Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

Mental Health (Private Hospital) Regulations (Northern Ireland) 2011: Children's Law Centre

12 October 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Michelle Gildernew (Chairperson)
Mr Jim Wells (Deputy Chairperson)
Ms Michaela Boyle
Ms Paula Bradley
Mr Mickey Brady
Mr Gordon Dunne
Mr Mark H Durkan
Mr Sam Gardiner
Ms Pam Lewis
Mr John McCallister
Mr Kieran McCarthy

Witnesses:
Mr Eamonn McNally) Children's Law Centre
Ms Natalie Whelehan)

The Chairperson:

I welcome Mr Eamonn McNally and Ms Natalie Whelehan from the Children's Law Centre. Thank you for coming to this afternoon's Committee meeting.

Eamonn will begin with a presentation, and that will be followed by members' questions.

Mr Eamonn McNally (Children's Law Centre):

I am the mental health solicitor at the Children's Law Centre (CLC), and Natalie is the policy officer at the centre. The Children's Law Centre is a children's charity, which uses the law to promote children's rights. We operate a free phone advice line for children and young people — it is called the CHALKY service — which some of your constituents may have used. We have been operating and bringing to people advice and assistance in the area of mental health for about 15 years. That has resulted in the creation of the mental health solicitor's post that I currently occupy.

The state of the mental health of our children and young people in Northern Ireland has been in dire straits for some time. As far back as 1999, the Chief Medical Officer noted that 20% of children and young people under the age of 18 suffered a significant mental health difficulty. There has been a significant increase in the number of children and young people with mental health difficulties in recent years. It is estimated that about 10% of our children and young people between the ages of five and 15 have a significant mental health problem and that there has been an increase of 70% in the past 25 years of the number of teenagers who are suffering from depression and anxiety.

The current mental health law in Northern Ireland, as you know, is the Mental Health Order 1986. It is a non-age-specific piece of legislation that is used to compulsorily treat and detain persons with a mental health difficulty at any age. While we view provision in the public sector as beneficial, CLC recognises that a private child and adolescent mental health services (CAMHS) hospital has the potential to benefit children and young people with mental health difficulties in Northern Ireland. However, we are very keen to ensure that the same safeguards and protections that are available in a National Health Service hospital will be available to children and young people in a private hospital.

As the law stands, any hospital opened as a private enterprise can treat patients who place themselves there on a voluntary basis. The 1986 Order does not permit patients of any age to be formally detained for treatment or assessment in a hospital opened as a private enterprise. That is what the regulations that we are debating here today are about.

As I said, the Mental Health Order 1986 is non-age-specific. If the new regulations are passed, they will also be non-age-specific and will have the potential to apply to everybody in Northern Ireland, regardless of age. They would apply to children and adults alike. Also, any regulations made under article 95 of the Mental Health Order 1986 would apply not only to the proposed Priory Group CAMHS hospital but to any private enterprise that would create a similar hospital in the future for children or adults. It is also important to note that a private hospital could change its remit at any time without consultation with the Committee or the Health Department, as it is a private enterprise and is free to do as it wishes.

The Children's Law Centre is concerned that appropriate safeguards should be put in place for children and young people who could be detained in a private facility, including a robust system of checks and balances to ensure that children and young people are not detained for financial incentives. The need for strong safeguards is even more pressing given that the regulations would also have effect once the new Mental Capacity (Health, Welfare and Finance) Bill becomes law and the 1986 Order is repealed. I believe that you are taking evidence in relation to that Bill at the minute, and we are interested in participating in that. The Department's current proposals exclude children and young people under the age of 16 from many of the protections that are in that legislation. Under the proposed legislation, it is easier to detain those under the age of 16 than it is to detain those over the age of 16 for a mental health issue.

We also have concerns around education. One of the key promises put forward by the Department in the proposals for the new mental capacity legislation is that children and young people who are in a hospital setting will have the same access to education as those in the community. The Beechcroft unit has its own school dedicated to it. We are unsure what the position would be for any young person who would be detained in a private CAMHS facility and whether they would have equal access to education.

On 21 September 2011, the Department indicated to the Committee that, if made, the regulations would apply to only a very small number of people. At that point, it was indicated that 12 people had been detained in the Beechcroft unit for treatment during that year. We obtained statistics that indicate that, on 31 August 2011, five people were detained in the Beechcroft unit. However, significantly, the Beechcroft unit is not the only unit in Northern Ireland in which young people can be detained under the provisions of the Mental Health Order 1986. For example, in 2009, in the Western Health and Social Care Trust, 11 under-18s were

detained for a variety of reasons under the Mental Health Order 1986, and, during the same time frame, 14 under-18s were detained in the Northern Health and Social Care Trust.

