

People First (Scotland)

Consultation response for Stage 3 to the findings and recommendations of the Independent Review of the Mental Health Act (IRMHA)

While most of the detail in the response was compiled by the Law and Human Rights Group of People First, which has been working on these issues for the past 8 years, following the Citizens' Grand Jury in 2011, the report has been shared widely with local groups and members across Scotland and has been agreed by the Board of Directors.

Members comments have been gathered from local group meetings held to discuss the Review recommendations and appear as an Appendix to this consultation response.

Very broadly, we support most, if not all of the main **Findings** of the Review. We do not support many of the **detailed recommendations** of the Review and think they actually contradict the main findings.

In our response, we are quoting from abstracts of the Review of the Mental Health Act 2003 produced by the Review Team. Our responses to each section are in a text box coloured light blue.

The Review says:

Are people well served by the law?

An important part of this review's remit is to consider:

'The operation of the 2003 Act – are people with autism and learning disability well served?'

At the end of stage 1, we found that autistic people and people with learning disability are not well served by the Mental Health (Care and Treatment) (Scotland) Act 2003. We do not think that this law is good enough at promoting and protecting the human rights of autistic people and people with learning disability.

We say: We agree with this finding. Not only is the law not good enough at protecting human rights but it has been used in a hugely discriminatory way towards people with learning disabilities. Additionally, including our impairment as a mental disorder under the Act has a knock-on detrimental effect on our human rights through other pieces of legislation such as the Adults with Incapacity Act

which removes our legal capacity and the Criminal procedures Act which takes away our right to a fair trial.

The Review says:

Complying with the Convention on the Rights of Persons with Disabilities

We think that it will take a lot of time and effort to do this. However, as part of the United Kingdom, Scotland has already committed to comply with it. We understand that the question is not whether to comply with the Convention on the Rights of Persons with Disabilities, but how to comply with it.

We say: We agree with this finding. We believe it is possible not only to comply with the United Nations Convention on the Rights of Persons with Disability but it is an opportunity for Scotland to show its commitment to Human Rights and equalities by demonstrating to the rest of the world that it can happen speedily and without delay. We are disappointed that the Review says Scotland is not ready to comply with the Convention or make the necessary changes.

The Review says:

European Convention on Human Rights

The Scotland Act 1998 requires all Scots laws to comply with the European Convention on Human Rights ([link](#)). Also, the Human Rights Act 1998 requires all public authorities to act in ways that comply with the European Convention. This is also very important. As you will see in this document, we think that Scotland's Mental Health Act may not fully comply with the European Convention on Human Rights.

We say: We agree with this finding. For that reason, we believe the Mental Health Act is unlawful under the Scotland Act and must be amended to become compliant immediately. The Review's claim that Scotland is not ready and that the unlawful measures must remain in place for the meantime is not a sustainable argument. Continued infringement of our rights is completely unacceptable.

The Review says:

Equality and non-discrimination in how people experience their rights

Autistic people and people with learning disability must not be detained or given compulsory care or treatment because of their disability.

We say: We agree with this finding. We believe this means that there should be no detention or compulsion of disabled people solely on the grounds of being a

disabled person. For this statement to be understood in terms of the UN Convention, we think that “disabled people” must be defined as “persons with lifelong impairments, including lifelong impairment of intellect”.

The Review says:

Supported decision-making

Each person with disability is entitled to make their own decision. Supported decision making has to make sure that a person’s rights, will and preferences are respected on the same basis as other people’s rights, will and preferences.

We say: We agree with this finding. Further, we believe it must apply to all persons, regardless of degree of impairment. We think our own Framework for Supported Decision-Making outlines how this can be workable and realistic.

The Review says:

Proportionate decisions

When people’s human rights are limited, this must be done in a way that is proportionate. As for everything in the Convention on the Rights of Persons with Disabilities, limits to rights must be used equally for all people. Limits must not discriminate against people with disabilities in any way. For example, it is not proportionate to limit the rights of a person with disability on the basis that this might help the ‘greater good’ of other people in general.

We say: We agree with this statement as it is written here. However, in some of the detail in the recommendations, the Review spells out how powers to limit the rights of persons with intellectual impairments can be retained, continue and, in some cases, be extended by new or revised powers introduced by new legislation. We wholly oppose those ideas and insist that any lawful powers to restrict rights must be used in exactly the same way for persons with or without lifelong impairments. We think that means that if powers to restrict rights can be used for non-disabled citizens on the grounds of having a severe mental illness and also being a danger to oneself or to other people, then those exact same conditions must be equally applied to persons with lifelong impairments. The existence of the impairment cannot and must not be used as the grounds for interfering with a person’s human rights, no matter how stressed or distressed the person becomes by crisis events in their lives or by mistreatment by others.

