

BASW England

Homes not Hospitals

The Role of the Social Worker
and Legal Literacy



BASW
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The professional association for
social work and social workers

Who is this document for?

This document is for social workers in a range of settings and roles who are supporting people with learning disabilities and/or autistic people (who may also have mental health problems), their families and carers.

Social workers undertake a variety of statutory and non-statutory functions on behalf of public bodies. Social Workers bring a strong set of social work values and ethics into practice which challenge assumptions and judgements and promote a human- rights-based approach from which to explore and understand the person in their situation beyond their diagnosis using the social model of disability.

Social workers support people with learning disabilities and autistic people in all areas of practice – in children and families and adults social care services, in hospital and community contexts as well as in specialist services. Deeper knowledge and a more specialised approach is needed when supporting people to avoid admission to hospital, to support them whilst in hospital and to ensure that clear and timely plans are in place to enable a return to home as soon as possible.

Context

Inadequate and abusive institutional cultures and practices are still being experienced by people with learning disabilities and autistic people.

The CQC state of care [report](#)¹ highlights that people with learning disabilities and/or autistic people have experienced a significant decline in the quality of care they are receiving. The number of inpatient services for people with learning disabilities and/or autistic people that have been rated 'inadequate' has more than tripled over the last year – from 4% to 13%.

People may be subject to increased use of restrictions and restraint which can cause them harm. There are far too many examples where patterns of abusive, institutional behaviour exist behind closed doors.

Social workers have a key role in upholding and safeguarding human rights to challenge situations with poor quality care, prevent abuse and ensure that the appropriate action is taken. It is essential that social workers are equipped with the right skills and knowledge underpinned by the profession's values and ethics, to ensure they offer the best response that supports and safeguards the rights of individuals they are working with.

¹ www.cqc.org.uk/sites/default/files/20201016_stateofcare1920_fullreport.pdf



Endorsement from Key Partners

“For the vast majority receiving care and support in their own home is far more beneficial than within a hospital setting, that said, there are people who do require medical intervention, care and support in a hospital setting. It is therefore vital that the person is fully involved in the decision making, and planning, at every stage of their care whether home or hospital. System leaders, practitioners and Social Workers must robustly promote and ensure person centred and strengths-based support at every opportunity”.

JENEFER REES, CHAIR & SIMON HOMES, VICE CHAIR OF THE PSW (ADULTS) NATIONAL NETWORK

“I really welcome BASW’s new resources which will support best practice in commissioning and social work in providing high-quality, person-centred care. As social workers, we are committed to upholding the rights of the individuals we support and ensuring they are treated with dignity and respect. It is important that we ensure those services we commission do the same, supporting individuals to be part of their communities with the best support in place and preventing long-term placements in closed institutions. These resources are a must read for social workers and will really help improve practice and deliver the best possible outcomes for citizens.”

FRAN LEDDRA, CHIEF SOCIAL WORKER- ADULTS, DHSC

“The Autism Alliance are proud to support the work undertaken by BASW on the Homes not Hospital workstream to ensure the positive outcomes for autistic people and people with a learning disability. This work and the new resources are vital to support the role of the social worker and commissioning to reduce the risk of situations reaching the point of hospital admission, this will ensure autistic people and people with a learning disability can live fulfilling and rewarding lives in their communities.”

MARY SIMPSON, CHAIR OF THE AUTISM ALLIANCE

“The National Autistic Taskforce is pleased to have been involved in working to support BASW’s Homes not Hospitals campaign. Wholly run by autistic people, NAT seeks to draw on the collective knowledge and experience of autistic adults to inform and improve care and support, especially for autistic people whose own voices are rarely heard. We are passionate about the importance of social work and commissioning in ensuring that autistic people live in real homes in our communities and are no longer detained in inappropriate institutions and subjected to restrictive practices. These documents will help to support social workers and care commissioners to recognise that, with high quality support in line with NAT’s independent guide to quality care for autistic people, built on genuine empathy with autistic perspectives, autistic people with all levels of support needs can thrive in real homes with real control over our own lives. We support BASW in calling for the role of the named social worker to be implemented across the country and for wider adoption of rights-based and legally literate approaches to ensure genuine change.”