Consideration also needs to be given to the large number of children and young people who are admitted to adult wards each year for mental health needs. A study published earlier this year by the Regulation and Quality Improvement Authority (RQIA) indicated that, in the past two years, 197 children and young people were admitted to adult wards in Northern Ireland because of mental health difficulties. The report stated that:

"Access to inpatient provision is problematic. All of the trusts outside Belfast reported that they did not feel that young people in their areas had timely access to inpatient provision. Given the continued level of young people admitted to adult wards it would appear that there is not enough access to the regional unit available".

The report also stated that:

"Admission to the regional inpatient psychiatric hospital for children and young people has often been limited due to insufficient number of beds available in Northern Ireland. When a placement is not available in the regional facility and no other service can be provided a young person aged 16 or 17 may be placed on an adult psychiatric ward."

In previous evidence sessions, it was indicated that 20 extra contractual referrals were made to England from Northern Ireland in the past three years. Information obtained by the Children's Law Centre indicates that, in 2006-07, 18 young people were sent outside Northern Ireland at a cost of £1·8 million. In the 2009-2010 financial year alone, 19 children and young people were sent outside Northern Ireland for treatment of a mental health difficulty at a cost of £2·1 million.

Evidence previously given to the Committee suggests that, if a young person goes into hospital as a voluntary patient and he or she then needs to be formally detained, the decisions for detention are made by clinicians who are external to that hospital. However, that is not strictly the case. Currently, a young person can be detained in hospital for an assessment of their mental health if a doctor who has seen them in the past two days is of the opinion that they need to be detained. In respect of a young person who is a patient in a private hospital, it is only logical to assume that the doctor who has seen them in the past two days will come from that hospital.

It was further indicated that, when a young person becomes detained, they would have an automatic right of appeal to the Mental Health Review Tribunal. Although that is strictly correct, the tribunal has an average turnaround of six weeks from the date of papers being lodged with the tribunal for an application to that tribunal to the first hearing of the tribunal. That takes you well past the period of detention for assessment and sometimes even treatment.

It was indicated that the cost of the detention of a child in a private hospital would be about £4,500 a week. We are concerned, given the current financial situation and the reductions in budget, that placements should be funded by new moneys in addition to the CAMHS budget and that there should be no reduction from the Beechcroft budget, which is stretched enough as it is. As far back as 2007, the CAMHS budget was only 5% of the adult mental health budget. The Bamford review recommended that that should be doubled. Information that we have obtained indicates that the current CAMHS budget has been reduced and is now 2·65% of the adult mental health budget. Given that children and young people represent a good 25% of Northern Ireland's population, there is great disproportionality in that regard.

Natalie will talk to you about the section 75 duties.

Ms Natalie Whelehan (Children's Law Centre):

In its evidence session, the Department indicated to the Committee that it was advised that, because the proposals are a service improvement, it does not need to put the regulations out for consultation. The Children's Law Centre leads on section 75 in the children's sector, and it is our view that the Department is not correct in respect of its obligations. Section 75 of the Northern Ireland Act 1998 requires public authorities to have due regard to the need to promote equality of opportunity among members of nine categories that are detailed in the legislation. It applies to policy decisions only. The Equality Commission's definition of a policy is intentionally very wide, and it would encompass the regulations within its scope. Therefore, it is our view that there is an obligation to subject the regulations to section 75.

Eamonn indicated that the impact of the proposals will be only on children and young people initially, but it must be remembered that children and young people are not a homogenous group. There will be significant potential for adverse impact on certain groups of children and young people. For example, it is well recognised that there is a higher incidence of mental ill health among specific groups of children and young people; particularly very vulnerable children and young people. Some of them are protected by section 75. They include children and young people with disabilities, those who live in poverty, those who are likely to come into conflict with the law and care experience children, as well as those who are in need of safe and secure accommodation.

We submit that a failure by the Department to subject the regulations to screening and, ultimately, to carrying out a comprehensive equality impact assessment would be a breach of its equality scheme. There is additional importance to subjecting the proposed regulations to the section 75 process in that we envisage scope for adverse impact to be suffered by various groups of children and young people, but, furthermore, the regulations will not be age specific, so there is a much wider debate to be had.

The Department's proposal is that section 75 would not apply because there would be no intention for adverse impact. We understand that, but the point is that section 75 focuses on the potential for adverse impact, not the intention. The Equality Commission was very clear about that in an investigation report of a complaint that the Children's Law Centre and nine other organisations lodged with it in relation to the introduction of the anti-social behaviour order legislation.

There are lots of issues that are very unclear about the proposals. We are very unclear about what exactly they will mean. The section 75 process and an open and comprehensive consultation process would open up the whole area to greater public debate. There is a need for proper examination of issues, especially with regard to the financial incentives to detain children and young people; the types of services that will be provided, given that it is a private enterprise; who can access the services and how they can be accessed; and the future implications for mental health provision for all as a result of a change to legislation that is not age specific. There is also the question of when services will be used. For example, will they be used in place of detention to adult wards? Nobody seems to be clear on that. As Eamonn mentioned, there is the issue of the provision of educational facilities for children and young people in the private mental health hospital, given assurances by the Department of Health, Social Services and Public Safety (DHSSPS) that there will be new legislative provision for education for all in in-patient facilities.