The Review says:

Led by people with disabilities

Scotland has to fully involve autistic people and people with learning disability in the whole process of making Scots law comply with human rights standards. We have

tried to do that in this review. The Convention on the Rights of Persons with Disabilities also requires Scotland to fully involve autistic people and people with learning disability in developing, implementing and monitoring the laws and policies that support Scotland's commitment to this Convention.

We say: we agree with this finding. General Comment 7 of the United Nations Committee on the Rights of Persons with Disabilities says that "The Convention explicitly requires States parties to consult closely with and actively involve persons with disabilities, through DPOs/OPDs, including those representing children and women with disabilities, in the *"development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes"* concerning issues relating to them. We particularly support the notion of involving Disabled Persons' Organisations as representative bodies.

The Review says:

The 'paradigm shift' in how we understand disability

We think that a lot of change will be needed for Scotland to comply with all of its human rights duties. We think this will need to include changes in culture, practice and use of resources. New resources may be needed.

An important reason for this change is the 'paradigm shift' that the Convention on the Rights of Persons with Disabilities requires around the world. The United Nations requires us to understand disability differently, and to improve how we relate to and support people with disabilities. Dignity and equality are very important in this, across all areas of life at all times. We need to understand disability as something that happens when people with impairments meet barriers in attitudes and in their environment. We need to see all people as equal citizens who hold rights, not as people who might receive charity to meet some of their needs. We also need to recognise all people as citizens who have equal standing before the law, and support all people to make full use of their legal capacity.

We say: We agree with this finding. However, there are a number of differences in what we hope to see compared with the detailed recommendations of the Review. Firstly, we disagree with the definition of disability used by the Review team which we address under Section 2 below. Secondly, although we agree that there is a lot of change needed, we don't agree that this has to mean things stay the same and that the change has to take place over a long time. We think the law is clearly wrong at the moment and Scotland needs to fix the law as a matter of urgency.

The Review says:

1.3 The changes that we think need to happen

Here is a summary of the changes that we think need to happen in mental health law, for autistic people and for people with learning disability.

The Review says:

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

We suggest that Scotland needs to move to understanding autism and learning disability as disabilities, not as mental disorders.

In Scots law, everyone is presumed to have legal capacity. We suggest that it should not be possible to challenge the legal capacity of autistic people or people with learning disability.

We think that autism and learning disability need to be defined as disabilities, not as 'mental disorders'.

We think that Scotland could use this definition of disability from the Convention:

'Disability results from the interactions between persons with impairments, and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.'

We say: we agree with these recommendations as they appear here.

However, we do not agree with the definition of disability used in the recommendations (see below).

The Review says:

New definitions in law

We think that definitions of autism and learning disability could be made in law, based on that definition.

Using the disability model, we could say that the autistic person has 'autistic impairment' at all times (and strengths also). We could say that any person who has a diagnosis of autism has autistic impairment.

We might say that when the autistic person is experiencing stress, distress or serious limitations, the person is experiencing 'autistic disability'. The disability is in the interaction between the person's autistic impairment, and attitudinal and environmental barriers. This 'autistic disability' would be temporary.

We think that the law could take a similar approach for people with learning disability. In future, we might say that the person has intellectual impairment at all times (and strengths also). We might say that when the intellectually impaired person is experiencing stress, distress or serious limitation, the person is experiencing 'intellectual disability'. This 'intellectual disability' would be temporary.

We say: No other group of disabled people has this definition applied to them and no Disabled Persons' Organisation would use that definition. We urge the review to follow the definition used in the Social Model of disability and, incidentally, used by the United Nations Convention.

Both the Social Model and the Medical model are models of Disability – they tell us the different ways of seeing disability and thinking about it. Something called a "Disability model" doesn't make sense – what is it a model of? If it's a Disability model of Disability, it tells us nothing.

The Social Model definition says that we have, as a lifelong condition, an intellectual impairment. The failure of society to structure itself to allow reasonable access and full participation and inclusion creates the conditions which disable us. That is not restricted to our experience of stress or distress (we think the Review means mental distress or mental ill-health) although many of the barriers to our inclusion in community and society do cause us frustration, anger, stress and distress. There are also barriers to our inclusion in education and work, to exercise our legal capacity, to fulfilling lives, to relationships, to civic involvement, to equal treatment before the law, to transport and to health, in fact to us being seen as adult human beings and full citizens. Our hope for a new law is that it would address all of those barriers and put in place mechanisms which would allow us the same rights in all of those areas as other citizens.

For the Review to single out "stress and distress" as the factors which define disability is a very wrong understanding of the social model of disability. We think that what is, in fact, being proposed by the Review, is effectively a separate Mental Health Act for people with learning disability and autism. It is suggested by the Review that everyone with those lifelong impairments would come out of the existing Mental Health Act and, instead, everyone with those lifelong conditions would become subject to the "new law". This would become a separate mental health law only for people with those lifelong impairments where experiencing diagnosable mental illnesses would not be a factor and, instead, experiencing stress or distress would subject the person to detention or compulsion in a way that would never happen to a citizen who did not have those lifelong impairments or disabilities.

