Written evidence submitted by The National Autistic Society, Mencap, The Challenging Behaviour Foundation, and VoiceAbility (MHB16)

Mental Health Bill

Summary

The National Autistic Society, Mencap, The Challenging Behaviour Foundation, and VoiceAbility have worked jointly on this submission.

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

Autism and learning disability are not mental health conditions. Yet, the Mental Health Act allows detentions solely on the basis of learning disability or autism. These detentions can be deeply damaging, and are often due to a lack of the right community support.

Despite repeated promises, successive programmes to build the right support and end inappropriate detentions have not made adequate progress and all national targets for inpatient reductions have been missed. Hospital detention continues to be used as a backstop and this is only because the Mental Health Act allows it to.

We welcome the Mental Health Bill and recognise its potential to significantly alter how autistic people and people with a learning disability are treated under the mental health system. However, we believe the Bill must be strengthened so that it provides the greatest protection for autistic people and people with a learning disability and is implemented in full at the earliest opportunity.

We recommend that:

1. **The Bill includes a new clause obligating the Government to publish a comprehensive plan for developing sufficient community support for autistic people and people with a learning disability to ensure Clause 3 can be commenced at the earliest opportunity**
2. **Amendments are made to close alternative routes to detention via the Mental Capacity Act, the criminal justice system, or through misdiagnosis/inappropriate mental health diagnoses**
3. **Clause 4 duties relating to Care (Education) and Treatment Reviews are strengthened, including provisions around housing, intervals between C(E)TRs, and reports/recommendations**
4. **Clause 4 duties relating to risk registers are strengthened, including joint working between ICBs and local authorities to provide community support**
5. **Amendments are made to address issues with the Mental Health Tribunal, including stronger powers for Mental Health Tribunals to direct the provision of services in the community and escalation measures where someone has delayed discharge**

6. **Amendments are made to ensure treatment is always appropriate and therapeutically beneficial, including consideration of the hospital environment and the treatment of Part 3 (forensic) patients**

Background: why change is needed

Under the Mental Health Act 1983 (MHA), autistic people and people with a learning disability can be detained in mental health hospitals indefinitely solely on the basis of being autistic or have a learning disability (without a co-occurring mental health condition). This is wrong – **autism and learning disability are not mental health conditions and they should not be treated as such in law.**

There are currently 2,025 autistic people and/or people with a learning disability detained in mental health hospitals in England.[1] There is wide recognition that mental health hospitals are often inappropriate for autistic people and people with a learning disability. Once detained, they can get stuck for many years in these settings, which can be deeply damaging and lead to lifelong trauma. The average length of stay for current inpatients is 4.6 years, with the key reasons for delayed discharge being a lack of suitable housing and social care.[2]

We also continue to hear worrying stories of overmedication, unnecessary restraint, seclusion, and abuse in these settings. Within March 2025, there were 7,855 reported uses of restrictive interventions against autistic people and/or people with a learning disability in mental health hospitals, such as physical, chemical, and mechanical restraint and isolation.[3]

This is a human rights scandal – in 2019, the Joint Committee on Human Rights (JCHR) concluded that the human rights of many autistic people and people with a learning disability are being breached in mental health hospitals.[4]

Progress in reducing inpatient numbers has been slow. The Building the Right Support (BtRS) policy programme to get autistic people and people with a learning disability out of hospital has not resulted in the change promised, and **all national targets to reduce inpatient numbers have been missed**.

Most recently this includes missing the 2019 NHS Long Term Plan target to reduce the number of autistic people and/or people with a learning disability in mental health

[1] NHS Digital Assuring Transformation Data, April 2025, published May 2025. Available at: https://digital.nhs.uk/data-and-information/publications/statistical/learning-disability-services-statistics/at-april-2025-mhsds-march-2025.
[2] Ibid.
[3] NHS Digital MHSDS Data, March 2025, published May 2025. Available at: https://digital.nhs.uk/data-and-information/publications/statistical/learning-disability-services-statistics/at-april-2025-mhsds-march-2025.
[4] Joint Committee on Human Rights (2019). *The Detention of Young People with Learning Disabilities and/or Autism*. Available at: https://committees.parliament.uk/work/3253/detention-of-children-and-young-people-with-learning-disabilities-andor-autism-inquiry/publications/.

