

### **Independent Review of Learning Disability and Autism in the Mental Health BHLF-5VS1-NC6T-A h Act**

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in Scotland. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

We welcome the opportunity to respond to the independent review of learning difficulties and autism in the mental health act.

#### Recommendation

End substitute decision making based on best interests, replacing it with supported decision making based on rights, will and preferences for all people with intellectual disability (no matter how severe) or autism. This would include decision making by non-instructed advocacy workers for people unable to form or express a view.

#### Response

BMA Scotland has concerns about the implications of this recommendation for decisions on medical and surgical treatment. At present, these are covered by the Adults with Incapacity Act, with decisions taken by the treating doctor - in consultation with family, carers and the multidisciplinary team - on a best interests basis. We understand the wish to move to a decision process based on rights, will and preferences; but we recommend careful consideration of the best way to achieve this, while retaining a significant role for the treating doctor, family, carers and the multidisciplinary team.

We also have broader concerns about the impact on power of attorney processes for people with intellectual disability or autism, since these are currently based on substitute decision making.

#### Recommendation

Take intellectual disability and autism out of Scottish Mental Health Act.

#### Response

BMA Scotland does not believe that the case has been made to treat people with either or both of these conditions differently from people with other conditions covered by the Mental Health Act. In particular, people with intellectual disability and/or autism who also have another

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condition categorized as a mental disorder within Mental Health Act would still be covered by the Act.

The question of why intellectual disability and autism are to be distinguished is critical – what is it that, morally, legally and clinically distinguishes this group?

We recommend that the Scott review should be allowed to deal with all conditions covered by the Act. We note that both the Adults with Incapacity Act and the Mental Health Act are compliant with the European Convention on Human Rights, and that the principles of the Mental Health Act are based on human rights.

In section 10.4 the review comments:

*“We have not suggested that detention and compulsory treatment on the basis of disability should end at this time for autistic people and people with learning disability. With the current level of development of mental health and criminal justice services in Scotland, we think that if the law did not allow professionals to restrict liberty or to give compulsory treatment to autistic people or people with learning disability on the basis of disability, this could lead to more lives lost to suicide. We also think that more people could be brought within the criminal justice system inappropriately.”*

BMA Scotland shares these views.

#### Recommendation

Regular health checks

#### Response

BMA Scotland is supportive of improving health care for vulnerable people. However, the proposal that people with learning difficulty should have a right to regular health checks with a GP is entirely inconsistent with BMA and Scottish Government policy on the role of general practice in Scotland.

Routine health checks for any specific group of society can be wasteful of limited NHS resources. There is growing evidence that the health check scheme in England is failing to improve health outcomes for people with learning disability.

We would suggest that improvements in services for people with learning disabilities would be better addressed by encouraging the Scottish Government to speak to learning disability

services, GPs, patients and their representatives to design care pathways that improve access to high quality care.