While it is true that disability is often caused by attitudes in the community, the review team also includes the person's own attitudes as a cause of the disability and argues that "treating the person" because of the disability is then justified.

To follow the social model of disability, any number of barriers to inclusion and citizenship creates the disability but it is the responsibility of society or community to deal with the barriers, rather than treating the disabled person for their reactions to the barriers. While we do accept the well-meaning intent of the Review team, we

think they have unconsciously adopted the medical model of disability where treatment for the person because of their disability is seen as the answer.
We reject that idea.

The Review says:

Section 3. Support for decision making

We suggest that Scotland should make change to comply in full with a key right in the Convention on the Rights of Persons with Disabilities, the right to equal recognition before the law.

To make it possible for autistic people and people with learning disability to have and use their legal capacity, Scotland would have to give strong support for decision making. We make a range of suggestions on how this support should be set up.

We say: We agree with this statement. However, we do not agree with all of the detail of the recommendations.

We think the suggestions about how support for decision-making should happen are not as well thought-out as the People First (Scotland) Framework for Supported decision-making. On decision-making, the review is not consistent throughout. On the one hand, it says that everyone is entitled to make their own decisions but a lot of the report is about how professionals should make decisions about people. The review also says that advance Statements under the Mental Health Act could be replaced by a statement of rights, will and preferences. We understand this to be a transition proposal until such time as learning disability is no longer defined as a mental disorder.

Our hope is for a new law (not a new and separate mental health law) which accords full citizenship and equal human rights for people with learning disabilities. Within that law, there could be an entitlement to support for decision-making and support to exercise legal capacity. We hope the new law would also detail the kinds of social and system change that would be needed to assure us equality in education, employment, criminal justice, family and relationships, housing, transport and so on as full citizens of Scotland.

The Review suggests that Independent Advocates could be the ones that offer support for decision-making. We are not entirely persuaded. Advocacy is hugely underfunded in Scotland at the moment and to simply make support for decision-making a responsibility of independent advocacy without significant additional funding would not result in this kind of support being available. There are also some conflicts between the current codes of practice for Independent Advocacy and the reasonable expectations of a person offering support for decision-making which would have to be resolved.

The Review says that if a professional thought that the person's will and preference for support, care or treatment would harm the person's rights overall, then the professional might be able to justify not following the person's will and preference. This justification would have to be made in terms of the person's human rights, and would have to show that the professional's decision was proportionate in that it gave benefit to the person's human rights overall. We think

this is a return to “best interests” substitute decision-making which is not compliant with the UN Convention and does not sit comfortably with Support for decision-making.

We are suspicious about the idea of a Human Rights assessment for people with learning disabilities. It is clear from the recommendations that such an assessment could be used to restrict or limit the person’s human rights. We do not accept that such powers should be exercised over persons with a disability when they could not be exercised over other citizens. We think this is in direct conflict with the UN Convention and, arguably, with the European Convention on Human Rights.

We are also suspicious about the proposal that additional powers should be held by the Mental Welfare Commission and the Mental Health Tribunal over the lives of persons with lifelong intellectual impairments since it is clear that those powers would not be only active during periods of mental illness or treatment for mental illness. Again, equal treatment under the law with non-disabled citizens is our hope.

The Review says that Scotland has to ensure that autistic people and people with learning disability have the support that they need to make their own decisions about their mental health, and to influence decisions that affect their mental health.

We don’t understand why the review says people should have support to make decisions specifically about mental health. We think this should be a right about all decisions and not just mental health decisions.

The Review says the person would only be given a psychological intervention where this would clearly lead to significant benefit to the person, and there was no other possible way for the person to receive this benefit.

While we are not impressed with the role of psychiatry in detentions and restriction and compulsory medication of persons with intellectual impairment, we have no such impression of psychology as a discipline. We believe that other citizens can freely access psychology as a means of learning, understanding and changing behaviour patterns and we do not see why people with intellectual impairments should have their access to psychological services restricted under the guise of protection.

The Review says:

Section 4. Support, care and treatment

We suggest that autistic people and people with learning disability should be given rights in law to have access to the support, care and treatment that they need.

We say: We agree with this statement. However, the Review recommends **A separate law for positive rights** and, while we very much support that idea, we have a number of concerns and disagreements with some of the detail. Our hope is for a Law which accords us the status of full human beings and full citizenship

as recognised legal entities before the law and which will specify what needs to happen to achieve that.

Until now, the law has defined us (under the Mental Health Act) as “mentally disordered” purely on the basis of our “learning disability however caused or manifested”. That meant we could be “treated” as mentally disordered persons rather than as citizens. Removing us from that definition would, arguably, take away that idea but we know that long-standing prejudice based on many years of different treatment is difficult to simply wipe away. The fact that the well-meaning principles of the Mental Health Act and the Adults with Incapacity Act were not applied to us in practice and were ignored by courts and professionals is evidence of that.