DR YO DUNN, STRATEGIC LEAD, NATIONAL AUTISTIC TASKFORCE

“We welcome BASW’s Homes not Hospitals campaign, recognising the important role of social workers and commissioners in Transforming Care. There are still over 2,000 people with a learning disability and/or autism in inpatient units; settings where people are at increased risk of abuse and neglect. Many have ended up in these places - and remain stuck - due to a lack of the right support in the community. Social workers and commissioners have a key role to play in ensuring people with a learning disability and/or autism are able to get the right support in the community - support that truly meets their needs. The new resources highlight the relevant guidance and legislation to follow and, importantly, set out why the right support must be developed as a matter of urgency.”

BELLA TRAVIS, POLICY MANAGER, MENCAP

“BASW’s Homes not Hospitals commissioning and social work guidance outlines good practice for commissioners and social workers to reduce the risk of people with learning disabilities and autistic adults from experiencing restrictive care in long term assessment and treatment units. NICE has worked with BASW to highlight the evidence that supports these priorities, in particular evidence about what works in practice in relation to integrated local services and person-centred preventive and responsive approaches.”

JUDITH RICHARDSON, ACTING DIRECTOR OF HEALTH & SOCIAL CARE, NICE

“ADASS would like to place on record our thanks to BASW for the enormous time, effort and expertise which was invested in the production of these resources. We will be recommending to ADASS Members that they take careful consideration of the content.”

STEPHEN CHANDLER, PRESIDENT ADASS

“BASW England fully supports the movement to get people with learning disabilities and/or autistic people out of overly restrictive hospital environments. To advocate for and uphold people’s human right to have a private and family life. These key documents designed to support best practice commissioning and the role of the social worker and legal literacy have been co-produced by BASW England in partnership with people and families and key stakeholders from across the sector to and bring about positive change and freedoms.”

MARIS STRATULIS, NATIONAL DIRECTOR BASW ENGLAND

“Skills for Care has been delighted to work with BASW in the development of these resources to as part of the Homes Not Hospitals campaign activity and to endorse these materials to promote best practice in social work and commissioning. This has been a collaboration with people with lived experience and key partners from across health and social care organisations. With the right skills and knowledge social work practitioners and commissioners can work alongside people with learning disability and autistic people, using preventative approaches to reduce the risk of hospital admission and develop local support offers which enable people to live well.”

SKILLS FOR CARE

Why has this document been developed?

Over the last five decades, national policy has been focused on moving people with a learning disability and autistic people that are inappropriately placed in hospital settings into community-based care (House of Commons, 1971). The Transforming Care Programme has been the key national policy vehicle for delivering this ambition since 2015.

To date this ambition has not been realised and timelines have continued to shift. Most recently The NHS Long Term Plan (NHS England, January 2019) states that improving the care and support for people with a learning disability and autistic people is a key priority. The plan sets a new target to reduce inpatient provision by 50% by 2023/24.

The number of inpatient services for people with learning disabilities and/or autistic people that have been rated 'inadequate' has more than tripled over the last year – from 4% to 13%.²

There is widespread concern about the misuse of restraint, the practice of prolonged seclusion and long-term segregation for children and adults who are autistic, with a mental illness and/or learning disability in secondary care and social care settings.³

The horrific abuse and systematic violation of people's human-rights at Winterbourne View, Whorlton Hall and Yew Trees hospital show systemic failures in health and social care the contexts within which social workers operate. The COVID-19 pandemic has reinforced the longstanding, structural inequities people with learning disabilities and autistic people experience which has led to the situation where too many people are not receiving the care and support they need.

This statement and the accompanying documents:

- Top Tips for social workers – Homes not Hospitals
- Quick Guide to Legal Literacy
- Further Information

Have been developed to support social workers to better understand their role when working with people with learning disabilities and/or autistic adults, to enable people to live their lives as they choose, to prevent situations from breaking down that lead to people being inappropriately admitted to hospital and to support people to be discharged from hospital as quickly as possible.

