Submitted to **1. Summary survey**

Submitted on **2019-11-05 14:49:47**

1. What Scotland needs to do

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

HOLDSS commend the view that Scotland's mental health law needs to change and the Human Rights approach is an extremely positive framework to adopt

within the review process. The review process has been thorough and wide reaching and clearly a significant degree of evidence has been reviewed. The

inclusion of an extensive range of views within the staged process has been a significant achievement to ensure the representation of key stakeholders has

occurred.

Increased clarity would be beneficial in relation to why there is a need to create separate mental health legislation for people with learning disability and/or autistic

spectrum condition.

HOLDSS fully support the view that people should not be detained or given compulsory treatment on the basis of conditions of autism and/or learning disability

alone. The position of using a Human Rights approach is setting a clear positive standard and strong ethical basis in relation achieving change. However, there

can be significant co-morbidities for people with autism and/or learning disability in relation to co-occurring mental health conditions and personality disorder.

There are some consistency issues noted in relation to the full consultation document and the easy read versions. In addition there is variance of terminology

within the full consultation document.

The easy read version contains examples that may be due to insufficient resourcing rather than a lack of an appropriate legislative framework.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Increased consistency between easy read and full document versions, with consistency in terminology across sections and documents.

Further consideration of the resourcing concerns in the examples in the easy read versions.

Clearer outline of how the review will ensure equity in line with equality act for all people with a disability/mental health conditions that may be impacted by

legislation changes.

2. How we understand autism, learning disability and mental health

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

There is an assumption in the review that people with learning disability and/or autistic spectrum conditions are only 'treated' using a medical model and the

proposed definition of disability does not incorporate the biopsychosocial model which is more appropriate for understanding complex presentations. Developing a

person-centred formulation and risk management and intervention plan is a core part of current approaches within Psychology and the wider multi-disciplinary

team. Significant effort is undertaken to ensure that psychological treatments currently provided are person centred; in line with good practice; professional and

ethical standards.

The review does not appear to sufficiently recognise any potential for co-morbidities such as personality disorder and major mental illness

"Culture in mental health and LD services can be risk averse", this statement needs more clarity and evidence as this does not recognise that current best

practice would include a comprehensive risk formulation, risk management plan and positive risk taking in the context of a duty of care for the person's health and

welfare and public safety.

Additional training for all professionals in human-rights and adherence to comprehensive ethical standards across professional groups is highly welcome.

HOLDSS do have significant concerns about the issue of legal capacity. "Recognise the legal capacity of all persons with disabilities at all times, in relation to

mental health services", decisions in this respect are complex and the review does not appear to recognise that many individuals with learning disability and/or

autistic spectrum condition (even with supported decision-making) will lack the capacity (as per the principles of the Adults With Incapacity Act) to make these

decisions. This could potentially leave individuals themselves, but also others at risk of serious harm, for example those who support are care for the person with

learning disability and/or autistic spectrum condition or the general public. Carers and the public also have human rights to safety.

The role of non-instructed advocacy professionals appears to need more clarification and clear standards set out in relation to the role. If a person with learning

disability and/or autistic spectrum condition is presumed to have legal capacity but cannot expressly indicate their will and preferences, the role of the

non-instructed advocate will be to ‘interpret’ will and preferences which potentially has significant room for error. This could result in the non-instructed advocate

making decisions on care and treatment

The acknowledgement of the role of Psychiatrists and Psychologists have in relation to diagnosis is valued; however Psychologists have a specific role in relation

to psychometric assessment in determining IQ scores.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Increased recognition of co-morbidities and complexities of capacity issues.

Professional standards for advocacy are required within a training and governance framework.

Acknowledgement of the room for error in the interpretation of will and preferences of those unable to directly express these themselves and the implications of

this in relation to decision making in relation to care and treatment.

Recognition that diagnosis is often complex and requires skilled clinical judgement and is often not ‘clear cut’ answer as to whether a person does or does not

have a learning disability or autistic spectrum condition. Specific professional assessments are required, and only Psychologists can undertake formal

assessments of IQ levels.

3. Support for decision making

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

HOLDSS believe that it is excellent to have increased focus in ensuring that steps to support decision making are undertaken at all times.

HOLDSS understand that the persons recorded will and preferences should always be respected. These should not be disregarded because a professional thinks

that the person does not have ‘mental capacity’ to make their own decisions. There appears to be lack of acknowledgement of the health inequalities that exist

within the learning disability and/or autistic spectrum condition populations and the level of support needs required to ensure that health needs are adequately

addressed. Capacity to make a decision is an important issue to consider in all areas of health, including mental health.

