Written evidence from Article 39 and Blooming Change
Joint Committee on Human Rights call for evidence – Mental Health Bill, January 2025

1. Article 39 is a small, independent charity which fights for the rights of children and young people in institutional settings such as mental health units, prisons and children's homes. We promote and protect children's rights in England through: awareness-raising of the rights, views and experiences of children; legal education; practice development; and policy advocacy, research and strategic litigation. Our name comes from Article 39 of the United Nations Convention on the Rights of the Child (UNCRC), which entitles children who have suffered abuse or other rights violations to recover in environments which nurture their health, self-respect and dignity.

2. Blooming Change is a group set up by Article 39 in 2021. **Members of Blooming Change are children and young people who have experienced being detained in mental health inpatient units in England as children.** We work together to make mental health inpatient units, and the laws and rules they follow, much better for all children and young people. We want them to be safe, respectful, and humane settings. Since the formation of Blooming Change:

    - Member's accounts of restraint and seclusion have been included in the Mental Health Units (Use of Force) Act 2018 statutory guidance
    - Members designed and now deliver a specialist training course to independent mental health advocates (IMHAs) across England
    - Article 39's Director has given oral evidence to the Joint Committee on the Draft Mental Health Bill and Blooming Change's concerns were subsequently reflected in the committee's recommendations
    - Members took part in an Article 39 project commissioned by government to undertake focus group discussions with young people around reforming the Mental Health Act (MHA) 1983
    - Members have met with the Mental Health Bill Team to discuss their priorities and concerns around the Mental Health Bill

3. As with all our work towards the Mental Health Bill, this evidence submission has been written collaboratively between Article 39 and young people from Blooming Change.[1] We believe that children and young people with experience of mental health detention must be involved in every step towards reforming the Mental Health Act.

Ending the placement of children on adult wards

4. Article 37(c) of the UNCRC, providing protection from inhuman and degrading treatment, requires that states separate children and adults who are deprived of their liberty, unless such placement would be in the child's best interests. Moreover, the current MHA 1983: Code of Practice states that it is government policy that under 16s should not be admitted to an adult ward.[2] Although, the legal definition of a child is

[1] Contributions from Blooming Change members, both written and spoken, are highlighted through blue text and boxes.
[2] Department of Health and Social Care, *Mental Health Act 1983: Code of Practice*, 2015, p. 190.

under 18 and protection from being placed on adult wards should apply for all children up to age 18.

5. In 2016, the government pledged that "inappropriate use of beds in paediatric and adult wards [would] be eliminated" by 2020/21.[3] This has not happened. According to most recent data from the CQC, 196 children were admitted to adult mental health units in 2022/23.[4]

6. We are deeply disappointed that the Mental Health Bill contains no protections for children being placed on adult mental health wards. After hearing evidence from Article 39 (which included Blooming Change accounts), even the Joint Committee on the Draft Mental Health Bill wrote in its final report that the government must take this opportunity to "strengthen the protections in the Mental Health Act against children and young people being placed in inappropriate settings, such as adult wards".[5]

7. As pointed out by one Blooming Change member, ending the placement of children aged under 18 in adult wards would uphold and protect Article 1 of the UNCRC, which defines a child as any person under the age of 18 and emphasises the need to safeguard their rights:

   Psychiatric units designed for adults are not equipped to address the specific developmental, emotional, and psychological needs of children. By ensuring that children are treated in child-appropriate settings, their rights to age-appropriate care are protected. The unique vulnerabilities of children require environments that are sensitive to their needs and where treatment is designed with a focus on their developmental stage. Adult psychiatric units, in contrast, don't provide such an environment, risking harm to the child's physical and psychological well-being.

8. Blooming Change members are also concerned that placing children on adult wards threatens Article 19 of the UNCRC, which protects children from all forms of violence, injury, or abuse:

   Children placed on adult units often witness intensified violence and levels of distress which are uncommon on CAMHS wards…When I was on an adult ward I witnessed:

   - *A man break a student nurse's nose*
   - *A man who had been bought from the forensic unit to the seclusion room on my unit screaming that he would kill and rape everyone when he got out*
   - *2 male staff members pin a young female patient to a wall by her neck and wrists*
   - *An elderly lady who was confused and started attacking staff*
   - *Numerous people being injected*
   - *A police raid involving police in riot gear and dog handlers due to patients on another ward flying drugs in using drones*

[3] NHS, *Implementing the Five Year Forward View for Mental Health*, 2016, p. 7.
[4] CQC, *Monitoring the Mental Health Act in 2022/23*, March 2024, p. 41.
[5] Joint Committee on the Draft Mental Health Bill, *Draft Mental Health Bill 2022*, January 2023, p. 75.

- *A staff member on response stating how he couldn't wait to restrain a female patient while he thought I was asleep*
- *People running around with no clothes on*
- *People smearing bodily fluids on walls*

Furthermore, staff are often not trained in child restraint, meaning children are particularly vulnerable to being restrained inappropriately, harmfully and violently. I was continually restrained and often left with bruising and injuries. I felt staff overused force on me and were almost excited to use force. I was shouted at in restraints. I was told to "stop resisting", "to comply" and to "work with us", as if staff thought they were police officers. There was never a quiet day - there were constant alarms, screaming, shouting, banging, and swearing.