We believe outlining the steps which authorities should and must follow to let us have equal rights and equal access would be necessary at least until such times as we are nearer to achieving them.

The Review focuses almost exclusively on what a new law would do in respect of proportional decisions about restricting our human rights and we think this is entirely the wrong focus.

We believe that if persons with lifelong intellectual impairment experience severe or chronic mental illness, then we should have the same access to the same mental health services, the same treatment options with the same protections under the Mental Health Act as any other citizen who experiences mental illness. A new law is not required to offer us those things. What we don't want or need is mental health services for our intellectual impairment. We need other things such as support, time, accessible communication, more awareness amongst service providers and support to make our own decisions. The Equalities Act already entitles us to some of those things and other laws allow us to receive care and support services. A new law could give us those things which are not yet recognised or understood such as legal entity status and citizenship rights.

The Review argues that “there should be duties on public authorities to give access to specialist health and social care services and environments for people with learning disability.

We do not agree. For many years now, Scottish Government policy has been to do away with segregated institutions and to maximise the access we have to mainstream services including mainstream schools, GPs and health services, mainstream hospitals, work and employment and to move away from segregated day care and residential services. We support that policy direction and we oppose the idea that we are so different from other citizens that we cannot access the same goods and services and rights that they do. We do not need or want specialist services for our learning disability and we do not want to be segregated away from other citizens into specialist environments.

Some of us do, of course, need some reasonable adjustments and some additional supports to properly access and benefit from mainstream services and community life.

The Review argues for a National Autism Service, stating that the European Court of Human Rights has indicated that support, care and treatment must meet the individual needs of people who are detained for mental health reasons. Of course we agree with that but our experience of specialist learning disability services is

that inside those, we are very *unlikely* to get an individual, personalised response or service because the idea of specialism for our condition suggests that we all have the same needs and the same response gets offered to us all. Services call this an “overarching diagnosis” where individual difference gets ignored or dismissed and is the very opposite of a personal, individual response.

We think the way forward is that all medical practitioners (and others) should have training on learning disability and autism so that our conditions are understood and each of us gets seen as an individual human being with our own individual needs and characteristics.

On **Decisions that are gender informed**, the Review suggests that “the process of removing a child from parents is considered carefully through child protection processes, the courts and the Children’s Hearings system”. Our experience suggests that this is not always the case and children are often removed from the care of parents with learning disabilities without proper consideration of what supports could be put in place to allow families to stay together.

Under **Duties for service provision and monitoring, the Review says:**

We think that Scotland needs the following in law for NHS Boards, Health & Social Care Partnerships, and local authorities:

A duty to provide access to specialist health and social care professional services for autistic people and people with learning disability

A duty to provide access to specially designed health and social care environments for autistic people and people with learning disability

A presumption in law of placement in a specialist health and social care environment for autistic people and people with learning disability whose rights are limited

We do not believe specialist professional services or specially designed or specialist environments are either necessary or helpful for people with a lifelong impairment. If the presumption in law was of placement in a specialist environment for disabled people whose rights are limited, this again buys into the medical model of seeing the impairment as a treatable condition which it is not.

Our experience of being placed in segregated settings, kept apart from other citizens is that the way we are treated is not seen by other people. The world tends to believe that we will be treated well and appropriately for our needs when we are out of sight.

That has very much not been the case and has been demonstrated many, many times through documentaries and exposures of institutional life. We believe we will be much safer when we exist alongside other people who do not share the label of learning disability even when we need support, service or treatment or are subject to confinement when we have committed a serious offence. We know that hiding us away most often results in us being treated badly and very differently from other people.

The Review says:

Section 5. Where support, care and treatment happens

We suggest that there should be a shift towards voluntary support and care that emphasises social support and care. We suggest a shift away from compulsory treatment in hospitals that emphasise medical treatment.

We suggest places where support, care and treatment should happen. This includes a new type of service which we call secure support centres.

We say: we agree that there must be an end to compulsory treatment for lifelong impairments which are and would be contrary to human rights.

We support the idea of social support and care which is accepted by the person and received in a voluntary way.

We support the idea of a right to independent living in law.

We do not accept the need for a new type of service called secure support centres. There are already places called Assessment and Treatment Units which are now widely discredited and where people with lifelong intellectual impairments are detained and receive compulsory treatment. There are also private learning disability hospitals and the remains of some long-stay learning disability NHS hospitals which should have been closed down long ago.

The Review says:

We think that Scotland needs to have specialist, secure support centres for autistic people and people with learning disability. This is for people who need to be detained. It is also for people who need to be detained and given compulsory support, care or treatment.

We think that autistic people and people within learning disability could have access to these centres, with or without mental illness or personality disorder

There is no need or purpose in re-inventing institutions for people with intellectual impairments. There should be no occasions where people, on account of having an impairment, can be confined in secure units, whatever they are called, when other, non-disabled citizens could not be. Where people have a severe enough mental illness, they should have access to good mental health services which other citizens use, covered by the existing Mental Health (Care and Treatment) Act.

