

## Mental Health Units (Use of Force) Bill

### HL Bill 120 of 2017–19

#### Summary

The [Mental Health Units \(Use of Force\) Bill](#) is a private member's bill introduced in the House of Commons by Steve Reed (Labour MP for Croydon North) and sponsored in the House of Lords by Baroness Massey of Darwen (Labour). The Bill has Government support and completed its third reading in the House of Commons on 6 July 2018. The Bill received its first reading in the House of Lords on 9 July 2018, and is due to be considered at second reading on 7 September 2018. The Bill was introduced by Steve Reed following the death of his constituent Olaseni Lewis on 4 September 2010, who died after being restrained by police officers in a mental health unit.<sup>1</sup> The Bill would make provision for increased oversight and management of the use of force in mental health units in England and Wales, and would require police officers to wear body cameras when attending mental health units. The Bill as introduced in the House of Lords consists of 17 clauses.

#### Bill Provisions

Clause 1 defines a number of terms used in the Bill, including “mental health unit”, “patient”, and “use of force”. Clauses 2 to 5 relate to accountability for the use of force in mental health units. Clause 2 would require mental health units to appoint an employee of an appropriate level of seniority as the “responsible person” for that unit. Clause 3 would impose a duty on the responsible person to publish and keep under review a policy on the use of force on patients by staff who work in the unit. The policy must set out what steps will be taken to reduce the use of force on patients. Clause 4 would impose a duty on the responsible person to publish information for patients, and for other relevant parties in the unit, in relation to patients’ rights and how they can complain about the use of force. Clause 5 would impose a duty on the responsible person to provide training for staff on the appropriate use of force.

Clauses 6 to 9 relate to requirements for reporting incidents of the use of force and investigation of deaths. Clause 6 would impose duties on the responsible person in relation to record keeping of incidents of the use of force. Clauses 7 and 8 would require the Secretary of State to publish an annual report, including statistics, regarding the use of force in mental health units. At present, such data is not routinely published. In addition, clause 8 would require the Secretary of State to conduct a review of any reports (made under paragraph 7 of schedule 5 of the Coroners and Justice Act 2009) of deaths resulting from the use of force, and to publish the conclusions of any such review. Clause 9 would impose duties on the responsible person to investigate, in line with relevant guidance, deaths and serious injuries of patients resulting from the use of force in mental health units.

Clauses 10 and 11 would impose duties relating to the delegation of the responsible person’s functions, and relating to the publication of guidance about the exercise of functions under the Bill. Clause 12 would impose a duty on police officers to wear and operate body cameras whenever they attend a mental health unit to assist staff who work in that unit. Clauses 13 to 16 would make provisions relating to interpretation of terms used in the Bill, financial implications, and regulations made under the Bill. Finally, clause 17 applies the extent of the Bill to England and Wales only, and makes provision for the Bill’s commencement and short title.

## Policy Background

In April 2014, the Department of Health launched the [Positive and Safe Programme](#), which aimed to reduce the use of restrictive interventions in the health and social care sector. As part of the programme, the Department of Health published the non-statutory guidance [Positive and Proactive Care: Reducing the Need for Restrictive Interventions](#). This guidance was intended to inform the Care Quality Commission's (CQC) programme of monitoring and inspection standards.<sup>2</sup> It identified a number of key actions, including the requirements that use of restraint must always represent the least restrictive option to meet the immediate need, and that staff must not use face down (also known as 'prone') restraint or any intervention that deliberately restricts the airway, breathing or circulation.<sup>3</sup>

Statutory guidance on the use of restraint is provided in the Mental Health Act 1983 [Code of Practice](#), published in 2015. The Code states that restrictive interventions should: be used for no longer than necessary to prevent harm to the patient or others; be a proportionate response to that harm; and be the least restrictive option.<sup>4</sup> Similarly to the 2014 guidance, the Code states that patients "should not be deliberately restrained in a way that impacts on their airway, breathing or circulation".<sup>5</sup> The Code states that prone restraint must not be used "unless there are cogent reasons for doing so".<sup>6</sup>