9. We know that children receive no therapeutic benefit from being on adult wards with no access to therapy or psychiatrists because, as one Blooming Change member shared, *"you're under 18 so they say they don't have the appropriate training to work with you."* Furthermore, another Blooming Change member highlighted that placing children in adult wards undermines Article 28 by *'unfairly restricting a child's right to an education'* which can lead to *'significant educational setbacks'*:

   I spent almost 2 months on an adult psychiatric unit before being transferred to a CAMHS unit. During that time, I did not receive any education at all. It would have been nice to have been able to do something and keep my brain active. There was a library in the hospital with computers that patients could use, however hospital managers said I could not go there due to my age. Although I was out of education that didn't mean I didn't want to learn, and it would have been nice to have been provided with an opportunity to do so.

RECOMMENDATION: New Clause to be added to the Mental Health Bill to ensure that children are no longer placed on adult wards, unless this is demonstrably in their best interests and the child agrees to this.

<u>Opt-out advocacy for all patients</u>

10. We warmly welcome the Mental Health Bill's introduction of opt-out advocacy, which will ensure that children are proactively offered help during periods of often profound distress, fear and isolation. However, this opt-out system will only apply to children who are compulsory patients (those detained under the MHA 1983). For young people who are informal patients, the Mental Health Bill requires hospital managers (or another responsible person) to give them information about their right to an independent mental health advocate (IMHA) and the help that is available.

11. Blooming Change members strongly questioned this planned new duty on hospital managers:

    "I haven't had very good experiences of hospital managers being present on the ward…I was very proactive in complaining directly to them and trying to get them to investigate

but essentially, they would say, 'well we're not really involved with the day-to-day ward so we can't really do anything'. They were very hands-off."[6]

12. We are deeply disappointed that the new opt-out advocacy provision creates a two-tier system whereby compulsory patients have greater access to an IMHA than informal patients, even though their experiences of mental health care are just as challenging. In fact, for the majority of Blooming Change members, their experience of being an informal patient was worse as they didn't know crucial information about their rights as an informal patient[7]:

    "When I became an informal [patient], no-one explained my rights to me for the first 3/4 months. I didn't know I was allowed to leave the inpatient unit at all. I stayed there or 3/4 months thinking I was locked in…As an informal patient you're sort of left to be by yourself as if you're not as sick as the formal patients...You don't know what you're doing, and it feels like no-one cares about you. You just stay there for longer. Whether you're an informal or a formal patient, you need to know exactly what your rights are."

    "I really think that every child should be on the opt-out system because if you're informal, you're still just as unwell as other patients and you still need someone to fight your corner just as much. It's what advocates do and if you're so unwell that you're not reading or taking in the information pack then you're gonna miss out on the chance to have someone on your side, and that just seems really wrong."

13. Article 12 of the UNCRC grants all children the right to be heard and taken seriously in all matters affecting them. It applies to decision-making processes affecting individual children as well as children collectively. There is a specific requirement in Article 12(2) for children to be heard in all formal (judicial and administrative) proceedings affecting them, either directly or through a representative. The Committee on the Rights of the Child's General Comment on Article 12 makes it clear that these proceedings include, for example, "decisions about children's education, health, environment, living conditions, or protection" and that "the right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment…as well as to those initiated by others which affect the child".[8]

14. Access to advocacy is a key part of ensuring that all children are heard and their rights are respected. The statutory right to advocacy exists for many of the most vulnerable children and young people who are at heightened risk of not being heard or suffering rights violations. Advocates not only help address problems but also work with other professionals and practitioners and service providers to promote a culture where children's wishes, feelings and rights are understood, heard, respected and upheld in practice.

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[6] Article 39, *In what world is this hospital care? Young people's views on fixing the Mental Health Act 1983*, December 2023, p. 18.
[7] Article 39, *In what world is this hospital care? Young people's views on fixing the Mental Health Act 1983*, December 2023, p. 18.
[8] Committee on the Rights of the Child, *General Comment No. 12 (2009) The right of the child to be heard*, CRC/C/GC/12 1 July 2009

15. Interestingly, Blooming Change members pointed out that in not making advocacy easily accessible to all patients, there is a risk of undermining Article 32 of the UNCRC which ensures children are protected from performing harmful or exploitative work. In the context of psychiatric care, Blooming Change is concerned that informal patients who do not receive opt-out advocacy may end up having to carry out the role of an advocate themselves, during an already extremely difficult and distressing time:

    Children are often not informed of their legal rights and unable to assert them due to being in situations that deprive them of their voice, making independent advocacy essential. If a child had to act as their own advocate, further harm could be caused to them by forcing them to undertake work that is often demanding, upsetting and frustrating, even for those who are trained to undertake such a role. Furthermore, it is an unreasonable burden to expect a child to recognise, prevent and/or challenge harmful treatment or defend themselves against coercive practices.