We feel that there would be a lot of benefit in carrying out a public consultation to open up the public debate, to hear views and to thrash those issues out. The impact of the regulations needs to be assessed under section 75 in line with the DHSSPS's statutory obligations.

The Chairperson:

Thanks, Natalie. There is a lot in what you said that the Committee needs to think about. Every evidence session has raised more questions than answers. One issue raised last week was that,

although the facility is planned to treat children and young people, it is only a matter of applying to the Planning Service for a change of use to open the facility up to anybody who needs treatment there. That came as a bit of a surprise to some Committee members. I have since learned that you cannot submit a freedom of information request about a private facility. The sort of information that Members of the House use to scrutinise Departments and their workings is not available to elected representatives or to anybody.

We heard from the Department that around 20 young people were sent to England over the past three years. However, the number of children and young people who needed to be detained under the current mental health provisions is much higher. That was not drawn out in the evidence session with the Department either.

Ms Whelehan:

Eamonn will go into more detail on the level of unmet need. From our reading of it, however, we do not think there was any malice or forethought on the part of the Department in relation to the figures that it quoted to the Committee. Our reading was that it was quoting figures specifically relating to children who were currently detained in Beechcroft only.

Mr McNally:

The information that we have was obtained through freedom of information requests. Young people have been sent across the water for a variety of reasons, from eating disorders to forensics. There are no guarantees that the new private hospital in Templepatrick will be able to provide any of those services because we are not sure what its remit will be. We do not know whether its creation will reduce the need for young people to be sent over to England for treatment.

The figures that we obtained show that it is an average of about 18 or 19 young people a year, at an average cost of just over £100,000 for each person. Natalie is right: it is clear that the Department was solely talking about the Beechcroft unit. However, a number of children and young people are detained throughout the various trusts in adult facilities and in facilities other than the Beechcroft unit. Even within Belfast, there a few units in which children and young people are currently detained under the provisions of the Mental Health Order 1986.

The Chairperson:

So, it is not just a few children or young people who need to go to England each year because we

do not have the basis to treat them. There is a need that certainly has to be met. However, it seems clear that there is a critical mass and that that need should be met by statutory services. None of us wants to see young people going to England for treatment that could be provided here. The Royal College of Psychiatrists made it very clear that, the closer you are to home and to the community team that has been looking after you, the better your outcome. We do not want to be exporting our problem, and it certainly sounds as if there is a need for that treatment to be provided here but on a statutory basis.

The point was made last week that, when it comes to detaining somebody — taking away their liberty, incarcerating them or whatever terminology you use — for us to do that through a private facility is when people start to get very uncomfortable. Not only are our most vulnerable young people becoming a commodity, it is only a step away from privatising prisons and things such as that. The point is that you have no choice but to get treatment, your liberty is being taken away, and you are contributing to a private company's bank balance. Those are the kind of things that the Committee was uncomfortable about.

Mr McCallister:

Do we know whether the young people or children that we send to England predominantly go into private or statutory care?

Mr McNally:

Under the Freedom of Information Act 2000, there is no way of obtaining information about exactly where they go, because that would breach someone's private medical business. I can only assume from reading the information that we have obtained that the care is a mixture of the two.

Mr McCallister:

I thought about one point that emerged at the first evidence session on this subject. If we need to make sure that the safeguards that you talked about are in place, that is fine, but as the RQIA will be inspecting it, does it not make sense that the inspection regime for the private hospital is exactly the same as it is for statutory provision?

Mr McNally:

Yes, for detained patients, it should be.

Mr McCallister:

Yes. Are you confident that it will be the same? My take on it was that, if we do not have enough provision in Northern Ireland but we have a private provision that the trusts can buy into, most people would probably agree that that would be much more preferable to placing young people in adult units. Does that not make quite good sense?

Ms Whelehan:

Our position is that we see potential in this, absolutely. It is a much more positive situation, in that children with complex mental health needs who need forensic treatment or eating disorder inpatient treatment can receive that here. That is much more preferable, but the difficulty is that, because this is a private enterprise, there is no guarantee that those services will be provided. Even if they are provided initially, there is no guarantee that that will continue.

Mr McCallister:

You could make the allegation about Beechcroft, for example, that the inspection regime that we have is not robust enough. You would want the inspection regime to be as robust as possible, whatever the provision, whether it is state, private or whatever, because of the seriousness of the problem that you are dealing with in this unit. Things have happened in many homes over the years, and the inspection regime should be there to protect some of the most vulnerable.