We think the language of “people who need to be detained” and “need to be detained and given compulsory support, care or treatment” when they do not have a mental illness or personality disorder is misleading. The idea that any other citizen might, without a mental illness or personality disorder, be detained or treated under compulsion would be unthinkable. It should not be considered for people with an intellectual impairment either.

To equate these secure support centres with secure care for children and young people is insulting and furthers the idea that we are not adult and certainly not equal citizens.

We do not support the need for separate, specialist housing provision for people with intellectual impairments. Like any other citizen with any other impairment, there may be a need for additional aids or adaptations and adjustments to certain kinds of houses but we oppose, in principle, the idea of group or congregated and segregated living for people with particular kinds of impairments.

We believe in as much choice as possible in housing type and location and the absolute choice of deciding who to live with, as any other citizen might expect.

The Review says:

Section 6. How professionals make decisions

We suggest that Scotland should make changes to move closer to compliance with the right to liberty and security. This is another key right in the Convention on the Rights of Persons with Disabilities.

We suggest that Scotland is not yet ready to end all detention on the basis of disability, or all compulsory treatment, in a safe way.

We suggest that human rights assessments should be the basis for all professional decision making for autistic people and people with learning disability.

We suggest new roles for a broad range of professionals.

We say: We believe that Scotland could quickly and easily become compliant with the right to liberty and security by simply excluding learning disability from the definition of mental disorder and by addressing the barriers to inclusion and citizenship which presently exist. We are convinced that such a course of action would satisfy the UN Committee's scrutiny of Scotland's efforts.

We do not accept that Scotland is "not yet ready" to end all detention and compulsory treatment on the basis of disability. We believe it is unacceptable to knowingly continue practices which are contrary to Human Rights.

We do not support the idea of Human Rights assessments in the form that they are proposed. The Review says they are a "proportionality test" and we follow the argument being made. However, our objection is: firstly, if they are a positive thing, they should be put in place for other groups of people and not just those of us with intellectual impairments. Secondly, if Human Rights Assessments are principally to be used to justify withholding or restricting our human rights, then it is not a good name for them. We have many years of experience of having our human rights limited and removed "for our own good" and it has never felt like a good thing for us, especially if those restrictions could not apply to other, non-disabled people.

We oppose a new Mental Health Law only for people with intellectual impairments and autistic people. We want equal treatment under the law, not a separate law to restrict our rights.

We fundamentally disagree with the Review's proposals about rights, will and preference. The Review proposes that we should have less right to have our will and preferences respected than other citizens and, instead, people making decisions about us should have "special regard" to our rights, will and preference. The Review cites the Essex Autonomy Project Three Jurisdictions report "Towards Compliance with CRPD Art. 12" in support of this proposal. That Report acknowledges that the term "special regard" is problematic, is subject to legal debate and different court rulings and is offered as a compromise between unconditional compliance with Rights, Will and Preference" and simple "taking account of" the person's rights will and preference. We believe that the key to resolving difficulties is, firstly, to accord the same rights to us to make decisions about our own lives that other citizens have and reinforcing that with a good supported decision-making service. If we have to have specific language to describe our position, we prefer the Essex autonomy Project's idea of a "rebuttable presumption" in favour of rights will and preference.

While we appreciate the effort that the Review Team have shown in coming up with proposals about a new role for Mental Health officers, we do not think that is necessary. If the plan was to continue to make persons with intellectual impairments who have a severe and enduring mental illness covered by the definition of mental disorder and subject to the existing Mental Health Act, then Mental Health Officers already have responsibilities and powers to act on the rights of any patient detained or compelled and they could simply exercise those rights in the same way for us.

The Review says:

"we think that if the law never allowed professionals to restrict liberty or to give compulsory treatment to autistic people or people with learning disability, this could lead to more lives lost to suicide ([link](#))"

In the link provided, it is clear that most of the "risk markers" indicating risk of suicide are shared with the general population (such as unemployment, unsatisfactory living arrangements, unmet support needs, mental health problems and self-injury). We know that we could add loneliness, bullying, relationship break-up, abuse and hopelessness to that list. Specific to the autistic people in the link were "camouflaging" and significant unmet support needs. We understand "camouflaging" is trying to fit in and appear like everyone who is not disabled.

While we agree that Scotland needs to pay attention to the suicide risk of different parts of the population, we do not agree that compulsory detention is a humane or progressive way to do that. We think following our appeal for a new law which would describe how people can be supported better, helped in relationships, supported in education and employment and assisted to become active citizens is a much better approach than locking people up and giving them drugs. We should strive to tackle the reasons for suicidal thoughts rather than try to prevent suicide attempts by detention, restriction and medication.