First person account:

I left school at 14, and last attended full time education at 13. I first entered this system at 13 years old and am now 21. During this time, I have continually acted as my own advocate which has required me to write numerous complaints, put myself in situations which have made me uncomfortable and arguably compromised my safety and dignity and educate myself on the law, policies and guidance. For someone who never sat any GCSEs, having to write objective and lengthy complaints, in a way that will be listened to while using the law to amplify my points is a skill that has taken years to master…

I have sat through numerous meetings with upwards of 8 professionals where I have had to dispute things being said about me, my life and my situation. Doing so has resulted in me being labelled as a troublemaker, "allegation risk", rude, aggressive, amongst other labels. My identity has been torn apart before me and I have been penalised for trying to stop this from happening. I have had professionals roll their eyes at me, tell me I don't know what I'm talking about and call me demanding and unreasonable…

I have written more complaints than I can count on both hands, often about the same thing but to separate organisations due to the disjointedness of individual systems. I have written desperate letters to professionals asking for help or explaining why something is wrong. I have learnt how to incorporate the law into my writing. However, my voice, both in writing and verbally, has never seemed to be enough.

RECOMMENDATION: Schedule 3 of the Mental Health Bill to be amended to extend opt-out advocacy to all child patients ('qualifying compulsory patients' and 'qualifying informal patients').

<u>Promoting a therapeutic environment in mental health units</u>

16. Article 39 of the UNCRC entitles children who have suffered abuse or other rights violations to recover in environments which nurture their health, self-respect and dignity. We are concerned that the Mental Health Bill fails to include provisions which recognises the experiences of children and offers them a therapeutic environment

within mental health units and a true opportunity for recovery and rehabilitation.

17. Children and young people's mental health is affected by various factors including abuse and trauma, family life and relationships, educational experiences, housing, poverty and experiences of discrimination such as racism or homophobia. However, the link between childhood trauma and mental health problems is rarely recognised or understood within mental health units. This is reflected both within the care and treatment offered and also through the way children and young people are treated as human beings. One Blooming Change member recalled the lack of care and understanding shown to her as a child in a mental health unit:

    "Staff acted like my incidents were bad behaviour and that I should know better and made me do things like clean up my own blood after a bad distressing incident. They made me feel so awful."[9]

18. Another factor inhibiting therapeutic environments is the lack of access to therapy. The Mental Health Bill contains no explicit provision around access to therapy or support from psychologists in mental health units. As one Blooming Change member stated, *"without therapy, mental health units become prisons"*.

19. Blooming Change members have been child patients in mental health inpatient units with no access to therapy. We believe strongly that this defeats the intended purpose of inpatient units to improve patient's mental health:

    "In the wards I've been on they just drugged us and restrained us. We should have had actual therapy to process what's going on in our minds and work out the best plan for hospital and when you're discharged. Since this wasn't the case for us, we left with even more trauma and no help in place so then we would end up back in hospital and the cycle would repeat. So much pain could have been prevented had the wards had better things in place."

    "Admissions shouldn't just be for detention, and a place to just be kept, they should be a place for rehabilitation and recovery."

20. Furthermore, Blooming Change members are concerned about the added difficulties for children in mental health inpatient units who have physical impairments, which threaten Article 23 of the UNCRC, granting children with disabilities the right to accessible health care that suits their needs. One Blooming Change member shared how the inaccessibility of mental health units had a huge impact on their treatment and access to therapy:

    "I am physically disabled and for me the room to speak to the psychologist was upstairs in the unit and there was no way for me to access that space. I kept being told she would come down to see me somewhere else during my stay, but it didn't happen. So, for me, my physical impairments meant I didn't get equal access to the support."

[9] Article 39, *In what world is this hospital care? Young people's views on fixing the Mental Health Act 1983*, December 2023, p. 11.

21. In the absence of psychological therapy, we are also concerned that medical treatment is being used as a form of coercive control, which prolongs hospital stays and increases the likelihood of readmission, as outlined in the account below.

First person account:

Any incidents were punished largely by restraint, NG [nasogastric] feeding, and sedation and staff would constantly threaten patients with this… This meant that young people on Section were essentially incarcerated yet still not able to voice views or share how they felt or generally engage in their treatment. This would lead to overuse of medical interventions, or threat of this, leading to young people living in fear and not having a way to raise concerns. Many of these things had a long-lasting impact on me.

Had this coercion not occurred and medicalisation not been used as punishment, I would have been able to access treatment and recover as per the aim of being detained under the Act (at least to a point I was able to be discharged safely), instead of the treatment compounding my illness and in many ways contributing to me being stuck in the cycle.

RECOMMENDATION: Amendment to be made to the Mental Health Bill which defines appropriate medical treatment as one which would minimise patient's distress and promote psychological wellbeing and recovery from any childhood trauma.

Article 39 and Blooming Change
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