I have no issue with the unit being in a private facility. I would want to know that the inspection regime was as robust as possible, regardless of whether the provision was given in a state or private facility. The Department assumed the cost — £4,500 a week — was much the same, which is roughly what it thought Beechcroft was costing. There was not much variation in the cost, because the regime of staffing and all the professionalism that is needed to deal with it was so intense. I am concerned about the inspection. I have no issue with the private provision, but I would want to know that the inspection was absolutely robust and done in the same way. I would be very concerned if there were any possibility that someone in a private setting could acquiesce by detaining a young person for longer than was necessary because they were getting light on numbers and needed to keep people there. I would want to know that our back-up regime and our legal system would not allow that to happen.

Mr McNally:

The robustness of the check and balance system does not necessarily mean that the service would

be provided. I agree that the inspection regime should be as good in any private facility as it is at the Beechcroft unit or any trust facility, but the fact that the RQIA would be coming in and carrying out its inspection would not mean that that private facility would be able to carry out some services at a higher level. There is no guarantee that that would actually exist. It may not reduce the trust's expenditure. It may increase it, because if it is only taking the overflow from the Beechcroft unit and Beechcroft were full, and we still had to send 18 or 19 people to England and Wales each year for a specialist service that does not exist in the private hospital, it would increase the pressure on the CAMHS budget.

Mr McCallister:

As Paula will remember, when we discussed this previously, we had a bit of a debate on whether the unit will be in Ballyclare or Templepatrick. Why would a trust buy into the service at that new centre if it were not providing a service that the trust wanted?

Mr McNally:

I am not saying that it would not provide the service that the trust wants.

Mr McCallister:

Why would the trust buy into it if the service were not being provided at the level that the trust wants?

Mr McNally:

If it were taking the overflow from the Beechcroft unit and matching the service from that unit, there would be no reason why the trust would not buy into the service. However, if it were not providing the extra specialist services that do not currently exist in Northern Ireland, there would still be the need to send young people to England for treatment.

Mr McCallister:

Is that because even Beechcroft does not provide that?

Mr McNally:

Beechcroft cannot provide certain levels of treatment, and there are no guarantees. We do not know what the business plan of the private corporation is, and we do not know whether it intends to provide, or is able to provide, even if it intends to provide, that higher level of service.

Mr McCallister:

As long as you get what you pay for. I would be concerned if you were promised a high level of service that is way above that which Beechcroft offers and you did not get it. It is not up to us to comment on the private corporation's business model, as long the trust knows that the service that it provides is clinically led and is best for a particular patient.

The Chairperson:

The difficulty is that, if a young person were voluntarily at the Priory and being seen by a psychiatrist, that is, receiving private healthcare that their parents were paying for, and it were assessed that they needed to be detained, the person who would probably make that decision would work for the Priory. That is because the person would have been in that unit. At last week's meeting, Philip McGarry said that mental health patients who are detained tend to stay longer than those who are not detained and that a lot of the detentions happen in private facilities. That makes you wonder whether that is about keeping them there because the private facility is getting paid quite a substantial amount of money to provide that care, whether the young person needs it or not. At that point, they might be better coming back to Beechcroft or being part of the community. Dr McGarry said that, although he works in a hospital setting, he also works in the community and that the pathway for that young person is based on a more holistic model as opposed to that which is offered to them if they were to stay in the Priory.

Mr McCallister:

How many doctors are needed to detain someone? Do you not need more than one?

Mr McNally:

There is an initial opinion, and then a secondary opinion is given.

Mr McCallister:

Does that come from outside that group?

Mr McNally:

It could come from somebody in the same trust area.

Mr McCallister:

To take the Chair's example, could the secondary opinion come from another doctor in the Priory, which almost has a vested interest, or would it have to come from outside the group?

Mr McNally:

There is no reason why it could not come from a doctor who works for that group in some form or another, whether that is privately on an ad hoc basis or otherwise.

Mr McCallister:

Does he not have to be semi-independent from that decision-making process?

Mr McNally:

He should be, but, similar to the situation that we often have in trust hospitals, there are issues with a lot of the user groups in that area. The new mental health legislation addresses the issue of who gives the second opinion.

Mr McCallister:

I am supportive of that being addressed, and it would be useful to have you back here when the legislation comes along. I do not think that the second opinion should be given by someone from the same group, and the RQIA should insist that it does not come from the same group. In the main, does the second opinion not come from the same group, or do we sometimes fall short on that?

Mr McNally:

To answer that, you would have to look at every detention in its own right, and there is no real way of doing that.

The Chairperson:

The 1986 Order is used at the minute to detain those young people, and you know that there are difficulties with the forthcoming Mental Capacity Bill. There are a lot of strands to the issue that make us very wary that, if the regulations were to go through, the best interests of the child would not be paramount.