We fundamentally disagree with the Review's proposals to create new criteria for detention. We agree that the current Mental Health Act makes it possible to detain people solely on the grounds of disability and that this is unlawful. We think the new criteria proposed to replace "mental disorder",

“The person has autistic impairment and/or intellectual impairment. Also, the person is experiencing autistic disability and/or learning disability”

would be at least as unlawful and non-compliant with the UN Convention. We do understand that the intention of the Review is to only use these powers when the person has the impairment PLUS experience of stress or distress but, nevertheless, it is disability specific and there is no similar power to detain non-disabled distressed persons. It is, therefore, discriminatory and should not happen.

Again, we appreciate the Review Team’s efforts to outline when people with lifelong impairments would be subject to compulsion and detention under their proposed new law and when it would not be used. However, we have long experience of well-intentioned laws being used in oppressive ways and we do not trust that professionals in the future will follow the benign intentions of new legislation. The fact is that the definition used by the Review Team says having the lifelong impairment and experiencing stress or distress is grounds enough to be detained and treated under compulsion and we expect that is what would happen to many of us, especially if support services are stretched and public funding is scarce. We believe that there would be a much more secure future for us if detention and treatment on the grounds of lifelong impairments were prohibited. If stress or distress for other citizens would be enough excuse for detention and treatment, then that could be enough for us as well but we do not think the law would allow that. It seems obvious to us that the same criteria and grounds for restriction of rights, detention and compulsion should apply to all citizens regardless of any impairment of any kind.

The Review says:

“We suggest that it would not be lawful to restrict someone’s liberty on the basis of disability when a tribunal finds that this would not be proportionate”

We believe that it should not be possible in law to restrict anyone’s liberty on the basis of disability. If we accept that, then all the arguments about proportionality and benefit fall. If we do not accept that, then Scotland would simply not be compliant with the UN Convention.

We do not believe that new roles for professionals are particularly necessary but we do agree that training for all professionals on learning disability and autism, led by those of us who have those conditions would be very helpful. If we are taken out of the definition of mental disorder by virtue of our intellectual impairment, then the professional roles addressing the treatment of people with severe mental health issues (including people with intellectual impairments who have severe mental health issues) should be enough.

We also strongly agree that there needs to be investment in the paradigm shift away from the medical model and towards the social model of disability.

We support the idea of an increased role for psychologists in the lives of all people with intellectual impairments to assist us with learning and understanding and developing behaviours and roles in society which would bring us positive attention and assist us to become active and valued citizens. We do not think that

psychology, especially if we ask for it, should be restricted or limited by any authority.

What the Review says

Section 7. How decisions are monitored

We think that Scotland needs mental health law and services based on human rights. We think that autistic people and people with learning disability should be routinely involved in developing, implementing and monitoring the law and services.

We suggest that the Mental Welfare Commission for Scotland and the Mental Health Tribunal for Scotland should have more authority to protect the rights of autistic people and people with learning disability.

We say: We agree with the first part of this statement as it is written here.

For the second part, once we are taken out of the definition of mental disorder, we think the role of the Mental Welfare Commission and the Mental Health Tribunal should still apply to people with learning disabilities if and when (and only if and when) we have severe mental health problems and become subject to the Mental Health Act on that basis.

For other people with learning disability and/or autism, we would prefer not to come under the Mental Welfare Commission or the Mental Health Tribunal. That would be confusing and arbitrary when we do not have mental health problems to that degree.

Instead, during the transition to secure our Human Rights and full citizenship in Scotland, we would prefer to see a Learning Disability Commission set up in the same way as the Scottish Human Rights Commission or the Mental Welfare Commission or even the Children and Young People's Commissioner.

Most of the discussion in Section 7 deals with people with learning disabilities and autism who become subject to restrictions on rights and compulsion. We believe these changes would be unnecessary if people with learning disabilities and autism **who experience mental ill-health** remained under the Mental Health Act and could rely on the protections for all citizens under that Act.

The Review says:

Section 8. Offenders

We suggest changes to make the criminal justice system fairer for autistic people and people with learning disability.

We suggest that Scotland uses ‘intermediaries’ to support suspects and defendants who have communication impairment.

We suggest a change to how disability is understood in criminal law. This change could make it possible for person to be held responsible for an offence, but also to have adapted consequences that take account of the person’s disability.

We suggest that punishment, treatment and support to stop offending should be clearly separated out in law for autistic offenders and offenders with learning disability.

We suggest that punishment should not be longer for these offenders than for any other offenders.

What we say:

We agree with many of the proposals to make the criminal justice and legal system more accessible to people with learning disabilities.

We agree that everyone, regardless of degree of impairment should have the right to a fair trial in court and that no-one should be refused that on the grounds of intellectual ability or impairment.

We do not agree that there should be exceptions to this rule and we believe that additional supports should be provided to ensure a fair trial taking account of the person’s impairments to ensure a fair and just process.

We believe that a range of disposals should be available to the courts to take account of any individual difference in reasons for offending, mitigating factors and, if custodial sentences are thought to be appropriate, take account of any impairment and how it could be accommodated. In the main, we think Sheriffs and Judges already have those powers.

Obviously, we agree that a person with impairment should not be detained or restricted for longer than any other offender who has committed similar offences.

We agree that training for the judiciary in learning disability would be useful.

What the Review says:

Section 9. Where support, care and treatment happens for offenders

We suggest that rehabilitation should usually happen in the community, for offences that would usually lead to community rehabilitation for anyone else.

We suggest that offenders should usually be given support, care or treatment in the community or in rehabilitation centres, not in hospitals.

We suggest that prison should only be used for autistic offenders or offenders with learning disability when it is specially designed or adapted to meet the person’s needs.

What we say: We agree generally with this statement. We think the Prison Service could do more to make sure that vulnerable prisoners of all kinds, including people with learning disabilities have a safer experience while serving custodial sentences. We are encouraged by the work going on to address the needs of women when sentenced to prison and the same kind of thinking could be applied to offenders with learning disabilities.

We are not convinced that offenders with a learning disability should be treated “more favourably” than offenders without a learning disability. We think the language of that is wrong.

We do believe that any offender should be sentenced in a way that will help with their rehabilitation and encourage them not to reoffend. The same is true for offenders with learning disabilities in our view. We think community based sentences where those would be applied to others is a good idea. We are not so sure that separate and segregated rehabilitation detention centres only for people with learning disabilities and autism would actually help with rehabilitation. But possibly neither would a mainstream prison. We would need to be persuaded that such an idea would be effective. That might depend on what kind of staff there were in such places and what the programmes were. As we said earlier, we are wary and anxious about any facility which segregates people with intellectual impairments from the rest of the population and history suggests that we are more at risk of abuse and exploitation when separated and segregated in that way.

What the Review says:

Section 10. What this means for the law

We suggest that autism and learning disability should no longer be defined as ‘mental disorders’ in Scotland’s Mental Health Act.

We suggest that Scotland develops a new law to give ‘positive rights’ for support, care and treatment to autistic people and people with learning disability.

We suggest how Scotland might prepare to end detention on the basis of disability, and to end compulsory treatment, at some time in the future.

We suggest that autism and learning disability should no longer be considered as forms of ‘mental disorder’ under the Mental Health (Care and Treatment) (Scotland) Act 2003. We include all autistic people and people with learning disability in this suggestion, including those people who also have mental illness or personality disorder. We are suggesting this approach to ensure consistency in the support, care and treatment of autistic people and people with learning disability. We see a need for a clearly separate law for autistic people and people with learning disability. We think that it would be confusing and arbitrary in practice to have autistic people and people with learning disability subject to one law when diagnosed with mental illness or personality disorder, and another when not diagnosed with those

conditions. Also, we think that the suggestions that we make in this consultation should apply to all autistic people and people with learning disability.

We think that our suggested changes would need to be in place before autism and learning disability were removed from the definition of mental disorder in Scotland's Mental Health Act.

What we say:

We strongly agree that learning disability and autism should not be defined as Mental Disorders under Scotland's Mental Health Act.

We support the recommendation that there should be a new law specifically about people with a learning disability and/or autism but we want it to make sure that we are entitled to the same human rights as other citizens, the same opportunities (with support) as other citizens and that we are treated equally under the law. We do not want or need a separate Mental Health Act for people with intellectual impairment.

Our view is that people who do not have a disability get treatment (and sometimes detention and compulsion) under the Mental Health Act when they have a serious mental health problem. Ordinary citizens without a mental health problem are not confused about why they are not under the Mental Health Act. Neither are psychiatrists and mental health professionals. We don't think people with an intellectual impairment would be confused either about why we were not under the Mental Health Act if we were not having mental health problems. While it might be a challenging transition for psychiatrists and mental health professionals to make that distinction, we think they would be able to learn the difference especially if it was outlined in law.

We believe that anyone with a serious mental health problem or serious mental illness should get good treatment from mental health professionals under the protection of the Mental Health Act whether they have any kind of impairment or not.

We think having separate mental health legislation for people with different characteristics (learning disability, gender, sexuality, age, hair colour) does not make any sense.

We believe that detention and compulsion on the grounds of impairment or disability is simply wrong and in breach of human rights and must stop as soon as possible and without delaying until new services are set up.

We believe that removing anyone's legal capacity is simply wrong and should stop immediately. In place of Guardianship and other substitute decision-making regimes, we believe that a good supported decision-making service would allow every citizen to retain their legal capacity and exercise their legal capacity.

We disagree with the term "disability model" and the Review's description of when an impairment becomes a disability. We support the social model of disability which recognises our impairments as lifelong conditions but holds society responsible for the disabling factors in the community. Disability is not a treatable

medical condition. It is a social condition. To claim to be able to “treat” disability is actually adopting the medical model of disability.

Appendix

Comments gathered from local groups and members of People First (Scotland) across the country

Mental Disorder – This term shouldn’t be used.

We don’t like this term. (mental disorder)

Supported Decision Making – is a good thing.

You shouldn’t have to do things you don’t want to do.

People should have choices. People should be educated about Supported Decision Making.

If you have plans, you shouldn’t have to change them for a support worker. It is important to trust the person who is helping you make decisions. Loyalty is important. The right support is very important in all aspects of support.

People should be educated about what we want.

It can be difficult to compromise if there are not enough staff about. Sometimes you have to do things you don’t want to.

Every person with a disability has different needs. We are not all the same.

There should be no Guardianship – Supported Decision Making is important.

They need to look at this carefully (Guardianship) because if people are disabled they can't just have their rights taken away. They should get fair treatment.

If you have a learning disability, they don't treat you well. They just lock you up and forget about you. There's always room for changes so that more people will not be affected like some people were affected in the past by being placed in care homes and institutions.

Supported Decision Making – Why are there still lots of Guardianships?

Autism – more support needed (within supported decision making)

People are getting assessments all the time even though their condition won't change. This needs to stop.

People with learning disabilities should be included in everything and not kept separate. People should be treated with dignity and respect.

Just because I am blind, I shouldn't be treated differently.

The entire group says that people with learning disabilities should make their own decisions.

Sometimes I might need help from my mum or my staff. I should still be able to make my own decisions with support.

People with learning disabilities should be treated equally under the law if they commit an offence.

Sometimes people are sent to long stay hospitals without a date of release. This is not right.

Actions have consequences. It should be done on an individual basis. People should be supported to understand what they have done wrong and face the consequences. (regarding criminal justice)

Before people are put in prison, they should be assessed. Some have mental health issues and these are overlooked. There should be prevention rather than putting people in prison. The prisons are overcrowded. Drug and alcohol addictions should be looked at, also people's background and circumstances.

The whole group agrees that there should be a new law for people with learning disabilities, like the law People First has been campaigning for.

People should be supported if they are in prison if they are vulnerable.

Prison is difficult but this does not mean that people should go to long stay hospitals without a release date instead.

The whole group disagrees with specialist secure support centres for people with autism and learning disabilities.

There should be the right communication tools for people such as people with a visual impairment or autism.

If someone has vandalised or caused other damage, they should be made to pay this back.

Human Rights Assessments – if people get the wrong person to advise them then they may end up taking the option to go into a hospital because someone thinks it's a better option for them.

It is important to get the right staff to work with us. Especially in segregated units, this job often attracts the wrong kind of person.

People with Learning disabilities should not be called people with Mental disorders, because having a learning disability does not mean that we have mental disorders. It is actually an impairment, that means that we need support. It also means that we are disabled sometimes, but not all the time.

We should have more information about statements.

If we write a statement of rights, then professionals should follow it and do as we say. It should be about us, but it should be done with images as well.

Everybody should have the right to make their own decisions.

Treatment must not make things worse for people with Learning disabilities.

We should have the right to take a decision, and people should never stay in a hospital environment. That would make us more disabled.

Supported decision making should be based on rights, preferences and will.

This (supported decision making) should happen. When people don't understand what is happening, this will be a real support.

If an advocate knows the person well, then they can help the person with a learning disability to make sure their rights are met.

People with Learning disabilities, and people with autism, have the right to information being explained in an understandable way.

They (doctors and professionals) should have training so that people with Learning Disabilities can be understood better, and our rights can be protected

People could also have specialist supporters, those people have to be trained in a good way, by people with learning disabilities.

We could do training for doctors and GPs.

Professionals have to listen to what people with learning disabilities have to say. And people should never be forced into things.

We definitely agree on the idea that there should be more money into community support, and that the right to independent living should be supported.

About those secure centres, we don't really understand what those centres are about.

People shouldn't have their rights taken away in any circumstances.

People should not be detained, what about their rights?

It is not ok to create a special place for us, it means that we are not treated the same.

Why have special centres for us, when we don't want that?

The rights from the Convention (UNCRPD) should be applied to everybody. Treat people with learning disabilities properly and stop removing our rights.

This is why people with learning disabilities have to be involved in the training and decision making, so we can make sure that our rights are respected.

Information when interacting with the police and criminal justice must be accessible. We have been saying that for years, it is about time that things changed. Things should be more clear for us.

People with learning disabilities should be given a chance to understand when what they have done is wrong.

Some people will need a lot of support to understand things.

We should be treated equally, that means realising that some things are not accessible the same way for us. Professionals and systems need to realise this.

If people with Learning disabilities or autism are supported to understand what they have been doing wrong, they might stop it, people can learn.

Everyone should be entitled to a fair trial.

We are basically the same as other people and should not be treated differently.

We are human beings and we deserve the same rights

The proposals about separate services are worrying. I was segregated at school and I hated it. I was made to feel different.

We just want a good life.

The proposals open the doors for more abuse if we continue locking people up. We are going backwards

Things are getting worse instead of better.