hospitals to 50% of 2015 levels by March 2024. The overall reduction has been approximately only 30%.[5]

The outcome of the policy programme has been particularly poor for autistic people without a learning disability, with the number of detentions for these people having increased by 141% since 2015.[6]

One year on from the NHS Long Term Plan target being missed, data shows only 29% of Integrated Care Systems (ICSs) have met the March 2024 target they were set of an adult inpatient rate at the ICS-level of no more than 30 adult inpatients with a learning disability and/or who are autistic per million adults in the population.[7]

It is clear that the MHA is acting as a backstop that is enabling inappropriate detention. **Legislative change is needed without delay.**

Key recommendations

1. A comprehensive plan for developing sufficient community support to enable Clause 3 to be commenced in a timely way

Clause 3 of the Bill removes autism and learning disability from the definition of mental disorder under section 3 (detention for treatment) of the MHA. This will mean it is longer possible to detain an autistic person or a person with a learning disability for treatment under section 3 unless they have a co-existing psychiatric disorder.

We firmly support the removal of autism and learning disability from the definition of mental disorder for the purposes of section 3 of the Mental Health Act.

Clause 3 of the Bill is integral to ending the human rights scandal of inappropriate detentions. It is therefore imperative these changes are commenced at the earliest opportunity. However, the Government has said that "the proposed changes to the detention criteria for people with a learning disability and autistic people will only be switched on when systems are able to demonstrate sufficient level of community support to safely move inpatients from hospital back into their community".[8]

We agree that getting the right community support in place is crucial to the success of these provisions. However, as the Joint Committee on Human Rights (JCHR) has said: "it remains far from clear if and when the Government will consider that there are adequate community services to allow for the key change to Part 2 of the MHA to be implemented."[9]

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[5] NHS Digital Assuring Transformation Data, April 2025, published May 2025.
[6] Ibid.
[7] Ibid.
[8] UK Parliament (2024), *Mental Health Bill: Impact Assessment,* pg. 72. Available at: https://bills.parliament.uk/bills/3884/publications.
[9] Joint Committee on Human Rights (2025), *Legislative Scrutiny: Mental Health Bill*, pg. 20. Available at: https://committees.parliament.uk/work/8783/mental-health-bill/publications/.

We are deeply concerned that commencement of this change may face significant or indefinite delay without a comprehensive plan for how this support will be developed and what constitutes 'sufficient' support.

This concern is not unfounded. Successive targets and policy programmes have not resulted in adequate progress made towards reducing inappropriate detentions. The 2022 BtRS Action Plan is now out of date, and there is no active plan being worked towards.

The Government has committed to publishing a yearly written statement on implementation of the Bill, which will include implementation of the parts relevant to learning disability and autism. However, this does not go far enough in terms of the planning needed for autism and learning disability services, and accountability necessary to ensure Clause 3 is commenced in a timely fashion.[10]

The Government must publish a comprehensive plan for how it intends to ensure Clause 3 can be commenced. We would like to see this clause commenced by 2027 in line with modelling in the impact assessment for the Bill.[11]

Any plan must include targets, milestones, and relevant actions being taken to commence Clause 3 and ensure 'sufficient support' in the community, with yearly statements to monitor progress. Any plan must also be co-produced with autistic people and people with a learning disability, their families and carers, relevant professionals, and advocacy groups.

The plan should consider the level of services as outlined in the Building the Right Support Service Model, including:

- Suitable housing and skilled social care providers;
- Access to crisis team support 24/7, including hands-on practical support;
- Provision of alternative accommodation (e.g., crash pads) if the person needs time out in a crisis situation;
- Trained support workers supporting in the family home;
- Suitable and flexible respite;
- Access to occupational therapy to undertake sensory assessments;
- Better access to psychological therapeutic approaches.