Mr McNally:

There is also a set of subreasons about the detention of children and young people that can have a knock-on effect down the line. For example, if a child at the age of 16 is detained now for treatment of their mental health condition, they may have to declare that for the rest of their lives. If they want to go to America to work, for example, they will have to declare it for a visa, and they will have to declare it to the Driver and Vehicle Agency (DVA) and to various insurance companies. There is a long list of places where they would have to declare it. If it is a short admission, sometimes that is not justifiable, and people can go to the Mental Health Review Tribunal, which undoes the detention process. That young person will have to declare that detention right the way through their lives.

Mr McCallister:

That still applies whether you go for private or statutory care, however.

Mr McNally:

Whether you are admitted voluntarily or detained makes a vast difference.

Mr McCallister:

Although that is an important issue, the point behind this statutory rule is that that still applies even if you went through the Beechcroft process.

The Chairperson:

There is no financial gain in that. At the minute, if you are detained on a statutory provision, no one benefits financially. The worry that I have is that unscrupulous actions may be taken, because the Priory is a business. Our most vulnerable young people will be seen as a commodity — as something on the bottom line of a balance sheet or something to be discussed at the shareholders' AGM. That is my deep-rooted concern.

Mr McCallister:

Are most of the referrals not going to be made through trusts, so that when they have not got the capacity at somewhere like Beechcroft, they would buy in the services? The trusts are not going to want anybody staying in residential care for any longer than necessary.

Mr McNally:

From the evidence given by the Department, there appears to be no reason why a person who is paying — or whose parents are paying for them — to be a patient in the private hospital and who then decides to leave that hospital could not find themselves detained under the Mental Health Order. The way that Department put its evidence forward suggests that, if the regulations are passed, a private hospital could detain a voluntary patient.

Mr McCallister:

Even if that were against the family's wishes?

Mr McNally:

Yes. Detentions of children and young people often happen against the family's wishes, and the nearest relative, such as the parent —

Mr McCallister:

That is where the second doctor's opinion would kick in.

Mr McNally:

It is, but the situation in a trust hospital is still the same as it is in a private hospital, in that a voluntary patient could be detained. There is no reason why that would not happen.

Mr McCallister:

Yes, if the medical evidence deemed it appropriate. I would probably need to see some evidence that there is a huge volume of cases where that happens in private hospitals. We have no experience of it in Northern Ireland, and this will be the first one. You would need to say that there was a huge volume.

I am conscious that other members want to get in.

The Chairperson:

They do. The difficulty is that Scotland has decided not to go down that route. In England and Wales, the British Government appear to have provided incentives to encourage the opening up of some of those clinics. There seems to be a move away, almost by stealth, from the National Health Service providing services to private operators doing so. There are a lot of things here that

make me deeply uneasy.

Mr Wells:

Leading on from what John said, implicit in what you are saying is that there will be doctors working in the new private unit who would deliberately recommend that a patient stay on because of a pecuniary interest. Would that not lead instantly to a disciplinary action being taken? Surely the doctor swears an oath that he will do what is best for the patient.

Mr McNally:

We are in no way saying that any medical professional would not put their ethics first. What we are saying is that there could be pressure on doctors from higher up in the corporation. I am not saying that they would in any way comply with that, but the pressure may exist, which is not good for the clinicians.

Mr Wells:

However, the code of ethics makes it very clear that, in that situation, they should rule on what is best for the patient. It worries me that a doctor would behave any differently in a private setting than they would in a trust residential unit. If there were a very clear trend that people in a similar situation were being treated for longer in a private unit than they were under statutory provision, regulatory authorities would very quickly be in to ask why. It worries me that there is even an implicit suggestion that a doctor working in the private unit would behave like that.

Secondly, RQIA would be in like a shot as well. I do not see how this could possibly happen in the regulatory context that we have.

Mr McNally:

Unfortunately, we do not have anything to compare it with. We do not know what it would be like. We cannot speak for the situation in England and Wales, because we do not practice there.

Ms Whelehan:

I take your point; in no way are we trying to undermine the ethics of any doctor. I want to refer to the evidence that Dr McGarry gave about the protections in England and Wales. It is as much about the protection of the medical profession in England as well, in case allegations are made against doctors, and to ensure that doctors do not work in the private hospitals to which the

patient is sent and that those safeguards are as robust and rigorous as possible and are in the regulations before they are brought in. We would like to see as much protection as possible provided to make sure that the best interests of children are upheld and that the medical profession is protected from such allegations. We are not saying that that would happen, but it is worth examining. We think that a much wider public debate would contribute to making sure that all the issues are thought through.

Mr Wells:

I do not know about the wider public debate, because these regulations have been known about for several weeks. I have to say that my mailbox is not exactly bulging with people expressing an interest in them; only a very confined group of people would be interested in them at all.

