

Briefing on the Draft Mental Health Bill

- There are **2,025** autistic people and people with a learning disability in mental health hospitals in England.
- **92%** of people with a learning disability and/or autistic people in mental health hospitals are detained under the Mental Health Act 1983.
- The average length of stay is nearly **five years** with people often sent miles away from their families. We hear alarming reports of **overmedication, unnecessary restraint, and solitary confinement**.
- Mental Health Act reform is a key part of addressing the inappropriate detention of people with a learning disability and autistic people in mental health hospitals.
- Autism and learning disability are not mental health disorders, and should not be treated as such in law. We welcomed the 2022 draft Mental Health Bill, which includes a provision to remove autism and learning disability from the definition of mental health disorder.
- The Bill now needs to be strengthened further and legislative reform must come hand in hand with investment in community support.

Our organisations work with and support people with a learning disability and autistic people and their families. We have long called for changes to the Mental Health Act and investment in community support to help end the inappropriate detention of autistic people and people with a learning disability in mental health hospitals.

Inappropriate detentions are fundamentally a human rights issue. Autistic people and people with a learning disability are at increased risk of abuse and neglect in these settings, and we hear alarming reports of overmedication, unnecessary restraint, and solitary confinement.

In its 2022 Building the Right Support Action Plan, the former government committed to reducing the number of people with a learning disability and/or autistic people in mental health hospitals to below half of 2015 levels. This target was not met. Progress for people with a learning disability has been slow, whilst the number of autistic people without a learning disability has in fact increased by 116%.

It is clear that legislative reform is needed to end this human rights scandal. This **must** be accompanied by significant investment in the right community support for autistic people and people with a learning disability.

It is now the responsibility of the new Government to ensure the Mental Health Bill is urgently brought before Parliament where it can be debated and strengthened.

Our Asks on the Mental Health Bill

We support that the draft Bill which will remove learning disability and autism from the definition of mental disorder under Section 3 (detention for treatment).

We recognise concerns about the unintended consequences this change could have due to a lack of community support options and alternatives. **That is why legislative change and investment in community support must happen together. They are mutually dependent and need to be simultaneous.**

As well as investment in community support, the Bill must be strengthened before it is passed into law, to:

- **Guard against alternative routes to detention**
We must ensure that alternative routes to detention cannot be used to inappropriately detain autistic people and people with a learning disability in mental health hospitals. This includes addressing: inappropriate use of the Mental Capacity Act, the application of unnecessary mental health diagnoses, and detentions under Part 3 (criminal justice).
- **Strengthen duties to provide community support**
We must ensure proposed new duties on local authorities and ICB commissioners to ensure an adequate supply of community services are strong enough- at the moment the proposed duties in the draft bill do not go far enough.
- **Strengthen statutory Care, Education, and Treatment Reviews**
We must make sure statutory Care, Education and Treatment Reviews (C(E)TRs) are high quality (including that C(E)TR panels have the right skills), recommendations from C(ETRs) are followed, and C(E)TRs happen frequently enough. At the moment the proposals in the draft Bill do not go far enough.
- **Strengthen Mental Health Tribunals**
At the moment, in the draft Bill, the power of Mental Health Tribunals to direct the provision of services in the community and facilitate discharge is too weak. We must ensure this power is strong enough. The proposals in the draft Bill also do not address the lack of learning disability and autism expertise on tribunals.
- **Improve independent advocacy**
We must ensure there are enough advocates with specialist knowledge of learning disability and autism - – this requires a national approach led by DHSC or NHSE to the commissioning and oversight of specialist independent advocacy service(s).
- **Make statutory Care and Treatment Plans accessible**
We must ensure autistic people and people with a learning disability are supported to engage with Care and Treatment Plans in an informed way. Lack of support to do this can be a barrier to discharge.
- **Develop independent pathways for families to raise concerns about care or being excluded**
We must ensure concerns from families are listened to acted upon, including where legal obligations are not being met and guidance is not being followed.
- **Clarify the relationship between reform of the Mental Health Act and an amended Mental Capacity Act**
With amendments being undertaken on different timetables, we must ensure any implications for autistic people and people with a learning disability are fully considered.

Building the Right Support

The 2022 Building the Right Support Action Plan outlined how the government intended to reduce the number of detentions for autistic people and people with a learning disability with a list of time-based actions and those responsible for them. Underpinning this was the NHS Long Term Plan target of a 50% reduction in numbers of inpatients with a learning disability and/or autistic inpatients from 2015 levels by March 2024.

Many of these actions have since lapsed, and the target has been missed, with an overall reduction of around 30%. Progress across Integrated Care Systems (ICSs) has been varied with some areas having met targets to reduce in-patient numbers, and others making no progress or going backwards.

To end the inappropriate detention of autistic people and people with a learning disability, alongside bringing the Bill forward, the Government must review and update the Building the Right Support Action Plan, including milestones, funding, and monitoring to ensure the right community support is developed.

The Challenging Behaviour Foundation has led the development of a co-produced plan with people with lived experience, the voluntary sector and those working in the field. This could be used to inform the Plan going forward.