2. Preventing alternative routes to detention

Steps must be taken to guard against alternative routes to detention being used once Clause 3 is commenced, including:

- Inappropriate use of the Mental Capacity Act (Deprivation of Liberty Safeguards (DoLS)) to detain people;
- Use of the forensic pathway to inappropriately detain people under Part 3 of the Mental Health Act;

[10] House of Lords Hansard, *Volume 845: debated on Monday 31 March 2025*, Column 39. Available at: https://hansard.parliament.uk/lords/2025-03-31/debates/29715D88-D423-43E0-B541-333EE31F5A96/MentalHealthBill(HL).
[11] UK Parliament, *Mental Health Bill: Impact Assessment,* pg. 17.

- Misdiagnosis or inappropriate diagnoses to justify detention under Part 2.

These potential consequences would be the result of poor implementation, and can be mitigated by proper planning for community support. However, we have also identified areas in the Bill that could be further strengthened.

A. Use of Mental Capacity Act (DoLS) being used instead to detain people

We are concerned that DoLS will be used to detain people with learning disabilities and autistic people in mental health inpatient units when they are no longer liable to be detained under the MHA – which would be contrary to Bill's intention.

We welcome the Government's commitment to monitor any displacement from the MHA into DoLS, and that appropriate action will be taken if this found to be the case.[12] However, we do not think the loophole has been sufficiently addressed.

The Government must introduce an amendment specifying that, in the case that someone with a learning disability/autistic person is assessed and deemed not liable to be detained under section 3 of the MHA, the Mental Capacity Act could not then be used to detain them in a mental health hospital, without removing them from the scope of the Mental Capacity Act in other contexts.

B. Use of the Forensic Pathway to detain people under Part 3 of the MHA instead

Under the Bill, autistic people and people with a learning disability will still be able to be detained under Part 3 of the MHA (a forensic section) where they do not have a co-occurring mental health condition. This is due to concerns that, in some cases where an autistic person or a person with a learning disability is in the criminal justice system, detention in prison would be less appropriate than detention in hospital.

Proper planning for community support can help reduce the risk of detention by ensuring there are appropriate community services to divert this cohort into at the earliest opportunity.

To support this diversion into the right community support, we recommend that statutory risk registers introduced in new section 125D under Clause 4 are extended beyond Part 2 patients to include those who are at risk of detention under Part 3.

We would also like to see a cross-departmental plan aimed at reducing the number of autistic people and people with a learning disability detained under Part 3.

C. Misdiagnosis or inappropriate diagnoses being given

We are concerned the intention of Clause 3 could be undermined by misdiagnosis or attempts to justify detention through a co-existing psychiatric disorder that would not necessarily meet the criteria for detention alone.

Clause 5 contains several provisions related to grounds for detention. We recommend including a provision in Clause 5 stating that, if a patient is autistic or has a learning disability, the registered medical practitioners conducting MHA assessments must provide a written statement declaring they are satisfied that

[12] House of Lords Hansard, *Volume 845: debated on Monday 31 March 2025*, Column 38.

detention for treatment is necessary for the purposes of treating the psychiatric disorder alone.

Too often, we hear that those conducting MHA assessments are not adequately trained to differentiate between behaviours attributed to a mental health condition and those related to learning disability and autism. This can lead to misdiagnosis or misunderstanding of the degree of a co-existing psychiatric disorder.

We recommend provisions in Clause 5 ensure that, if the patient concerned is autistic or has a learning disability (or where autism and learning disability are suspected), one of the medical practitioners providing a recommendation for admission for treatment has relevant expertise in autism and learning disability.

3. Strengthening Care (Education) and Treatment Reviews (CETRs)

New sections 125A and 125B under Clause 4 contain provisions to establish statutory Care (Education) and Treatment Reviews (C(E)TRs) to help ensure children, young people, and adults who are autistic or have a learning disability are discharged in a timely way and are getting the right care and treatment. C(E)TRs are current NHS England policy, and we support them being placed on a statutory footing.

