**Mind’s submission on the United Kingdom’s implementation of the International Covenant on Civil and Political Rights**

**Submission to the United Nations Human Rights Committee, in advance of the adoption of the List of Issues Prior to Reporting**

**128th session, 2-27 March 2020**

About Mind

1. **We're Mind, the mental health charity for England and Wales.[[1]](#footnote-1)** We believe no one should have to face a mental health problem alone. We provide advice and support to empower anyone experiencing a mental health problem. We campaign to improve services, raise awareness and promote understanding.

**Evidence on the United Kingdom’s implementation of the International Covenant on Civil and Political Rights**

1. **People are compulsorily detained and treated in hospital under a law that pays little regard to their views, and that disproportionately affects Black people (Articles 6, 9, 17 and 26)**
	1. The Mental Health Act provides for when people can be detained in hospital and given mental health treatment without consent. It gives people almost no legal say over their treatment, even if they have the mental capacity to make health care decisions or have written out their wishes in advance.[[2]](#footnote-2) Black people are four times more likely to be detained than white people and are over eight times more likely to be discharged onto a Community Treatment Order.
	2. A UK Government-commissioned independent review of the Act heard how awful the experience of detention can be, with people feeling stripped of their dignity and people – especially those of African and Caribbean heritage - fearful of being made worse or even dying.[[3]](#footnote-3)
	3. The independent review published its report in December 2018 and made a range of recommendations, including investment in community mental health services and hospitals, a new framework for better meeting the needs of black and minority ethnic communities, greater legal weight to patients’ views on treatment, statutory care and treatment plans, tighter criteria for detention and strengthened safeguards such as advocacy and tribunals.
	4. The UK Government is promising a response to the independent review; we think its recommendations need to be adopted in full as an essential first step towards more fundamental, longer-term reform.
2. **Plans to “update” the Human Rights Act (Article 2)**
	1. The Human Rights Act (HRA) plays a vital role in securing rights for people with mental health problems. Too many people with mental health problems continue to experience infringements of their human rights, including abuse and degrading treatment, and unwarranted deprivation of liberty and autonomy. The Human Rights Act provides necessary protection by helping to change practice and procedure, culture and attitudes, and offering redress through the UK courts. We want to see better recognition of the importance of the Human Rights Act in securing rights for people with mental health problems.
	2. The UK Government has promised to “update the Human Rights Act” after Brexit. The previous UK Government stated their intention to remain signatories to the ECHR only for the duration of the last parliament. We remain deeply concerned about what this would mean for the human rights of people with mental health problems.
3. **Inadequate protection from discrimination for people with mental health problems (Article 26)**
	1. The Equality Act 2010 does not adequately protect people with mental health problems from discrimination. Research by Mind has found that only half of people with mental health problems know that the Equality Act 2010 makes it illegal for people with mental health problems to be discriminated against at work, if they come under the definition of disability.[[4]](#footnote-4) Further, large numbers of people are unsure as to whether their mental health problem fits this definition of disability, and many others believe that it does not, despite indications that from a legal standpoint, it would.
	2. The wording of the definition of disability under the Equality Act 2010 should be changed to reflect the experiences of mental health problems, so that more people with mental health problems can access their right to not be discriminated against.
4. **Issues with housing forcing people to remain on mental health wards (Article 9)**
	1. Too many people are being forced to remain on mental health wards when they’re well enough to leave because of a lack of support to resolve housing issues. In some cases, this can leave people effectively detained in hospital. In many instances, people are homeless when they're admitted to hospital, or have their own accommodation but need funding for support to help them live independently. Delayed discharges from housing issues continue to rise. A survey by Mind (2016) of people’s experiences of leaving hospital found that almost half (47 per cent) did not have their housing needs met at all.[[5]](#footnote-5)
	2. There must be increased investment in providing support to people on inpatient mental health wards to resolve housing issues immediately after admission. Nobody should have to remain on a mental health ward for any longer than is absolutely necessary.
5. **People with mental health problems can face additional barriers to voting (Article 25)**
	1. Most people with mental health problems are eligible to vote, including those detained in hospital. But too many are not able to enjoy their right to vote. We are concerned that some are not aware that they are eligible to vote, and others will need additional support, for example if they are currently detained in hospital under the Mental Health Act. We want to see more support for people with mental health problems to vote, so they can enjoy all their democratic rights.
	2. We are concerned by the UK Government’s promise to introduce identification to vote at polling stations, as this may increase the barriers that people with mental health problems face in enjoying their right to vote. We call on the Government to fully assess the risks posed by this policy, including for people with mental health problems, before implementation.
	3. Some people who are detained under a forensic section of the Mental Health Act are not eligible to vote, ie if they have been convicted of a criminal offence and are detained in hospital by order of the courts.
6. **Digitalisation threatens equal access to public services, including the courts (Article 14)**
	1. Too many people with mental health problems are finding themselves locked out of vital public services as a result of an increasing reliance on digital systems. Recent research from the Department for Work and Pensions found that of people with long-term health conditions one in four could not make an online benefits claim without support. Despite this work is currently underway to move to a digital approach to applying for disability benefits.
	2. Ongoing reforms to the courts and tribunal system risks creating the same problems for people looking to access justice in relation to immigration, employment or social security issues.