The other issue is, of course, if we are paying £100,000 a year, and if the trusts are paying to place someone in such a unit, they would also be watching the situation very carefully to ensure that there is no deliberate prolonging of treatment where it is not required. Northern Ireland is a small place, and we would very quickly find out if something were going astray. I think that the RQIA regulatory regime has worked well for residential homes and nursing homes and for hospitals generally, and I do not see why it would not work here, particularly when there would be a special interest in this because it is our first way forward.

Secondly, there must surely be some potential saving here. It costs £100,000 a year to treat people in England. Those figures are quite shocking; in one case it was £120,000 a year. Surely if we send patients down the road to either Ballyclare or Templepatrick — we still have not established where the unit will be, although we know that it is somewhere in south Antrim — there are bound to be savings, at the very least in transport costs for relatives who want to go and visit those patients. There must be an opportunity in that.

Ms Whelehan:

We see potential for that, because there is a huge level of unmet need in child and adolescent mental health services in Northern Ireland, particularly for those types of services that we do not currently provide. It would be really positive, particularly for the rights of those children and young people, to ensure that they receive proper support from their families if they are treated closer to home. However, we are not aware that the new hospital will definitely provide those services. There have been no assurances that we are aware of, although we could be wrong, that

forensic inpatient treatment, inpatient eating-disorder treatment or treatment for children with very complex needs — the young people whom we are sending to England — will be provided. I hope that those services will be provided; it would be much more preferable if they were available here. Given that this is a private enterprise, our concern is that the decision about the services that will be provided is entirely one for the Priory.

Mr McCarthy:

My question is about the protection of and safeguards for youngsters who have to be detained. Four and a half thousand pounds a week seems like an awful lot of money. How does that compare with the NHS through Beechcroft, for instance?

Mr McNally:

I can only quote you the figure that the Department gave in its evidence, which was £4,200.

Mr McCarthy:

There is really not much difference.

Mr McNally:

There is not much difference between the two, pound for pound.

Mr McCarthy:

I agree with everything that has been said. Are you content that there will be enough protections and safeguards when this arrives? That is the critical question.

Mr McNally:

The main protection is the mental health review tribunal. As I said in the presentation, there is a six-week period between the date on which a parent would lodge an application to go to the tribunal and the date on which the tribunal would sit. So there is a six-week window in which a young person could be detained before the situation can be reviewed. That is the situation as it stands under the 1986 Order. We will probably have the new mental capacity legislation in about a year or a year and a half. Under that, there are protections that we would like to be available to children and young people —

The Chairperson:

Are those not available now?

Mr McNally:

Those extra protections, such as advocacy services and so on, are not available now. They do not exist at the minute. You have a period of time where a child is detained in a unit, and there is not really a robust system to help. It has been our experience that the parents of the children have no real understanding of the mental health system. They do not understand the law or the children's rights, because this may be the first experience that they have had of such a system. For a short period until they get in contact with organisations such as ours, they do not really know what their children's rights are. So there is no real immediate protection mechanism there.

Mr McCarthy:

That is the case at the moment. However, as things work on, will you follow it, chase it up and, if need be, bring in something that will completely safeguard and protect those vulnerable children?

Mr McNally:

It is up to the Department what to bring in, and, at the minute, there are proposals that may help in the case of detained children. They will not be there for children who have been admitted voluntarily. There are a number of protections under the new mental capacity legislation that the Department is proposing, and those will be available for anybody aged 16 and above. They will not be available for people under the age of 16 unless a young person is formally detained, which, unfortunately — I hate to use the expression — creates the incentive for detention when there is no assistance available to the parent in the future. So, at the minute, we are depending on what the Department puts forward when it puts the draft legislation in place. At the minute, the provision is not sufficient.

Mr McCarthy:

You want to see what the new private facility will offer. At the moment, you do not have enough information. Surely that is worrying.

Mr McNally:

I do not think that anybody has enough information at the minute. Even if the Priory Group puts forward a proposal now, there is nothing to say that, in six months' time, it cannot change its

mind about what services it intends to provide. However, if the service is a statutory function that Beechcroft provides and there is a plan to provide it, it will be there and it will grow. Money will drive whether the service continues in a private facility.

The Chairperson:

Eamonn, you are saying that the 1986 Order does not provide adequate protection at the minute with the two doctors who need to sign off on a young person who is retained. It does not seem good practice to bring in this regulation under an outdated Order. We all agree that an update to the 1986 Order is well overdue.

Mr McNally:

We also need to bear in mind that we are talking about a CAMHS facility, and the 1986 Order does not apply to children in the way that you would want it to. It applies to everybody who has a mental health difficulty. It does not say that children are a special group and that certain protections exist for them.

The Chairperson:

Are children less protected than adults at the minute?

Mr McNally:

They have the same level of protection, but I think that everybody will agree that the 1986 Order does not contain enough protections for either adults or children. However, children are in a worse situation, because they are reliant on somebody else at all times to help them through the process. As I said, in our experience, parents often do not, with the best will in the world, understand what protections are available or how to access them. That may be because they have no experience of the system. So, an extra level of protection is always of great benefit.