It is important that learning from the current effectiveness of CETRs is applied to legislation. Currently there are three key issues with C(E)TRs that the Bill needs to address:

- C(E)TRs are of varying quality
- recommendations are not always followed
- they are too infrequent

We would like to see the Bill strengthened in the following ways in relation to CETRs:

Housing

The Bill includes provisions as to the purpose of C(E)TRs, including identifying the needs of the patient in relation to social care, special educational needs, and medical treatment. However, the biggest reported reason for delayed discharge is housing, which is responsible for 48% of all delays for those recorded as being clinically fit to be discharged.[13] It is essential housing needs are identified as early as possible, as it can take time to secure funding for housing and make necessary adaptations.

We therefore recommend that identifying the needs of the patient in relation to housing is included in the Bill as a primary purpose of C(E)TRs.

Intervals between C(E)TRs

The Bill requires C(E)TRs to take place at least once every 12 months. Autistic people and people with a learning disability often experience lengthy stays, and in many

[13] NHS Digital Assuring Transformation Data, April 2025, published May 2025.

cases an interval of 12 months may be too long and mean significant delays in discharge planning.

Current NHS England guidance states that CTRs for adults in non-secure settings should take place at least every 6 months, and that CETRs for children and young people should take place at least every 3 months.[14] We recommend that the time intervals in the Bill are amended to better reflect this guidance.

C(E)TR recommendations

C(E)TR reports are crucial to outlining which actions are being taken forward, and by which organisation and professionals involved in the person's care. We are concerned that these recommendations are too often not carried out.

The Bill currently states that the responsible clinician, commissioner, ICB, and local authority must have 'regard' to the recommendations set out in C(E)TR reports. This wording can be strengthened to provide a stronger duty to carry out these actions. We recommend there is a requirement that those responsible have 'due regard' to the recommendations included in reports.

This language would be in line with that used in the Public Sector Equality Duty under the Equality Act 2010 and has proven strength in case law.[15]

Recipients of reports

It is important that the individual remains at the heart of all decisions, and for there to be accountability in ensuring actions are being carried out.

Whilst the Government has amended the Bill to clarify that the report can be circulated to persons other than those responsible for carrying out the recommendations, we do not believe this goes far enough.

We recommend that provisions are put in place to ensure the patient, the patient's nominated person (if applicable), and the patient's Independent Mental Health Advocate (if applicable) receive a copy of the C(E)TR report.

Community C(E)TRs

We are concerned that the Bill only makes provision for statutory C(E)TRs for people who are detained under the MHA. Current NHS England policy states that C(E)TRs should also take place in the community to prevent admissions where possible. We would therefore recommend provisions are put in place to extend statutory C(E)TRs to the community.

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[14] NHS England (2023), *Dynamic Support Register and Care (Education) and Treatment Review Policy and Guidance*. Available at: https://www.england.nhs.uk/publication/dynamic-support-register-and-care-education-and-treatment-review-policy-and-guide/.

[15] See for instance R (Domb) v Hammersmith and Fulham (2009).

4. Strengthening risk registers and duties around community support

New Section 125D under Clause 4 of the Bill introduces statutory risk registers, which will help to ensure that autistic people and people with a learning disability who are at risk of detention are identified and receive the necessary support in the community. Under current NHS England policy, risk registers are known as Dynamic Support Registers (DSRs).

It is important to ensure that identification of need happens at the earliest opportunity, however, far too often this is not the case. Currently, only 18% of those who are detained in a mental health hospital are recorded as being on a DSR prior to admission.[16] We believe the Bill needs to be strengthened to increase their effectiveness.

Joint-working to identify risk

Ensuring collaboration between ICBs and local authorities is essential. We want to see greater joint working to provide the right support to people with a learning disability and autistic people at the right time. In particular, we would like to see a duty on local authorities to have an active role in identifying and facilitating enrolment of people onto the register, and to work with the ICB to provide support and prevent admission under the MHA.

Duty to meet needs without detaining

The Bill introduces new duties on ICBs and local authorities in relation to commissioning services and market shaping for those enrolled onto a risk register. This includes provisions stating that ICBs and local authorities must 'have regard' to the risk register and 'seek to ensure' the needs of autistic people and people with a learning disability can be met without detaining them under Part 2 of the MHA.

As has been outlined elsewhere in this submission, ensuring community support for autistic people and people with a learning disability is absolutely crucial to the success of the Bill. We recommend that the wording in this new section is revised so that it places a stronger duty on ICBs and local authorities to meet the needs of autistic people and people with a learning disability in the community.

Commissioning duties for local authorities

The duty in the Bill in relation to local authorities is limited to their market shaping function. Poor local authority commissioning and inadequate packages of social care/housing are a key reason why people's needs may escalate resulting in detention under the MHA, at which point the NHS assumes responsibility for funding (thus, disincentivising local authorities from commissioning the right support initially). A duty around local authority commissioning is essential to incentivise action.

Section 117 aftercare replacement

Many people only get the support they need in the community through the provision of section 117 aftercare funding. Autistic people and people with a

[16] NHS Digital Assuring Transformation Data, April 2025, published May 2025.

learning disability without a co-existing mental health condition will no longer be eligible for this funding as they will no longer be able to be detained under section 3.

We would like to see a duty similar to the section 117 duty of the MHA to meet the needs of those who are on the risk register. This could help ensure adequate packages of care and suitable housing to prevent admission to inpatient units and to prevent re-admission for people coming out after section 2 who don't qualify for section 117 aftercare.

5. Addressing issues with the Mental Health Tribunal

Alongside the strengthened duties on public bodies for community support, the Government should strengthen the powers of Mental Health Tribunals to direct the provision of services in the community as recommended by Sir Simon Wessely's Independent Review.[17] The new power in the Bill for the Tribunal to recommend service provision in the community is too weak.

The Tribunal, like the Court of Protection through its power to call for reports under section 49 of the Mental Capacity Act, should have the ability to be a more active case manager and apply pressure on public bodies to work collaboratively to facilitate discharge. These powers should apply equally to 'restricted' patients under Part 3 of the Mental Health Act where they are on a pathway to discharge.

An amendment on this was debated in the Lords. The Minister wrote to Peers after the debate stating that the Tribunal already has extensive powers to require responsible authorities to provide information to support its decisions.

However, from the experiences of those we support, the Tribunal's current powers are insufficient to ensure autistic people and people with a learning disability are discharged in a timely way (as evidenced by the fact the average length of stay for current inpatients is 4.6 years).

We would also like to see specific escalation measures in the Bill for situations where nothing is moving forward for people with a learning disability and autistic patients with delayed discharge/lengthy stays e.g. involvement of a senior intervenor and/or referral to the Court of Protection where the person lacks capacity.

6. Ensuring Appropriate treatment and therapeutic benefit

In general, we would like to see increased emphasis on ensuring therapeutic benefit for autistic people and people with a learning disability throughout the Bill.

Mental health hospital wards can be overstimulating and unpredictable, and this can cause significant distress to autistic people and people with a learning disability. In some cases, whilst a particular medication may be considered clinically appropriate, the distress caused by being detained in a mental health hospital may

[17] DHSC (2018), *Modernising the Mental Health Act: Final Report from the Independent Review*. Available at: https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review,

mean that the benefit of any therapeutic intervention is undermined by the hospital environment – this must be considered when making the decision to detain someone for treatment.

We therefore recommend that the new definition of appropriate medical treatment under Clause 8 includes consideration of the environment where treatment takes place.

We would also welcome additional protections for Part 3 patients who do not have a co-existing mental health condition to ensure that they are not being inappropriately treated with antipsychotic medication – autistic people and people with a learning disability are up to 16 times more likely to be subject to antipsychotic medication in hospital settings.[18]

We therefore recommend that new section 56A on making treatment decisions under Clause 11 includes specific consideration as to the prioritisation of non-drug-based interventions, and whether non-drug-based interventions would be more appropriate in place of drugs-based therapies for autistic people and people with a learning disability detained under Part 3.

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[18] NHS England, *Stopping over medication of people with a learning disability and autistic people (STOMP) and supporting treatment and appropriate medication in paediatrics (STAMP)*. Available at: https://www.england.nhs.uk/learning-disabilities/improving-health/stomp-stamp/.