The proposed role of Independent Advocacy is “to give a best interpretation of the person’s will and preferences” – would someone in an advocacy role have the

necessary skills and training to provide this as this is often highly difficult to determine for skilled, experienced and highly trained professionals. “To support

decision-making in crises, services may be needed at all times” is to be a commended recommendation, but this may not always be feasible in practice.

HOLDSS believe that the “Move from a ‘best interests’ approach….professionals need to make decisions that are based on each person’s rights, will and

preferences and that are proportionate in relation to all of the person’s rights” – this is similar to the principles underpinning the current Adults With Incapacity Act,

which outlines a least restrictive position that takes into account persons wishes.

HOLDSS believe that the roles and responsibilities outlined under non-instructed advocacy appears above and beyond the role of an advocate and is more in line

with professionals who have undergone several years of training and experience to make these judgements/decisions.

Support the need for accessible information regarding treatment/interventions to enable informed-consent is welcomed.

“Separate authorisation for each form of treatment (including psychological interventions) may be unwieldy in practice. For example, Positive Behavioural Support

is a multi- element and multidisciplinary approach, underpinned by a set of person-centred values (human rights are embedded within the model). This includes

psychological treatment for the person, adaptations to the environment and guidelines for carers at: primary prevention; secondary prevention and reactive

strategy levels. The Mental Welfare Commission has produced guidance on ‘rights, risks and limits to freedom’ which are used currently to support and develop

an appropriate plan.

The review does not recognise the collaborative/systemic nature of all psychological interventions, they are not ‘done’ to the person. Human rights legislation is

already embedded into professional practice guidelines and standards of practice for Psychologists. Psychologists require registration with the Health and Care

Professions Council, who regulate the practice of registrants in line with set professional and ethical standards.

Consent to treatment is routinely sought as part of good practice standards, written consent that is obtained using visual supports is part of routine practice in

Psychological Therapies services for the majority of Learning Disability Psychological Therapies services. Where the person is unable to consent, this is sought in

line with Adults with Incapacity Legislation from a Welfare Guardian or designated medical practioner via a Section 47 certificate. It should also be highlighted that

other professionals from a non-psychologist background also deliver Psychological Therapies, often without the same robust governance structures as within

defined Psychological Therapies Services.

HOLDSS welcome review and monitoring of prescribing of medication for management of ‘challenging behaviour’ as highlighted by NHS England’s national

project STOMP – ‘stop over medicating people with learning disability, autism or both with psychotropic medicines’. However, HOLDSS believe in the important

focus on reducing over prescription of psychotropic medication but also are clear that medication can play an important role in the positive management of

arousal levels.

“Safe places and secure support centres, places that people can choose to go in a crisis, without being made to have treatment”, further evidence is required that

this is more beneficial over hospital services. This model would require significant investment in infrastructure and availability of staff to ensure person’s human

rights are met in the community (Coming Home report).

As highlighted by HOLDSS in the previous review stages, there are significant capacity issues impacting on Learning Disability services across Scotland. There is

significant variance in access to Psychological Therapies for people with learning disability and/or autistic spectrum conditions; this currently represents

challenges in equity of access to appropriate and timely treatment. The proposed duty on public authorities to provide professional services is welcomed, but

without workforce development to increase capacity of services to deliver on this agenda further inequity may result. This will increase demand on services

currently beyond capacity.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Professional standards for advocacy are required within a training and governance framework.

Further evidence and detail is required in relation to the development.

Clearer outline in relation to the Adults with Incapacity Act legislation and how the legislation may interface.

Clearer definitions of what constitutes Psychological treatment and clearer indications that Psychological treatment can be provided by a wider professional group

than Psychologists. .

Clear outline that workforce development is required for services for learning disability and/or autistic spectrum condition, including increased equity of access to

Psychological Therapies Services.

Recognition that arousal levels can fluctuate and multiple concurrent interventions from multiple disciplines may be required at times of stress/distress.

4. Support, care and treatment

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

It is highly welcomed that people with learning disability and/or autistic spectrum condition are given rights in law to access the support, care and treatment that

they need. It is highly welcomed that duties are placed on public authorities to make these rights real. However, it is essential that adequate workforce

development and infrastructure development take place to enable this to be delivered.

There needs to be equity for all, and if there is a recommendation for a National Autism service there should also be a Learning Disability National Service.