	3. The UK Government must create safeguards so that people who are digitally excluded can maintain access to crucial public services including the social security system and the courts.
7. **Restricted access to justice as a result of the legal aid reforms (Article 14)**
	1. Since the introduction of legal aid reforms, we have been concerned about the deeply negative impact on people living with mental health problems. Legal aid helped people to manage life’s day-to-day challenges, stay well and avoid crisis by making sure they could access the courts when they needed to. If people can’t get legal aid, problems with housing, debt and benefits can quickly spiral out of control, and the impact can be devastating.
	2. Our research into the impact of legal aid reforms shows that the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has unfairly impacted people with mental health problems.[[6]](#footnote-6) One in two people who lost out on legal aid had a mental health problem. Our research also shows that people with mental health problems are far more likely to have experienced legal problems (52% compared to 27% of other respondents) – are more likely to have experienced more legal complaints that other respondents.
	3. The changes made to the legal aid system are threatening the right of people with mental health problems to access justice. We are deeply concerned by these reforms, and believe urgent legislative change is required to protect the rights of people with mental health problems.
8. **People with mental health problems have worse experiences when they are victims of crime (Article 2, 16 and 26)**
	1. People with mental health problems are more likely to be a victim of crime. According to our research with Victim Support, people with mental health problems are three times more likely to be a victim of crime.[[7]](#footnote-7) We also found, however, that people with mental health problems were much less satisfied with the police response, including feeling that they were not believed and not considered to be a reliable witness. People with mental health problems can also find attending court more distressing and stressful. With appropriate support, people with mental health problems can give effective evidence in court, but too few are offered support or special measures.
	2. We recommend a strategic response to supporting people with mental health problems who are victims of crime, and are calling for action to improve the access that people with mental health problems have as victims in the court system.
9. **Provision of healthcare in prison, including mental health care (Article 9 and 10)**
	1. The principle of “equivalence of care” is the principle whereby people detained must have the benefit of care equivalent to that available to the general public in the same country. The principle of equivalence is the standard to which NHS England commission services. Prisoners should have equivalence of healthcare as patients in the community, but this is not happening in practice. The House of Commons Health and Social Care Committee found that “the Government is failing in its duty of care towards people detained in England’s prisons.”[[8]](#footnote-8)
10. **Continued use of immigration detention, including no time limit (Article 7, 9 and 10)**
	1. Along with other organisations including the British Medical Association,[[9]](#footnote-9) we believe that immigration detention should be phased out altogether and replaced by alternatives.
	2. In the meantime, there must be a maximum limit of 28 days’ detention: any time spent in Immigration Removal Centres can have a detrimental impact on someone’s mental and physical health, but this can become significantly worse after 30 days.
11. **Inadequate safeguards for vulnerable adults in immigration detention (Article 7 and 9)**
	1. We are concerned that there remains fundamental issues with the safeguards intended to protect people in immigration detention, including people with mental health problems. These safeguards include Rule 35, the adults at risk (AAR) policy, plus screening and gatekeeping at the point of detention.
	2. In assessing the Government’s progress in implementing his recommendations on the welfare of vulnerable people in detention, Stephen Shaw stated: “...in my visits to IRCs I found many people whom I felt should not be there. Indeed, I think every one of the centre managers told me that they had seen no difference in the number of vulnerable detainees (and, in some cases that the numbers had actually increased).”[[10]](#footnote-10)
	3. There have been six court cases where a breach of the right to be free from torture or inhuman or degrading treatment or punishment (Article 3 of the Human Rights Act) has been found in respect of vulnerable immigration detainees.[[11]](#footnote-11)
1. We're a registered charity in England (no. 219830) and a registered company (no. 424348) in England and Wales. [↑](#footnote-ref-1)
2. [Mind’s submission](https://www.mind.org.uk/media/24107564/mind-mhar-submission-final.pdf) to the Independent Mental Health Act Review (2018) [↑](#footnote-ref-2)
3. Independent Review of the Mental Health Act 1983 (2019) [Final report: Modernising the Mental Health Act - Increasing choice, reducing compulsion](https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review) [↑](#footnote-ref-3)
4. Mind (2019) [Lack of clarity in law leaving people with mental health problems in the dark about vital workplace protections](https://www.mind.org.uk/news-campaigns/news/lack-of-clarity-in-law-leaving-people-with-mental-health-problems-in-the-dark-about-vital-workplace-protections/) [↑](#footnote-ref-4)
5. Mind (2016) [Leaving hospital: Briefing on discharge from mental health inpatient services](https://www.mind.org.uk/media/18839049/leaving-hospital-minds-good-practice-briefing.pdf) [↑](#footnote-ref-5)
6. Mind (2018) [An unjust system? How changes to the justice system have affected people with mental health problems](https://www.mind.org.uk/media/23652220/an-unjust-system-mind-may-2018.pdf) [↑](#footnote-ref-6)
7. Mind (2014) [At risk, yet dismissed](https://www.mind.org.uk/about-us/our-policy-work/victims-of-crime/) [↑](#footnote-ref-7)
8. House of Commons Health and Social Care Committee (2018) Prison Health, Twelfth Report of Session 2017–19 [↑](#footnote-ref-8)
9. British Medical Association (2017) Locked up, locked out: Health and human rights in immigration detention [↑](#footnote-ref-9)
10. Stephen Shaw (2018) Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: a follow-up report to the Home Office [↑](#footnote-ref-10)
11. In chronological order:

R (S) v Secretary of State for the Home Department [2011] EWHC 2120 (Admin).

R (BA) v Secretary of State for the Home Department [2011] EWHC 2748 (Admin).

R (HA (Nigeria)) v Secretary of State for the Home Department [2012] EWHC 979 (Admin).

R (D) v Secretary of State for the Home Department [2012] EWHC 2501 (Admin).

R (S) v Secretary of State for the Home Department [2014] EWHC 50 (Admin) NB the judgment was overturned on appeal.

R (MD) v Secretary of State for the Home Department [2014] EWHC 2249 (Admin). [↑](#footnote-ref-11)