The Chairperson:

The Deputy Chair said that his inbox is not full of people inundating him. However, when the Department came in, it was apparent that it had not consulted anyone and that it was up to the Department to rubberstamp the SL1 without having consulted on it. I do not think that was good practice either. You said that the CAMHS budget is underfunded. We may have a situation where there is an incentive for young people to be detained because somebody is making money on the back of that. I accept that they are going to a similar facility across the water, but it seems

that there is less incentive because those facilities are in a different country.

It comes back to the point that we want a holistic approach to mental health to be taken. We want early intervention, and we want the community to work in conjunction with the consultants. We want the best outcome for the child, young person or, indeed, adult, for that matter. However, if the figures that you are giving concern the numbers who could end up in the Priory, our budget would be spent on funding the Priory and there would be much less of a community resource. We have far more demand for the facility here but not the right protections to ensure that people are not detained in the Priory unnecessarily. It has to be funded from a finite pot of money.

Ms Whelehan:

Our view is that the budget that is currently allocated to Beechcroft should be ring-fenced. The money for the service you are talking about should not come out of that budget, because we are very concerned that community services and services provided in Beechcroft would suffer as a result. Our experience is that the level of unmet need for child and adolescent mental health services is extremely high. We are worried that this will place very difficult pressures on a budget that is already extremely stretched.

Mr Durkan:

I share all the concerns that have been raised. I will take up your point, Chair, about the budget and CAMHS being under-resourced as it is. There might be a bit of work for us, as a Committee, to look at why there is such a cost differential between the provision of that care across the water and that here. Earlier figures that we received indicated that, in England, it costs £160,000 a year to get this treatment or for someone to be detained. However, here, the private figures would equate to almost 50% more than that, and the costs for the statutory units are similarly greater. Why it is costing us so much to provide this service? That would be worth looking at.

Mr McNally:

I am afraid that, because that is down to the internal workings of the trust, we cannot answer that.

Mr Durkan:

I appreciate that.

Mr Brady:

Jim raised an interesting point that, if doctors do something that is felt to be ethically wrong, they are disciplined and it impacts on what they do. Jim, you and I have been involved with the social security tribunal system for many years and know of cases where doctors found people capable. In my experience, some of those people had quite serious conditions but were examined by doctors who deemed that there was nothing wrong with them and found them capable.

The medical support service in England and here is privatised. A firm called Atos has taken over, and people are examined in the private sector. In one well-documented case in England, a person was apparently found not to have a mental health condition because he or she did not sit in the corner rocking back and forth in a chair. Those are the kind of issues that are coming through.

Jim, I have complained — I am sure you have too — about cases in which no one was ever disciplined and nothing ever came back to me. I was told that a doctor had examined the person and that that doctor was right. It brings in a wider issue. We need to be very wary of what is happening with privatisation, but I just wanted to make that point.

I am not sure what the views of the Children's Law Centre are. It is a different, broader issue. However, it could have an impact if a doctor, or whoever, decided to keep the person longer because of the financial incentive. Jim said that those people would be disciplined immediately and the sky would fall on them, but that is not my experience.

Ms P Bradley:

I understand the Chair's concerns. The figures that you have given us today show the need for some sort of centre. It would be wonderful if it was a statutory facility, but we do not have that option. It is not there; it is not on the table. We do not have the money to build a statutory facility to facilitate the children that need this help.

As for the figures, it is swings and roundabouts. The price of a length of stay in hospital is around the same in the private sector. Earlier, you mentioned some figures. I wrote down only the figure for the Northern Trust because my ears prick up as soon as I hear it mentioned. Were 14 children detained in that trust area last year?

Mr McNally:

In 2009-2010, 14 children were detained in the Northern Trust area.

Ms P Bradley:

Do we know where they were detained? Was it in one of the Northern Trust's mental health facilities?

Mr McNally:

Yes. It was in one of the mental health facilities.

Ms P Bradley:

We are failing our children by putting them into adult facilities. It is wrong. It should not happen. I know that there are many issues around the regulation of a private facility; for example, with regard to schooling. Many things need to be tightened up. Certainly, we need to thrash all those things out. However, there is no doubt about the fact that a facility is needed. None of us can deny that we need some sort of facility for our young people.

Earlier, Jim made the point about doctors. Anybody who works in the health service has a code of ethics. We are talking about a child being transferred from a hospital to a private facility. As I know from working for the Northern Trust, bed management follows doctors around everywhere wanting to know lengths of stay and when patients will be declared medically fit. There is always someone else waiting to come in and fill a bed. That is what happens. We all know that. Bed managers hound people to try to free up beds.