Diagnostic services are already in place in many areas of learning disability and/or autistic spectrum condition services. However, HOLDSS appreciate that there

is variance in access. Establishing a right to diagnosis given current resourcing issues may divert services to assessment to a non-clinical population rather than

being able direct resources to those in direct need of services for care and treatment. Neuro-developmental conditions may be wider than those meeting

diagnostic criteria for learning disability and/or autistic spectrum conditions, this may mean that there are further gaps in legislation and services for those who

have similar needs to these populations but will not receive a diagnosis of learning disability and/or autistic spectrum condition.

Least restrictive options and the focus on reduction in the use of seclusion and restraint are highly welcomed, this is a key focus of the Positive Behaviour Support

Model and this is recommended model adopted within Psychological Therapy Services. Further resourcing of Positive Behaviour support would be required to

ensure that there is an evidenced based model to direct practice.

The right to (physical) health, this seems to contradict section on ‘legal capacity’ for mental health services, as person with learning disability and/or autistic

spectrum conditions may not under Adults With Incapacity act have the capacity to make a decision about complex health issue whether this is in relation to

mental or physical health

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Equity of recommendations across the learning disability and/or autistic spectrum condition populations. There should be equal access and rights for all people

with a disability.

Recognition of the workforce development and infrastructure development required.

Support, care and treatment should be tailored to a needs assessment, rather than giving a right to diagnosis for anyone who may have some aspects of the

condition/s but who are not clinically impacted in relation to functioning.

Recognition of the core role of Positive Behaviour support as an evidence based model to provide alternatives to restrictive practice. Positive behaviour support is

a core Psychological Approach.

Clearer outline in relation to the Adults with Incapacity Act legislation and how the legislation may interface

5. Where support, care and treatment happens

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

It is conceptually excellent to avoid admission to hospital and have a focus on community based living. Voluntary care over compulsory detention is an extremely

positive aim. However, the impact of mental illness or other compounding conditions must be given consideration given the increased prevalence of mental

ill-health in the learning disability and/or autistic spectrum condition populations.

The focus on Independent living is highly welcomed by HOLDSS; however there are already high numbers of people learning disability and/or autistic spectrum

condition waiting for discharge from hospital. Delayed discharges are the result of complex challenges around infrastructure, community skill base and

resourcing/development of accommodation and service provision. Crisis management plans are highly welcomed but resourcing and staffing of plans may

present challenges in relation to achieving positive outcomes in practice.

Elaboration and clarification of the corresponding legislative framework is required in relation to admission to secure support centres. Discharge planning will also

be required to be further detailed in order to avoid replication of current situation of delayed hospital discharges.

Secure support centres for people with learning disability and/or autistic spectrum condition with or without mental illness/personality disorder also require

significant further detail in relation to both the model and the evidence base. Current inpatient provisions are led by highly trained health professionals with robust

clinical governance arrangements in order to provide least restrictive interventions. Governance and scrutiny procedures must be clearly outlined to ensure that

appropriate evidence based approaches are being undertaken in relation to support, care and treatment in the least restrictive manner.

Suicide is highlighted as requiring specialist assessment, further clarity on why is area of risk alone is a focus. Risk assessment of suicide is accepted, but later

this is deemed unacceptable in relation to section on offending.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Significant development of the secure support centres in relation to legislation, admission and discharge planning, models of care and corresponding evidence

base is required.

Wider consideration of key risks to health and wellbeing of person or others and how risk assessment and management are undertaken by those professionals

with the most appropriate training, skill set, experience and governance arrangements.

Recognition of the workforce development and infrastructure development required.

Increased recognition of co-morbidities and complexities of capacity issues in relation to where support, care and treatment happens.

6. How professionals make decisions

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

HOLDSS are in agreement that it is extremely important that Human Rights are to be included in professional's decision making. It is helpful that consideration is

to be given to situations where a person cannot consent to treatment and the use of a human rights approach to this.

HOLDSS are in agreement with the position that Psychology has a positive contribution to make in relation to professional decision making within a legislative

framework with new roles for Psychologists. Increased clarity on the duties and responsibilities of the new roles would be welcomed. Increased clarity would also

be beneficial in relation to the process of decision making for the care manager on when the may seek the expert opinion of a psychologist.

The inclusion of Psychological treatments in the tribunal system is also welcomed, as increased scrutiny and focus on psychological treatment is valued.

However, this should also mean inclusion of psychologist's in tribunal panel membership in order to be able to effectively evaluate psychological treatment plans.

