

# CQC State of Care report 2022/23 – what does it say about mental health care and the Deprivation of Liberty Safeguards?

08 November 2023  Katie Viggers

The CQC has published its [State of Care in England report for 2022/23](#). State of Care is CQC's annual assessment of [health](#) and [social care](#) in England. The report looks at the trends, shares examples of good and outstanding care, and highlights where care needs to improve.

In the report, there are sections on:

- The quality of mental health care
- The [Deprivation of Liberty](#) Safeguards (DoLS)

We have summarised CQC's key findings in these two areas below.

## Quality of mental health care

### 1. Access to mental health care and the quality of the care remain a key area of concern for CQC.

Unavailability of community care continues to put pressure on mental health inpatient services, with many services struggling to provide a bed. In turn, this is leading to people being cared for in inappropriate environments.

### 2. There are lengthy waiting lists for treatment. In June 2022, an estimated 1.2 million people were on the waiting list for community-based NHS mental health services. This is despite more funding and increasing staffing levels for mental health services.

2.1. Despite the best efforts of community providers, there are still concerning waits for services for children and young people, which has a significant impact on children and families, and on staff morale

### 3. People are often facing the prospect of being sent far from home for care and treatment. Despite a government commitment to ending out of area placements, as of May 2023, there were 775 out-of-area placements across England.

3.1. Placing people in hospitals far from home and away from friends, family and support networks can affect their recovery.

### 4. CQC considers that the quality of care in mental health hospitals is not good enough, with areas of concern include the use of dormitories and mixed sex wards. The safety of services also continues to be an area of concern.

### 5. Recruitment and retention of staff remains one of the biggest challenges for mental health services, with the use of bank and agency staff higher than ever.

5.1. The use of agency staff puts pressure on permanent staff and increases risk to people using services, as staff do not always know them.

5.2. Warning notices have been issued to providers because of staffing issues, including not having enough registered nurses, poor mandatory training figures and poor records management.

### 6. There are concerns around the use of restrictive practices, due to the trauma service users can experience as a result.

6.1. CQC has developed a new policy position on reducing restrictive practices.

6.2. Whilst CQC recognises that restrictive practices may be appropriate in limited, legally justified and ethically sound circumstances, it is clear that the use of such practices should be rare and could be seen as a failure of care.

6.3. Providers are expected to report on the use of restrictive practices, learn from them and actively work to reduce them.

# Deprivation of Liberty Safeguards (DoLS)

1. **The number of applications for a deprivation of liberty (both to the Court of Protection or under DoLS scheme) has increased year-on-year since April 2020** in both adult social care and hospital settings.
2. **CQC remains concerned that the current DoLS system is unable to cope with the demand for assessments.** Ongoing problems with the process, including delays in processing applications and the varied knowledge of staff about the safeguards, have left many people who are in vulnerable circumstances without legal protection for extended periods.
  - 2.1. In 2022/23, the number of applications to deprive a person of their liberty increased to over 300,000 (an increase of 11% from the previous year), with only 19% of standard applications completed within the statutory 21-day timeframe.
  - 2.2. The average application took 156 days – over 7 times the statutory timeframe.
3. **To tackle these resourcing issues, some local authorities are carrying out remote assessments** in cases where there are no concerns. However, the suitability of this type of assessment has been questioned by CQC, especially for people who have conditions such as advanced dementia which may affect communication.
4. **CQC continues to see that some providers have a limited understanding of the DoLS framework and are not delivering adequate training on DoLS.**
  - 4.1. In particular, CQC has seen that staff do not always implement the conditions attached to DoLS authorisations – which providers have an obligation to comply with.
5. **Poor knowledge and application of the Mental Capacity Act (MCA)** has affected ratings for some providers and has led to enforcement action.
  - 5.1. There is a variable understanding of the interface between the MCA and the Mental Health Act.
  - 5.2. Mental capacity assessments are often poorly recorded.
  - 5.3. Some staff still make the assumption that people subject to DoLS lack capacity in all areas and are not capable of making any decisions for themselves.
  - 5.4. Lack of understanding of the MCA has led to the overuse of restrictive practices, e.g. installing sensor mats or bed sides are not always viewed as restrictions.
6. **Some providers do not clearly explain the DoLS system to service users and their families**, and do not give sufficient information about their roles and rights.
  - 6.1. This prevents families from being meaningfully involved in the process and unable to properly represent their relatives.
7. **Delays to the implementation of Liberty Protection Safeguards mean that the existing challenges with the DoLS system will likely continue** unless short-to-medium term changes are introduced. CQC is concerned about the impact of these delays for people being deprived of their liberty, for their family and friends, for providers, local authorities and other stakeholders.

## So what now?

The new Mental Health Bill may have helped to resolve some of the issues highlighted in [mental health care](#), since the planned reforms were designed in part to reduce the use of detention and community treatment orders (CTOs) and end the detention of autistic people and those with learning disabilities. The Bill was also designed to give patients more choice and greater safeguards were planned for those refusing medication. Sadly, however, no mention was made of the new Mental Health Bill in the King's Speech on 7 November 2023, meaning there will be no reform of the Mental Health Act any time soon.

The Government has however previously announced that it will be introducing an updated MCA Code of Practice, which CQC hopes will assist in improved understanding of the Act. We will provide further updates on this as and when it is published.

## Contact

Rebecca Fitzpatrick

Partner



rebecca.fitzpatrick@brownejacobson.com

+44 (0)330 045 2131

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