Use your Power!

The Secretary of State for Health and Social Care must use their new power to direct NHS England to urgently reduce the number of people with a learning disability and autistic people in mental health hospitals and improve support to live in the community.

Detained in unsuitable environments for years, subjected to physical, mechanical and chemical restraint including solitary confinement, the experience of people with a learning disability and autistic people in mental health hospitals is leading to lifelong trauma and loss of life.1 Despite repeated scandals and media exposés of neglect and abuse (Winterbourne View, Edenfield Centre, Cawston Park, Whorlton Hall) and a succession of inquiries, reports and government strategies,2 the number of people with a learning disability and autistic people in mental health hospitals remains over 2000 and has actually increased in the past year.3

There is a widespread consensus that better support in the community is the key to avoiding people being admitted to mental health hospitals and to discharging those who are currently ‘stuck’ in hospital.4 However, in a multi-layered and complex health and care system where responsibility is spread across a multitude of public and private bodies, a “lack of political focus and accountability to drive change” has been identified by the Joint Committee on Human Rights as the “biggest barrier to progress”.5

Power to direct NHS England

We are therefore calling on government to intervene directly through use of the Secretary of State for Health and Social Care’s new power to direct NHS England under s45 of the Health and Care Act 2022. This would ensure that both the Secretary of State and NHS England, which is responsible for delivering the NHS Long Term Plan target to halve the number of people with a learning disability and autistic people in mental health hospitals by 2024,6 would have visible public accountability for achieving the target.

The litany of failure in care and support for people with a learning disability and autistic people in England is long and shocking. We need renewed political leadership, drive and public accountability to counter what former Health Minister Sir Norman Lamb described as “the failure of a voluntary system to deliver results”.7 The government must use its new powers of direction to overcome the repeated failures in the system and all political parties must also support and commit to using this power.

1 Learning-disabled and autistic people are being neglected and tortured. How much longer? | John Harris | The Guardian
2 SN07058 Learning Disabilities: health policies.pdf (parliament.uk)
3 CBP-7172 Autism: Overview of policies and services.pdf (parliament.uk)
4 Learning Disability Services Statistics - NHS Digital
5 Treatment of autistic people and individuals with learning disabilities (parliament.uk)
6 Detention of children and young people with learning disabilities and/or autism (parliament.uk)
7 NHS Long Term Plan
8 Treatment of autistic people and individuals with learning disabilities (parliament.uk)
What is the Secretary of State’s power to direct NHS England?
Section 45 of the Health and Care Act 2022 inserted clauses 13ZC-F into the National Health Service Act 2006 so that the Secretary of State for Health and Social Care:
- “may give NHS England directions as to the exercise of any of its functions” alongside a statement that the Secretary of State considers the direction to be in the public interest
- can take over functions of NHS England where there is “significant failure”

The Bill’s explanatory notes stated that:
“The policy intention is that the Secretary of State will be able to use these powers to ensure that NHS England continues to work effectively with other parts of the system for which the Secretary of State has responsibility including social care and public health, to support integration and tackle broader priorities such as health inequalities.”

In parliamentary debates on the legislation, DHSC Ministers stated that “through new powers of direction, the Government will be able to hold NHS England to account for its performance and take action to ensure that the public receive high-quality services and value for taxpayer money”. As far as we are aware, the power has not yet been used.

How could the power of direction be used?
NHS England has responsibility for delivering the NHS Long Term Plan which has a target to reduce the number of people with a learning disability and autistic people in mental health hospitals by half (based on 2015 levels) by March 2024. However, we are not on course to meet that target. Using the power to direct NHS England would bring more accountability and transparency to progress in achieving existing and future targets.

As a broad power, there are other potential applications such as NHS commissioning of care and support for people with a learning disability and autistic people and how the NHS works with other parts of the system. This includes local authorities who are another key part of the jigsaw as commissioners of social care and other local infrastructure. There are separate powers for direct government intervention in local authorities.

Why have we prioritised calling for use of the power of direction?
As detailed earlier, public accountability for achieving targets to reduce detention in mental health hospitals has been identified as a key issue by parliamentary select committees and others. Use of the power of direction is an attractive option as it already exists in legislation, focuses on the key issue of accountability and would be relatively straightforward to implement without institutional upheaval. Evidence on other initiatives to prioritise policy and delivery challenges, such as establishing special government units or appointing tsars, suggests relatively few have been a clear success.