A multidisciplinary team works with those children in hospitals along with social workers who would follow them to a private institution and monitor them there. Therefore, at the end of the day, it is not just up to the clinician. Members are worried about a child having to stay longer than possible, but lots of other people are involved in the care of that child, not just the clinician. There is a full multidisciplinary team of allied health professionals who all work to codes of ethics. Other safeguards are in place to call into question anything that is seen to be improper in any way.

I certainly believe that there is a definite need for some sort of facility, albeit we would wish for a statutory one. We do not have that option.

Ms Whelehan:

We agree that it would be much more preferable if the provision was statutory. There are huge levels of unmet need. Therefore, again, we see real potential in the services that the facility might provide. However, I also agree that how that will look with regard to education provision and the services that will be provided is very unclear.

One issue that we have always raised consistently is that children should never be detained with adults in adult psychiatric wards. I could not agree with you more that that is a clear breach of children's rights. However, there are no assurances that children will not be placed on adult psychiatric wards if that facility exists. The Department said in its evidence to the Committee that it imagines that all statutory places would be used up first before it would look to that facility. That is the type of issue that absolutely needs to be looked at and publicly debated. We are not clear about the answers.

Other interested parties — not just us — would have much to say on the matter. It came to us relatively recently. We did not really know about it prior to that. There would be a lot of interest. People's views would be genuinely helpful to the discussion.

The Chairperson:

There is also no guarantee that it would not work the other way — the Priory would only have to apply for a change of use and adults could be treated there as well. Therefore, there is no guarantee that the facility would be for children and young people only.

Ms Whelehan:

That is exactly right. It could well end up that children are, again, detained with adults in that private facility. That is a huge concern for us.

The Chairperson:

The point is that the Priory has a business plan, and so on. It plans to come here and build a 30-bed unit. Our job is to identify whether we will put the SL1 through, which will then enable detained patients to be detained at the Priory. The basis is still there for the Priory to treat people on a voluntary basis. The fact that we are talking about taking people's liberties away from them by detaining them in a private facility is where it gets a wee bit difficult for a lot of us. If we do

not agree to the statutory rule, the Priory can still go ahead and open its unit on an at-risk basis. That is likely to kick off a public debate. As I said, the Royal College of Psychiatrists gave evidence to the Committee last week, and it had not been consulted on this either.

Jim said that his inbox is not full, but there is a reason for that. If you or someone in your family has never experienced mental health problems before, you probably think that this does not apply to you and that such problems will not happen to you. If a child in your family has mental health problems, you are probably so focused on that child and on helping them to get better that you will not be writing to MLAs or the Health Committee. So, the people from whom we need to take views are either thinking, "This does not affect me" or are so engrossed in trying to get the best treatment for their child that they are not listening to this debate.

Ms Boyle:

I am conscious of the time. I just want to make one comment. A lot of this afternoon's discussion has been very relevant to what I wanted to say earlier. The fact that 11 under-18s were detained in my trust area in 2009 is worrying. That equates to almost one person a month, which is one too many. I believe that there needs to be more provision for preventative measures in the community and that that needs to be better resourced.

I know one of those 11 people who had to be detained. The young lady, who is a constituent of mine, has spoken to me on a number of occasions. She told me that the facility she was placed in was not the one she wanted to be in and that, had the preventative measures that she requested been in place in the community at the time, she would not have ended up in that institution. So, I believe that there is an unmet need in the statutory sector. That developing trend is worrying. As Paula said earlier, we are failing our children. What exists at present is failing.

Mr Brady:

Paula made the point that it is not just clinicians but a whole support team involved. She said that the team follows the patient around, so I was just wondering whether social workers who deal with children and adults in statutory facilities would have the same access to provide that kind of support in a private facility. Would private facilities — we do not know this yet — have their own in-house teams? Would a person leaving a statutory facility be separated from the support that they had there when they move into a private facility? Would they have a completely different team dealing with them, or would there be a seamless transition? I think that that is very

important. If someone is vulnerable, they need that kind of support following through rather than having to deal with two different groups. However, we obviously do not know whether that will be the case yet.

The Chairperson:

That is a good question.

Mr McNally:

That is a perfect example of why we need a consultation. I am sure that the Northern Ireland Association of Social Workers will want input into that, because it affects social workers more than anybody else.

Mr Brady:

More importantly, it affects patients.

Mr McNally:

It affects the patient as well. The role of the social worker is being looked at again under the new legislation, and the input from the Association of Social Workers will probably answer that question. I have to admit that I am not best placed to answer it. That is another good example of why consultation is key.

The Chairperson:

OK. Thank you very much, Eamonn and Natalie. I am sure that you are wrecked after that. I think that the Committee needs to further discuss the issue and how it should proceed. It has been a very steep learning curve for all of us. A couple of weeks ago, a very innocuous SL1 landed on our table that we were expected to say yes to without a full appreciation of its likely impact. Thanks a million for your contribution.