continued to tell CQC about a lack of involvement in their relative's care, including difficulty in contacting wards or arranging visits, though CQC also heard of good practice.

Advocacy

CQC are concerned that a lack of resources and funding arrangements for Independent Mental Health Advocate (IMHA) services mean that people are not being given the advocacy support they have a legal right to expect. The regulator also has concerns around people's access to culturally appropriate advocacy. This section sets out the steps some services have taken to improve understanding of, and access to, these services. CQC welcomes proposals in the draft Mental Health Bill to improve the availability and flexibility of IMHAs.

Least restrictive practice

Despite the pressures on many services, CQC have seen evidence of services continuing to take steps to apply the principle of least restriction and creating therapeutic, recovery-orientated environments. This includes challenging blanket restrictions and reducing the use of restraint. CQC highlight that

services that focus on maintaining therapeutic relationships have reported a reduction in the use of restraint. The regulator stresses that services should continue to implement the Use of Force Act and review their policies and procedures in line with it.

CQC activity in 2021/22

Mental Health Act reviewer visits

CQC carried out MHA monitoring reviews of 609 wards – 466 were on-site visits and 143 were remote reviews. CQC spoke with 2,667 patients (2,056 in private interviews and 611 in more informal situations) and 726 carers. MHA reviewers took part in Independent Care, Education and Treatment Reviews for 30 patients between November 2021 and April 2022 and for 82 patients overall.

Complaints and contacts

CQC's complaints team received 2,434 new contacts in 2021/22, which were a mixture of complaints and matters dealt with as requests for advice. CQC received 6,500 contacts in respect of open cases, most of which relate to complainants they are helping to use local complaints resolution.

The most common upheld aspects of complaints investigated by CQC related to failures to communicate effectively with nearest relatives and families or carers (7 upheld), and failures of services' own local complaints systems to address concerns in a timely or appropriate way (6 upheld). CQC also found failures in communication across teams (2 upheld) and failures to take appropriate account of advance statements of wishes or arrangements for lasting power of attorney (2 upheld).

Second opinion appointed doctor (SOAD) service

SOADs provided 12,005 second opinions for patients. This is a marked decrease in the number of checks carried out annually (14,372 checks carried out on average over each of the previous 5 years).

Notifications

CQC were notified of 695 incidents of absence without leave. 325 deaths of people detained under the MHA or subject to a community treatment order (CTO) were reported. This is a fall on the previous year (363 deaths in 2020/21).

NHS Providers view

Services have continued to experience unprecedented pressure and we welcome CQC's recognition in this context of the examples of good practice. This includes involving patients and carers, addressing inequalities, applying the principle of least restriction and creating therapeutic, recovery-orientated environments.

However, the report makes clear the impact of pressures, and in particular workforce challenges, on quality of care and patient experience. This is a key factor in closed cultures and trust leaders were extremely concerned about recent reports of abuse and poor care and are urgently reviewing their services as well as their approach to oversight and assurance of safety, quality of care and management of risk. We need to see immediate action as well as longer-term work at local and national levels to prevent further instances of abuse and improve culture and practice. There is welcome improvement work underway and further plans to bring about an overall cultural change within mental health services and improve the therapeutic environment of mental health settings. Listening to service users, their families and carers is vital to making the much-needed improvements.

Workforce issues and staffing shortages remain the greatest challenge for the sector. The cost-of-living is adding further pressure on mental health services – 72% of NHS trusts have recently seen more mental health service users due to stress, debt and poverty. Steps trusts have been taking to meet workforce gaps are limited without greater national progress on growing and funding the domestic pipeline and retention initiatives. The chancellor's announcement that a long term workplan will be published that is independently verified was a welcome step. It is essential that this assessment is published in full, including a focus on the mental health workforce, and an explicit commitment to provide the necessary funding.

We agree with CQC about the importance of fully and promptly funding, on a sustainable basis, the expansion of community-based specialist mental health care capacity required to meet the demand for mental health services, and ensuring these services meet the needs of their local populations. We know this investment is key to reducing the need to detain under the Act and providing care in the least restrictive setting. The sector receiving its fair share of capital funding to improve inpatient environments and capacity is also crucial. There must also be increased support for public health and social care given the crucial role these services play in providing wider care and support people need.

We look forward to the government prioritising the introduction of reforms to the Mental Health Act and the development of robust and achievable plan for its implementation, as well as taking the necessary steps to progress the broader changes to policy and practice required.