This would again have implications for Psychological Therapy services with challenges to meet additional demands on psychological staffing resources.

The use of an 'Approved/Responsible Clinician' role has resulted in positive outcomes in England and Wales. While this is not a role adopted by the current

review, HOLDSS consider that there is evidence that this role has been effective in reducing admission times and enabling community based care to be

successfully achieved. The training associated with this role is focussed on legal issues, mental health and human rights. There is a rigorous application process

and robust governance arrangements in place subsequent to initial training. The role of the approved clinician appears to go beyond the role outlined for a care

manager in the current review; however the approved/responsible clinician role has provided clinical leadership; responsibility for ensuring the development and

adherence to a care plan. This leadership role of the approved/responsible clinician is clearly contributory to successful outcomes achieved.

As stated previously, HOLDSS would put forward that consideration of consent to treatment is routinely incorporated into current practice in Psychological

Therapies services, collaborative approaches are central to all Psychological models. The 'Behaviour modification' example references an outdated form of

psychological approach, and HOLDSS would disagree with any premise that therapy is 'done to' someone without due consideration of their will and preference.

The historical background of institutionalisation means that Psychologists are acutely aware of the need to incorporate choice and values based approaches into

care and treatment. Punitive approaches are directly challenged by Psychologists when encountered in clinical practice regardless of setting and the focus

redirected to approaches using positive reinforcement techniques and skills teaching.

Increased clarity is required in relation to the evidence base for a social work and social care model being best placed to lead on change; it is disappointing to see

that the role of health care models of achieving change is not represented.

As stated previously, there are concerns about the focus on independent advocacy leading decision making, as multi-disciplinary teams do currently adopt

structured evidence based approaches to clinical decision making. Interface with the mental welfare commission will occur when advice is required on treatment

approaches by multi-disciplinary teams.

Increased clarity is required on what happens when will and preference place the person at risk or others at risk of harm. HOLDSS have significant concerns

about the view that Psychologists and Psychiatrists should not undertake risk assessment. HOLDSS clearly accept that professional decision making should be

subject to scrutiny and that assessment and treatment should be undertaken on an objective basis, however risk assessment and management are a core part of

Psychologists current role. Ethical standards are clear and Psychologist's may well be making decisions on risk based on progress in clinical sessions, structured

assessment and the use of standardised tools.

There are standardised tools available for people with learning disabilities namely the ARMADILLO-S and the FARAS for people with Autism. Psychologists have

significant training in formulation and the use of scientist practioner skills to guide assessment and treatment in a range of clinical settings. Optimally, the

professional making decisions on detention should not be the treating clinician, but in practice this may be difficult to achieve given the workforce challenges.

HOLDSS have concerns over the use of the term ‘unsound mind’ and consideration of revision of this terminology would be beneficial. Destabilisation of mental

health and wellbeing is complex and often caused by stress or distress, this terminology promotes an internal focus when behaviour dysregulation is the product

of both internal and environmental factors.

HOLDSS believe in the important focus on reducing over prescription of psychotropic medication but also are clear that medication can play an important role in

the positive management of arousal levels.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Reconsideration of the role of Psychology and Psychiatry in risk assessment. If Psychology and Psychiatry would not be undertaking these risk assessments,

then clarification on who would undertake this and what training skills and governance would be employed to ensure public protection is adequately addressed in

risk management frameworks.

Clarification of the circumstances where expert opinion will be sought from a Psychologist. Clinical leadership from the most appropriately qualified professional is

central to achieving positive outcomes; this is clearly incorporated into the Approved/Responsible clinician role and appears to be a crucial element that should

not be overlooked when designing new roles within the current review.

Clarification of the duties and responsibilities of a Psychologist in the legislative framework in relation to the new roles.

Recognition of the workforce development and infrastructure development.is required.

The terminology of ‘unsound mind’ does represent a concern as this may be difficult to interpret and also may be seen to be a negative term by people learning

disability and/or autistic spectrum condition, when changes in presentation may be due to stress/distress or environmental factors..

7. How decisions are monitored

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

HOLDSS endorse the expansion of the role of the mental welfare commission.

Previous higher level scrutiny of inpatient services has also been undertaken by SHAS and QIS

HOLDSS agree with the monitoring of compulsory treatment.

Accessibility of information and access is supported; this would need access to speech and language therapy professionals. The concept of making the criminal

justice system and tribunals more accessible is highly welcomed.