## Commons Stages

### Second Reading

The Bill had its second reading in the House of Commons on 3 November 2017. Introducing the Bill, Steve Reed described the events leading up to the death of his constituent Olaseni (also known as Seni) Lewis, who had been a patient at the Bethlem Royal Hospital in Croydon in 2010. Steve Reed stated that following an incident in which Mr Lewis had attempted to leave the hospital's mental health unit, he was restrained face down by police officers, suffered a heart attack and died four days later.<sup>7</sup> Consequently, Mr Reed described the Bill as "Seni's Law".<sup>8</sup> Mr Reed claimed Seni Lewis's case was not an isolated incident, stating that prone restraint "was used over 9,000 times in the last year alone",<sup>9</sup> and that "46 mental health patients [have] died following restraint between 2000 and 2014".<sup>10</sup> Mr Reed also highlighted the issue of the disproportionate use of restraint on patients with certain characteristics:

There are fears about unconscious bias in the mental health services [...] If we look at the faces of the people who have died after severe restraint in a mental health hospital, we see many more young black faces than in the population as a whole. We need to understand the extent to which assumptions based on stereotypes are causing that, but to do so we need standardised data recording.<sup>11</sup>

There was broad cross-party support at second reading for the intentions of the Bill. Some issues were raised for further discussion in committee, such as the use of body cameras by the police, and whether the Bill should be amended to introduce a blanket ban on prone restraint. On the subject of prone restraint, the Government spokesperson, the Parliamentary Under Secretary of State for the Department of Health, Jackie Doyle-Price, stated:

Members have expressed views on the use of restraint, particularly prone restraint, with some of them suggesting that that type of restraint should be banned altogether. I was at Broadmoor yesterday, and I was told about a man who had experienced a head injury and needed stitches. Because of the challenges of his behaviour and mental health condition, prone restraint was used. I am not condoning the use of prone restraint in that situation or in any other, but I will say some words of caution. We need to understand restraint and define it clearly before introducing an outright ban. The guidance says that prone restraint should be used only as a last resort, and we

must be careful not to put staff at risk by introducing a blanket ban without understanding more about the circumstances in which that type of restraint might be necessary.<sup>12</sup>

Justin Madders, Shadow Minister for Health, indicated the Opposition's support for the Bill:

I thank my hon Friend the Member for Croydon North (Mr Reed) for introducing the Bill; he certainly made a powerful case for it. Everything we have heard has made it clear why the Bill is necessary [...] Restraint is used too often and disproportionately in certain sections of society. This cannot be allowed to continue. When she responds, I hope the Minister will support the Bill and allow it to be sent to Committee.<sup>13</sup>

Jackie Doyle-Price indicated the Government's support for the general principles of the Bill:

The death of the hon Gentleman's constituent, Seni Lewis, was a tragedy [...] I look forward to taking this Bill further—hopefully completing its journey—so that we can bring Seni's law to the statute book [...] For too long, restrictive interventions have been accepted as the norm in health and mental health care settings, and we want to change that culture. That is why the Government support the principles set out in the Bill.<sup>14</sup>

### **Committee Stage**

The Bill was considered over two sittings of a House of Commons public bill committee on 28 March 2018 and 25 April 2018. Seventy-eight amendments were made at committee, the majority proposed by Steve Reed following consultation with the Government. Consequently, there was little significant disagreement in committee, and no divisions were held. The main points of debate focused on the issues of ensuring the independence of investigations into deaths caused by the use of force, and access to legal aid for the families of those who had died in such circumstances.

Clause 12 (now clause 9), which would make provision for the investigation of deaths resulting from the use of force, was the most contested clause at committee stage. As introduced, the clause placed a duty on the Secretary of State to appoint an independent person to investigate the death and to produce a report within three months. Mr Reed tabled amendment 1, which clarified that the appointed investigator must be independent of the National Health Service or of private mental health service providers.<sup>15</sup> The Government moved to replace clause 12 with new clause 6, which stated that the "responsible person" must investigate deaths with regard to guidance produced by the CQC or by the NHS. This would have the effect of placing NHS England's [Serious Incident Framework](#) on a statutory footing.<sup>16</sup> Under the framework, the most serious level of investigations—level three—must be undertaken by an independent investigator. However, level one and two investigations are internal investigations.<sup>17</sup> Steve Reed argued that the ambiguity concerning the commission of an investigation at the appropriate level had been a factor in delaying justice to the family of Seni Lewis:

My concern is that under the framework as it is drawn up, it is still possible for the NHS to avoid such an investigation because it regards it, perhaps wrongly, as an unnecessary burden [...] I respectfully invite the Minister, therefore, to comment on who takes the decision to commission a level three investigation under the new framework and whether it is possible for the NHS to avoid commissioning the right level of investigation so that the appropriate lessons are not learned and the system not held to account [...] That is key, because it is the loophole through which the Lewis family fell following the death of their son.<sup>18</sup>

The Government argued that an explicit requirement that investigations be undertaken independently of the NHS could negatively impact the quality of investigations, through the loss of relevant skills and

experience of those who work or had worked in the NHS.<sup>19</sup> Following further debate, which focused on Government assurances over the content and oversight of the relevant guidance, Mr Reed withdrew amendment 1.<sup>20</sup> However, he stated that he was “reserving the right to reintroduce amendments into the Bill at a later stage if necessary”.<sup>21</sup> Clause 12 was subsequently disagreed to, and new clause 6 was ordered to stand part of the Bill.<sup>22</sup>

Debated alongside clause 12 was new clause 1, moved by Steve Reed, on the subject of legal aid for the families of those who had died in mental health units as a result of the use of force. Steve Reed made reference to Dame Elish Angiolini’s 2017 report, *Deaths and Serious Injuries in Police Custody*, which had recommended that the families of those who died in police custody should be eligible for legal aid.<sup>23</sup> He claimed that the Government had accepted that there was a need to consider the recommendation as part of the “Lord Chancellor’s ongoing review of the provision of legal aid”.<sup>24</sup> Mr Reed argued that new clause 1 sought to remove a potential loophole in which the investigation of deaths in police custody would potentially be eligible for legal aid, but deaths in mental health units would not.<sup>25</sup> The Government argued that the Bill was not the place to resolve issues regarding legal aid.<sup>26</sup> However, it committed to “consider deaths in mental health detention on the same basis as those in other methods of detention” as part of the review, which would be published “later this year” as part of the Government’s response to Dame Elish Angiolini’s report.<sup>27</sup> Given that assurance, Mr Reed agreed to withdraw new clause 1 on the basis that, as with his amendment to clause 12, he reserved the right to reintroduce the amendments at a later stage. Mr Reed did seek to reintroduce both amendments at report stage.

Clause 2 was amended to change references to “responsible manager” to “responsible person”, and to allow a health organisation to designate one employee as the responsible person for multiple sites.<sup>28</sup> Clause 5, in relation to staff training in the appropriate use of force, was amended to broaden the definition of which staff in the unit should receive training, and to clarify the list of training topics which must be provided.<sup>29</sup> As introduced clause 6 (now clause 11) would have given powers to the CQC to publish guidance on the use of force. This clause was amended to place duties on the Secretary of State to publish such guidance.<sup>30</sup> Clause 7, as introduced, (now clause 6) placed duties in relation to record keeping of incidents of the use of force. This clause was amended to alter the list of the patient’s “characteristics” which must be recorded, and to specify that incidents of “negligible” use of force did not need to be recorded. Following a debate on the importance of tightly regulating the definition of “negligible”, it was agreed this would be specified in future guidance.<sup>31</sup>

Clause 13 (now clause 12) as introduced would have required police officers attending mental health units to wear and operate a body-worn camera as soon as reasonably practicable after receiving the request to attend, and until they leave the unit. The clause was amended to remove specific references to when the camera should be turned on and off, and to make the wearing of a camera a requirement only “when reasonably practical”.<sup>32</sup> These amendments were in response to concerns raised at second reading about the timeliness with which police officers could attend a mental health unit if no body-worn cameras were available.<sup>33</sup> Amendments also clarified that not wearing a camera would not automatically make police officers liable for criminal or civil proceedings.<sup>34</sup>

## **Report Stage**

Report stage took place in the House of Commons on 15 June 2018. Steve Reed reintroduced his amendments from committee stage on independent investigations of deaths and on legal aid as new clauses 1 and 2, respectively. The Government opposed the amendments, citing similar reasons as had been given at committee.<sup>35</sup> Following further debate, Steve Reed indicated his satisfaction with the commitments given by the Government, and he withdrew new clauses 1 and 2.<sup>36</sup>

In addition, Philip Davies (Conservative MP for Shipley) moved amendments that sought to add to the list of topics for which staff would be required to receive training. Amendment 11 sought to add “the roles, responsibilities and procedure in the event of police involvement”, and amendment 12 sought to add “awareness of acute behavioural disturbance”.<sup>37</sup> Regarding amendment 11, Mr Davies argued that given the alleged treatment of Seni Lewis by police who had been called to the mental health unit, “it would be extraordinary if the Bill did not include training on the thing that is central to it”.<sup>38</sup> With regard to amendment 12, on acute behavioural disturbance, Mr Davies claimed this medical condition could have been a factor in Seni Lewis’s case and therefore it was important that staff received training in identifying its symptoms.<sup>39</sup> Both amendments were supported by Steve Reed, but were opposed by the Government. Jackie Doyle-Price stated that the Government were confident the issues raised by Mr Davies’ amendments would be addressed in future guidance which would be subject to consultation.<sup>40</sup> Mr Davies moved both amendments to divisions, which were lost by 47 votes to 8, and 49 votes to 3, respectively.<sup>41</sup>

Finally, a number of government amendments, which Jackie Doyle-Price described as “largely technical” drafting changes (such as linking the Bill to the Data Protection Act 2018), were agreed to.<sup>42</sup>

### **Third Reading**

Third reading was commenced on 15 June 2018,<sup>43</sup> and completed on 6 July 2018.<sup>44</sup> At third reading, Steve Reed claimed that the Bill “in its current state will, if passed, give the United Kingdom some of the best legislation in the world to protect mental health patients from abusive or excessive restraint”.<sup>45</sup> Jackie Doyle-Price paid tribute to Steve Reed for his “incredible leadership in getting us to this point”.<sup>46</sup> She also stated that “when, as I hope, the Bill gets on the statute book, he can really be proud of a very significant achievement”.<sup>47</sup> Jackie Doyle-Price made reference to the importance of updating the guidance relating to the use of force:

Mental health settings are places where people should feel safe, and it is clear that the existing guidance is not having the impact that the Government expected, and that we must do more. This Bill will be a very important tool to achieve that.<sup>48</sup>

During third reading debate on 6 July 2018, Sir Christopher Chope (Conservative MP for Christchurch), pressed the Government on its timetable for publishing the revised guidance:

The advisory code is key to the Bill, and when we discussed it last time she said that she would bring draft guidance forward. I hope she will be able to tell me today whether that will be done before the Bill reaches the other place, so that there can be a proper discussion of the contents of the draft guidance at the same time as the substance of the Bill is discussed.<sup>49</sup>

Jackie Doyle-Price responded by stating:

The guidance will be published and consulted on. Clearly, it would be inappropriate to propose guidance until Parliament has passed this legislation, but we fully undertake to consult all those with an interest. We expect that debate to take place so we can implement the Bill, if passed, within a year of its passage.<sup>50</sup>

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- <sup>1</sup> [Explanatory Notes](#), p 2.
- <sup>2</sup> Department of Health, [Positive and Proactive Care: Reducing the Need for Restrictive Interventions](#), April 2014, p 11.
- <sup>3</sup> *ibid*, p 10.
- <sup>4</sup> Department of Health, [Mental Health Act 1983: Code of Practice](#), 2015, p 290.
- <sup>5</sup> *ibid*, p 295.
- <sup>6</sup> *ibid*.
- <sup>7</sup> [HC Hansard, 3 November 2017, col 1089](#).
- <sup>8</sup> *ibid*, col 1092.
- <sup>9</sup> *ibid*, col 1089.
- <sup>10</sup> *ibid*.
- <sup>11</sup> *ibid*, col 1090.
- <sup>12</sup> *ibid*, col 1135.
- <sup>13</sup> *ibid*, cols 1107–9.
- <sup>14</sup> *ibid*, cols 1133–4.
- <sup>15</sup> [Public Bill Committee, Mental Health Units \(Use of Force\) Bill, 25 April 2018, session 2017–19, 3rd sitting, col 40](#).
- <sup>16</sup> *ibid*, col 45.
- <sup>17</sup> NHS England, [Serious Incident Framework: Supporting Learning to Prevent Recurrence](#), March 2015, p 41.
- <sup>18</sup> [Public Bill Committee, Mental Health Units \(Use of Force\) Bill, 25 April 2018, session 2017–19, 3rd sitting, col 42](#).
- <sup>19</sup> *ibid*, col 45.
- <sup>20</sup> *ibid*, col 47.
- <sup>21</sup> *ibid*.
- <sup>22</sup> *ibid*.
- <sup>23</sup> *ibid*, col 43.
- <sup>24</sup> *ibid*.
- <sup>25</sup> *ibid*.
- <sup>26</sup> *ibid*, col 45.
- <sup>27</sup> *ibid*, col 46.
- <sup>28</sup> [Public Bill Committee, Mental Health Units \(Use of Force\) Bill, 2 March 2018, session 2017–19, 1st sitting, cols 7–8](#).
- <sup>29</sup> *ibid*, col 15.
- <sup>30</sup> *ibid*, col 19.
- <sup>31</sup> [Public Bill Committee, Mental Health Units \(Use of Force\) Bill, 25 April 2018, session 2017–19, 3rd sitting, cols 31–8](#).
- <sup>32</sup> *ibid*, col 47.
- <sup>33</sup> [HC Hansard, 3 November 2017, cols 115–18](#).
- <sup>34</sup> [Public Bill Committee, Mental Health Units \(Use of Force\) Bill, 25 April 2018, session 2017–19, 3rd sitting, col 48](#).
- <sup>35</sup> [HC Hansard, 15 June 2018, cols 1249–53](#).
- <sup>36</sup> *ibid*, col 1263.
- <sup>37</sup> *ibid*, cols 1218–20.
- <sup>38</sup> *ibid*, col 1218.
- <sup>39</sup> *ibid*, col 1220.
- <sup>40</sup> *ibid*, col 1217.
- <sup>41</sup> *ibid*, cols 1264–5.
- <sup>42</sup> *ibid*, col 1253.
- <sup>43</sup> *ibid*, col 1266.
- <sup>44</sup> [HC Hansard, 6 July 2018, col 596](#).
- <sup>45</sup> [HC Hansard, 15 June 2018, col 1266](#).
- <sup>46</sup> *ibid*, col 1267.
- <sup>47</sup> *ibid*.
- <sup>48</sup> *ibid*.
- <sup>49</sup> [HC Hansard, 6 July 2018, col 596](#).
- <sup>50</sup> *ibid*, cols 596–7.

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