ASD would be required prior to MHA changes to provide the legal structure to ensure people with intellectual disability and/or ASD receive effective care and support,[13] addressing a concern raised by Courtenay.[6] A progressive rights-based approach, in which professionals would be required to consider the potential impact of their decisions on the human rights of the individual with intellectual disability and/or ASD, is advocated.[13] Importantly, the report proposes that people with intellectual disability and/or ASD and their families and unpaid carers should play a key role in developing, implementing and monitoring laws and policies that support a commitment to complying with the United Nations Convention on the Rights of Persons with Disabilities.[13,14] We argue that it is time for mental health legislation in England and Wales to catch up, and for proper attention to be given to providing sufficient and effective care in the community.

Declaration of interest

none declared.

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The case for removing intellectual disability and autism from the Mental Health Act – further debate required

We thank Hollins and colleagues[1] for raising some interesting points in their article regarding intellectual disability and autism spectrum disorder in the Mental Health Act 1983. However, there are a number of issues with which we disagree or require further discussion and clarification. The authors state that intellectual disability has been removed from the amended Act, but this is not the case. In paragraph 2.14 of the Code for the Act, there is an unequivocal statement refuting this: 'Learning disabilities and autistic spectrum disorders are forms of mental disorder defined in the Act'.[2]

Making it impossible for patients with intellectual disability and autism spectrum disorder to be detained, unless they have comorbid mental disorders, as the authors propose, could deny such patients the right to have a legal framework for treatment. For example, a patient in the criminal justice system would not have the opportunity to be diverted into hospital using Part IV of the Act, a point considered by Earl Howe in the Lords debate regarding the bill (3, column 68),[3] and more recently in the review of the Mental Health Act.[4]

The authors assert that continuing to require the additional criteria of abnormally aggressive or seriously irresponsible conduct results in 'lazy diagnosis and lazy practice', as a cause for this behaviour is not required.[1] We wondered if this was the opinion of the authors, or whether this was based on evidence. We would welcome a clarification for this strongly worded statement.

Although recommending the removal of autism spectrum disorder and intellectual disability from the Act, the authors acknowledge that there is no consensus regarding what this change should look like.[1] Our worry is that if the authors' recommended change is implemented, patients may be assigned additional permitted mental disorder diagnoses with the sole aim of detention, based on flimsy clinical evidence. This potential unforeseen consequence was also debated in the House of Lords by Lord Hunt (3, column 69).[3] Why not propose a consultation on change, rather than the removal?

The implication from the authors in the article is that the Act is always stigmatising, and should be avoided if possible. Our experience is that the Act can be helpful to an individual, such as section 117 aftercare resulting in extra resource allocation to support a care package. The Act also has inbuilt safeguards such as reviews of detentions by independent bodies, and the powers of the nearest relative. We therefore contest this implication, but recognise it may hold true for some patients.

It is clear to us that further debate is required, and we thank Professor Hollins and her colleagues for encouraging this.

Declaration of interest

none declared.

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