



# **Mental Health Units (Use of Force) Bill**

## **House of Commons**

### **Briefing for Third Reading**

**Friday 6 July 2018**

#### **Introduction**

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

The Commission encourages Parliamentarians to attend the Third Reading of Mental Health Units (Use of Force) Bill (the Bill) on Friday 6 July.

#### **Equality and Human Rights Issues relating to the Use of Force in Mental Health Units**

The use of force in mental health units raises both human rights and equality concerns. The use of force potentially violates a range of rights protected by the Human Rights Act 1998, including the right to life (Article 2), the prohibition of inhuman and degrading treatment (Article 2) and the right to a family and private life (Article 8).

There are thousands of instances of the use of force (including physical, mechanical and chemical restraint, and seclusion) every year in mental health units<sup>1</sup>. In some instances, as with Olaseni Lewis, this can result in death but there are also substantial numbers of physical injuries occurring<sup>2</sup>. Based on concerns for the well-being and safety of patients, a consensus has emerged that where possible services need to reduce the use of force<sup>3</sup>. Following our own review into disability inequality in Great Britain, the Commission called for action to reduce the use of physical and chemical restraint in hospitals<sup>4</sup>.

Further, evidence demonstrates that force is used disproportionately on patients with protected characteristics, such as age, gender and race. Both the UN Committees on the Elimination of Racial Discrimination and on the Rights of Persons with Disabilities have noted concerns over the disproportionate use of force on some ethnic minorities in psychiatric institutions<sup>5</sup>. This is supported by the most recent annualised data from the NHS, which shows that Black Caribbean people are much more likely to be subject to a restrictive intervention than White people<sup>6</sup>.

There are also concerns about other groups, including young women under 20, but the available data is unreliable, with inconsistencies in reporting. The Commission has previously noted huge variations in the numbers of incidents reported in institutions, concluding that “it is difficult to monitor restraint incidents because the information provided by mental health organisations is often incomplete”<sup>7</sup>. Reporting categories are also inadequate. For example, our own research shows that the data

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<sup>1</sup> We adopt the same terminology in this briefing as in Clause 1 of the Bill. In respect of the numbers, Mind reported that in “August 2015, in England, there were 9600 uses of restraint reported across all mental health trusts and 15 independent mental health service providers.....[and] 1617 incidents of seclusion” [Mind \(2015\) Restraint in Mental Health Services \[ONLINE\] \(Accessed 4 July 2018\)](#) Similarly, the CQC report “during 2013/14 more than 6,000 people who spent time in hospital were subject to at least one incident of restraint. Collectively these people experienced more than 23,000 incidents of restraint” [CQC \(2017\) The State of Care in Mental Health Services 2014-17 \[ONLINE\] \(Accessed 4 July 2018\)](#).

<sup>2</sup> [EHRC \(2017\) Being Disabled in Britain – a journey less equal \[ONLINE\] \(Accessed 4 July 2018\) see pg 11.](#)

<sup>3</sup> For example, [CQC \(2017\), Mental Health Act – A focus on restrictive intervention reduction programmes in inpatient mental health services \[ONLINE\] \(Accessed 4 July 2018\)](#).

<sup>4</sup> [EHRC \(2017\) Being Disabled in Britain – a journey less equal \[ONLINE\] \(Accessed 4 July 2018\) see pg 98.](#)

<sup>5</sup> Please see [CERD Concluding Observations on the UK \[ONLINE\] \(Accessed 4 July 2018\)](#). [CRPD \(2017\) Concluding Observations on the UK para 36. \[ONLINE\] \(Accessed 4 July 2018\)](#).

<sup>6</sup> [NHS Digital \(2017\) Mental Health Bulletin Reference Tables 2016-17 Table 7.1 \[ONLINE\] \(Accessed 3 July 2018\)](#) This data is currently described as “experimental” and there are issues about its completeness.

<sup>7</sup> [EHRC \(2017\) Being Disabled in Britain – a journey less equal \[ONLINE\] \(Accessed 3 July 2018\)](#).

on restrictive interventions by ethnicity are not broken down into categories of intervention (physical restraint, seclusion, etc.)<sup>8</sup>.

## **The Contents of the Bill**

The Bill addresses many of the concerns and recommendations that the Commission and UN Treaty Bodies have made previously in relation to the human rights and equality issues arising from the use of force.

## **Accountability**

The Bill provides for greater accountability for the use of force in mental health units by requiring that: a) policies on the use of force are published; b) information about the rights of patients in relation to the use of force by staff in mental health units must be provided to patients; and c) training is provided to staff on matters including avoiding unlawful discrimination, harassment and victimisation, and the use of techniques for avoiding or reducing the use of force. These have the potential to facilitate improved practice in the use of force and, in turn, improved compliance with human rights and equality standards, and a reduction in the use of restraint<sup>9</sup>.

## **Reporting**

The Bill requires that any use of force in a mental health unit must be recorded. The collection of data on the use of force is welcome as it should facilitate oversight and scrutiny of the use of force and should also inform efforts to tackle the disproportionate use of restraint. The collection of such data will fill current data gaps and better enable mental health units, the Department of Health and Social Care and other relevant public authorities to meet their obligations under the Public Sector Equality Duty<sup>10</sup>.

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<sup>8</sup> EHRC (2018) Literature Review on the Mental Health Act (unpublished internal research document).

<sup>9</sup> This aligns with the view of the CQC, which concluded that ‘ those wards where then level of restraint is low or where they have reduced it over time have staff trained in the specialised skills required to anticipate and de-escalate behaviours or situations that might lead to aggression or self-harm’ [CQC \(2017\) The state of mental healthcare 2014 -17. \[ONLINE\] \(Accessed 4 July 2018\)](#).

<sup>10</sup> Equality Act 2010 s149.

We would wish to see gender reassignment status added to the list of relevant characteristics, as it is currently the only protected characteristic under the Equality Act 2010 completely omitted from the Bill<sup>11</sup>.

## **Investigation of deaths**

The Bill requires that there are investigations into deaths and serious injuries. The Commission welcomes the minister's statement giving assurances that investigations will comply with human rights law by being prompt, independent, and involving families<sup>12</sup>. We look forward to the implementation of these important human rights principles, along with a clear and effective system holding those responsible for death or ill treatment to account. This would align with the recommendations that the Commission made in its Adult Deaths Inquiry, summarised in its Human Rights Framework for Adults in Detention<sup>13</sup>.

## **Further information**

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about the Commission's work at: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

For more information, please contact:

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<sup>11</sup> Clause 6 (10) (d) refers to whether the patient is pregnant rather than pregnancy and maternity.

<sup>12</sup> [Hansard \(15 June 2018\) volume 642 at 12.45pm \[ONLINE\] \(Accessed 4 July 2018\)](#).

<sup>13</sup> [EHRC \(2015\) Human Rights Framework for Adults in Detention \[ONLINE\] \(Accessed 4 July 2018\)](#).