The principles of increased accountability and transparency of clinical decision making are highly welcomed.

Robust monitoring of restraint and seclusion are supported, these interventions should not currently be used (unless in an emergency to prevent serious harm to

self and others) and all other least restrictive responses had been attempted. ‘Emergency’ and ‘crisis’ can occur regularly and on a daily basis for some

individuals.

There are existing monitoring systems in place, and it is essential that this would continue to be in place for all physical interventions or restrictive practices and

incorporated into any legislative change. .

The duties placed on local authority to ensure appropriate community packages of care are extremely welcome.

Increased clarity of the role of second opinion professionals. Psychologists have a core skill set in formulation and could provide a key role in relation to the

provision of second opinions.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

The increased role of the Mental Welfare commission would be additionally supported by the increased inclusion of user and carers in evaluation of decision

making processes.

Recognition of the need for Psychology Tribunal panel members is Psychological treatments are to be evaluated effectively within the tribunal system.

Professional standards for advocacy are required within a training and governance framework.

Recognition of the workforce development and infrastructure development.is required.

Increased accessibility of the court system may be difficult to achieve as this would require significant changes to be made to existing processes.

8.Offenders

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

HOLDSS consider that review of the Criminal Justice system is welcome, and highly welcome increased equity for people with learning disability and/or autistic

spectrum conditions. This would include support for the position of increased participation in trials, but the use of intermediaries may not be sufficient to abandon

'examination of facts' in all cases.

HOLDSS suggest punishment should not be included, with rehabilitation being the primary focus. Detention should focus on treatment and support with a focus

on reducing reoffending.

HOLDSS question whether it is 'legally sound' for an uninstructed advocate to interpret the will and preferences of an individual in the context of mental health

(support, care and treatment) and not for decisions in respect of criminal proceedings?

HOLDSS have significant concerns regarding the assumptions made on decision making in criminal proceedings versus a person's health and welfare which is

also just as complex a decision. Participation in support, care and treatment may also require an understanding of acting responsibly in social contexts for people

learning disability and/or autistic spectrum conditions that may have additional needs such as challenging behaviour or personality disorder. The concept of

capacity for offenders then seems disparate in relation to previous positions in the review in relation to capacity.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Increased focus on reduction of reoffending rates through treatment rather than punishment.

Increased consistency within the review in relation to views on capacity for offenders in relation to legal contexts and views on capacity in relation to support, care

and treatment.

Equity of treatment when a sentence has been completed may continue to be dependent on the appropriate community resourcing being in place, therefore

recognition of the resourcing required to achieve equity may be beneficial.

9.Where support, care and treatment happens for offenders

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

The focus on community based sentences is welcome, this would enable an increased focus on rehabilitation to be undertaken but this does require to be in the

context of a risk management framework. The reasons for offending behaviour are multiple and complex, stress and distress, lack of understanding and skill

deficits can all be contributing factors in addition to intentional forensically driven behaviour. There needs to be increased awareness of these complexities at all

levels within the criminal justice system.

Current security levels in medium and low secure forensic settings would require to be replicated in the context of rehabilitation centres to ensure the safety of

other service users and staff.

People with a learning disability and/or autistic spectrum conditions are at increased risk in Prison settings due to vulnerability issues, adaptations would be

required to Prison settings to adequately accommodate their needs.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

Increased clarification of circumstances that would continue to require an ‘examination of facts’

Consistency in relation to views on capacity for offenders in relation to legal contexts and views on capacity in relation to support, care and treatment.

Further consideration of how to adapt Prison settings to ensure those who receive a Prison sentence could be supported effectively within the Prison context.

10. What this means for the law

1 What do you think about the ideas in this section?

I have mixed feelings about the ideas

Why do you think that?:

HOLDSS have outlined views on all sections within all sections the survey response.

2 Could these ideas be made better?

Yes

How could these ideas be made better?:

HOLDSS have outlined views on how the ideas could be made better within all sections within the survey response.

About you

1 What is your name?

Name:

Rowan Reffold

2 Are you taking part as an individual person, as a professional or as a group of people?

A Group

3 Do any of these apply to you?

None of the above

4 If you are taking part as a professional, what is your profession?

Profession:

Clinical Psychologist

5 If you are taking part as a group, what is the name of your group?

name of group:

Heads of Learning Disability Psychology Services Scotland (HOLDSS)

6 Do you live in Scotland?

Yes

7 Do you want us to publish your response?

Yes please publish my response anonymously

If you want to say anything else at all please say it here: