

*"Maybe when we die it is our words that carry on, those lingering sentences and half finished thoughts carried in the ears and the hearts of those to whom they were spoken."*

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Lindsay Riddoch

*Words That Carry On*  
LINDSAY'S FUND



## WTCO main recommendations for the current Review of the Mental Health Act

- Full UK government funding is essential to achieving the Mental Health Act (MHA) review objectives. Partial funding is unacceptable.
- The individual, their autonomy and their lived experience must be at the heart of the MHA reform.
- Detention is not an acceptable treatment for people in a mental health crisis. As a society we need to put this practise behind us by funding ample excellent alternatives.

### Background

As part of its review of the Mental Health Act England and Wales (MHA) the UK government published a "[White Paper](#)" in January 2021, containing its proposals for legislative changes. The White paper responds among other things to "[The Wessely Review](#)" which was called to investigate the rising number of detentions and disproportionate black and minority ethnic detentions under the act. The remit of the review required that it look at "processes that are out of step with a modern mental health care system". The White paper makes many potentially positive proposals concerning detention under the MHA including:

- Tightening conditions for detention and requiring that a condition for detention is that therapeutic support is made available to the individual within a planned care and discharge process.
- Giving legal weight to people's choices and preferences about their care and treatment and requiring that clear, monitored plans are made for their therapeutic support while in detention and stating how an individual will move out of detention
- Choosing which family member or friend is given particular rights to be involved in their care, and providing additional independent advocacy support and advocacy rights for the patient
- Providing culturally appropriate advocacy and a wider range of support from advocates to better help people from a range of different ethnic and cultural backgrounds to express their thoughts and wishes about the care they receive.
- More opportunities for tribunals to discharge people, scrutinise and make certain changes to their care.
- Requirements on Local authorities to improve the provision of services for mental health care within their area.

WTCO's major concern around the White Paper is its failure to address the out-dated process of using detention under the law, for people in a mental health crisis. Despite governments own review recognising that the current MHA is "out of step with modern health care" there is no long term plan proposed in the White Paper to move the UK away from the detention of people in a mental health crisis. Now with the NHS Long Term Plan and the NHS Mental Health Implementation Plan 2019/20-2023/24 (MHA) is the ideal time to raise ambition and to use the coming legislative opportunity to lay out how detention is to be eliminated over the longer term. This process could usefully start by including in the new legislation provisions for all necessary changes to wider legislation such as the Mental Capacity Act. As the Wessely Report observes "essential reforms of both the MHA and MCA are needed now".

The White Paper emphasised that no budget has been set aside to fund the changes proposed. This sadly impacts the credibility of the coming legislative process and raises questions about the government's commitment to act. WTCO encourages the government to use the opportunity of the current societal concern around poor mental health care provision and racial discrimination at a time where wider changes are in progress in the NHS Mental Health Service provisions to move ambitiously and fully fund MHA legislation. The Impact assessment suggests that it would require a shortening of 2 days in the average length of a detention for the cost of the proposed changes to be paid for. A modest target for success.

WTCO responses to the White Paper Consultation include:

- **The MHA must include a definition of "therapeutic benefit"**

The White Paper proposes that an individual must receive a “therapeutic benefit” from detention. However there is no definition of “therapeutic benefit” in the proposals creating doubt as to what will be acceptable as a benefit. WTCO suggest that “therapeutic benefit” is clarified to include at least that the therapy will be appropriate to provide real benefit for the individual and readily available from professional staff during the planned detention.

- **Making Therapeutic Treatment a condition of detention.**

Detention, is and should remain an extraordinary step separate from criminal detention and being a clear first step into planned, appropriate therapeutic support for the individual and leading to transfer to appropriate non-secure care. WTCO draws attention to the need for sufficient funding of the NHS Long Term Plan and the NHS Mental Health Implementation Plan 2019/20-2023/24, as regards alternative therapeutically appropriate provision to avoid the need for unnecessary detention under the act. Individuals should have: more rights to challenge detention, independent advice on detention and clear frequent reviews of their detention and detention conditions if they are detained.

- **A person detained under the act must be provided from the outset with a) therapeutic support and benefit b) a plan to both deliver these benefits and move the person back into the community. This planned process for release should also include automatic access to advocacy and tribunals.**

The Care and Treatment plan discussed in the White Paper must record both the patient preference and also their preferences born of experience. It includes the Responsible Clinician's (RC) plan for treatment as well as a timed pathway to release from detention. Responsibility to create the plan resides with the RC. It is important that other professionals involved with the patient's care, for example responsible social workers and community care providers are requested to give input and that this is recorded. The document should also include suitable monitoring and key stages process to allow a timely and sensible review and measure of progress against the dynamic plan at any point.

WTCO suggests that the plan should include

- **Autistic people and people with Learning disabilities should not be detained under the act**

There should be no detention of autistic people or people with a learning disability unless the person has a specific mental health problem which is the cause of the proposal for detention. Use of section 2 (suitably reinforced as previously outlined in white paper) should apply to both groups. Any mis-alignment with the Mental Capacity Act must be addressed in lock step with the new legislation.

WTCO again stresses (and as the white paper highlights) the need for sufficient funding of the NHS Long Term Plan and the NHS Mental Health Implementation Plan 2019/20-2023/24, to be made available in anticipation of the changes of

provision implicit for good operation of the white paper proposals. In this case so that staff with expertise in autism and learning disorder are available in all receiving clinical settings and that accommodation suitable for autistic people and those with a learning disability is made available at a time of crisis.

- **The introduction of a duty to provide adequate community services.**

WTCO welcome a new duty on local commissioners to ensure adequacy of supply of community services for autistic people and people with learning disabilities in their territory.

WTCO again stresses (and as the white paper highlights) the need for sufficient funding of the NHS Long Term Plan and the NHS Mental Health Implementation Plan 2019/20-2023/24, to be made available. In this case staff with expertise in autism and learning disorder must be available in all receiving clinical settings and accommodation suitable for autistic people and those with a learning disability must be made available in a crisis. The impact assessment highlights the economic benefit of reducing the number and shortening the length of detentions under the MHA. Modest shortening of the average detention by 2 days or a reduction in the number of individuals facing repeat detention from 15.5% to 12.7% would save enough out of the public purse to pay for what is proposed.

[Words That Carry On, April 21 2021](#)