

# Legal frameworks for mental health

19 January 2024

*This article was first published by [Healthcare World Magazine](#).*

**The statistics are stark. We have a global mental health crisis on our hands. But can adapting and changing mental health laws and regulation really help with this?**

The World Health Organisation says that: "Depression is one of the leading causes of disability. Suicide is the fourth leading cause of death among 15-29 year olds and people with severe mental health conditions die prematurely - as much as two decades early."

In the UK it is estimated that more than 60 per cent of children and young people who have a diagnosable mental health condition are not currently receiving NHS care, while rates of probable mental health disorders in 6 to 16-year-olds has risen from 11.6 per cent in 2017 to 17.4 per cent in 2021.

As the world is advancing, particularly in relation to technological advances and the increased usage of social media and other tech platforms, alongside the COVID pandemic we have seen a greater number of people suffering from worsening mental health. Countries are reconsidering how to provide better support to their population with mental health issues and starting to understand that the need for mental health provision is greater than ever before.

But despite progress in some countries, people with mental health conditions often still experience human rights violations, discrimination and stigma. Legal frameworks should be able to seek to redress this, but do they? Have we created an approach which has developed with needs of citizens in the 21st century or is legislation still stuck in the 20th century?

Generally, mental health laws are seen as fairly narrow and draconian and it would seem that a move to more flexible, all-inclusive legislation that considers developing mental health conditions, a need for patient choice, how best to deliver population-based mental health prevention and care for long term mental health needs, would work much better. Such radical realignment to move to prevention and earlier treatment in the right clinical setting does, however, require laws with greater flexibility to enable access to treatment. It also necessitates an understanding that mental health is as important as physical health, meaning a move towards greater equity of funding that enables an approach which allows citizens to access the right mental health care in the right place.

In the UK, the Mental Health Act 1983 has been criticised as being overly restrictive with inadequate scope for patient choice and autonomy. The proposed reforms of the government's Draft Mental Health Bill to improve patient choice plus a statutory duty to offer patients advance choice documents the recommendations by a joint parliamentary committee. Certain conditions have also been removed as grounds for detention under the Act. The intention is to try and create a legal framework which is flexible enough to adapt to patient need as that develops, including seeking to keep people in the right place so they can recover as quickly as possible, as opposed to detaining them and potentially not really addressing the trigger for any crisis.

Taking all of the above into account, what should those legislating elsewhere in the world think about when considering their mental health laws? Equally, how do they place patients at the heart of the legislation, given that 80 percent of WHO Member States reported having a stand-alone or integrated law for mental health but only 38 per cent reported their laws were fully compliant with human rights instruments and only 28 per cent reported having fully compliant laws that were in the process of implementation. That raises the question of why are they not compliant?

It would seem that the limited implementation of mental health plans, policies and legislation is, in part, due to a lack of resources - both human and financial - with most countries spending less than 20 percent of their mental health budget on community mental health services. The WHO Mental Health Atlas 2020 shows that only half of countries with a mental health policy or plan also have the estimated financial resources they need to implement it, with only around a third of countries having actually allocated financial and human

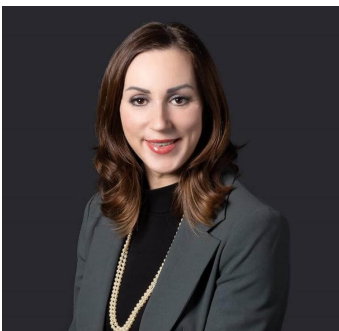
resources to implement their mental health policy or plan. The gap between estimating resources and allocating them is particularly stark among low-income countries.

Alongside writing and implementing mental health laws and policies themselves sits regulation of the issues causing an increase in poor mental health themselves. How do we regulate social media platforms, cyber bullying and the like? How do we protect our children and teenagers from being exposed to damaging content and behaviour in the first place? How do you make children understand that it is damaging and motivate them to take control of their own mental health wellbeing more?

So, it seems that while mental health regulation can support treating the increasing number of mental health issues, it cannot solve them. Many countries around the world are at an early stage in developing their laws and policies, but may not have sufficient resource to implement a legal framework that is flexible enough to address the ever changing pressures in the 21st century. It is clear that, as the nature of mental health issues changes, writing laws that cover all eventualities (and anything we do write is likely to be outdated again in a decade (or less)) is increasingly difficult.

So what is the answer? The sorts of things that we see that have success are really putting time and effort in to working with children and young people to help them understand what can cause poor mental health and the things they can do to seek to redress this. The health sector joining up with schools and education settings, for example. Using students and volunteers to facilitate engagements with others and making it less formal and less of a barrier to people seeking help and support. If we can get it right during these formative years, we may see a generation with less emerging mental health issues meaning that the extreme shortage of mental health professionals can better manage the people they are seeing and caring for. As for developing new legal frameworks then it is essential they are flexible enough to enable treatment options to change and develop to address the mental health problems which people face. That they seek to be patient focussed and not draconian in purpose. And so, as with many other areas, whilst the law can be a useful support and facilitator, it cannot be the answer in itself.

## Key contact



Carly Caton

Partner

[carly.caton@brownejacobson.com](mailto:carly.caton@brownejacobson.com)

+44 (0)7890423367