This document sets out what we mean by legal literacy and highlights the learning from the **Named social worker** pilots which were initiated through the Government's response to the public consultation *No Voice Unheard, No Right Ignored*. The role description, skills, knowledge and values have been reviewed and are presented here for social workers and organisations to use in a range of roles and settings to strengthen practice.

What does the document do?

- Sets out the key legislation and guidance that is relevant to social workers involved with people with a learning disability and autistic people
- This statement sits alongside tools and resources to support effective, rights based social work practice giving social workers confidence and knowledge to support legal rights
- Provides links to further resources, information and advice

² www.cqc.org.uk/sites/default/files/20201016_stateofcare1920_fullreport.pdf

³ www.cqc.org.uk/sites/default/files/20201218_rssreview_report.pdf

What do we mean by legal literacy?

- Social workers have a key role to play in upholding the rights of people with a learning disability and autism: human rights/ right to autonomy/citizens' rights.
- In order to effectively support people to uphold their rights, social workers need to have an excellent grasp of relevant legislation, to be able to apply it in practice (in often complex situations) and to be confident to challenge decisions that do not seem to uphold rights.
- Knowledge and understanding of primary and secondary legislation, central government guidance and judicial decisions all of which provide essential frameworks for the commissioning and provision of adult social care.
- When deciding whether or not to use statutory authority to meet people's care and support needs, or to protect them from abuse and harm, actions must be lawful, proportional, reasonable and rational.

Legal frameworks

- Social workers need to understand and know how and when to apply the main statutory legal frameworks including case law and precedents relevant to the rights of individuals and families and the duties and responsibilities of public bodies ([See Quick Guide: Legal Literacy](#)).

Social workers need knowledge and skills in supporting people with lived experience and their families to navigate legal systems to ensure access to services and rights. Current key relevant laws when working with people with learning disabilities and/or autistic young people and adults (and their Codes of Practice) in England include:

- The Care Act 2014
- Mental Health Act 1983 (as amended 2007)
- Human Rights Act 1998
- Equality Act 2010
- Autism Act 2009
- Children Act 1989
- Children and Families Act 2014
- Children and Social Work Act 2017

- Child with special education needs and disabilities (SEND) guidance
- Mental Capacity Act 2005
 - Deprivation of Liberty Safeguards 2009 and the Liberty Protection Safeguards which are due to be implemented in 2022.

Evidence Based Practice

Social workers need to refer to and use evidence-based national guidance, research and relevant case law in order to uphold human rights, to advocate for people and to challenge institutional and abusive regimes and practice. Throughout this document links are provided to the relevant NICE guidance to inform best practice when working with autistic people and people with learning disabilities.

Social workers will need to continue to develop their knowledge and skills to maintain a current and relevant evidence base for practice.

Human Rights Based Practice

Social workers should uphold and promote human rights for adults with learning disabilities and /or autistic adults as for any other citizens, embedding their values and ethics into rights-based practice that makes a difference to people's lives. This includes a commitment to promoting the right to make decisions, right to private and family life, the right to liberty and the right to choose their own lifestyles.

Social workers must develop their advocacy skills to improve people's access to rights, entitlements and services. Social workers should seek legal redress for people when necessary and understand the range of relevant entitlements and legislation. Social workers should check if advance decisions, statements or care plans have been made and support the use of these, ensure human rights have been explored and the relevant legal safeguards are in place in the context of restrictive interventions.

The following NICE recommendations may be useful:

NICE recommendations about involving people in decision-making

1.1.8 If a service user has not made any advance decisions or statements about the use of restrictive interventions, encourage them to do so as soon as possible (for example, during admission to an inpatient psychiatric unit). Ensure that service users understand the main side-effect profiles of the medications recommended in this guideline for [rapid tranquillisation](#) (see [recommendation 1.4.37](#)) so that they can make an informed choice.

1.1.9 Ensure that service users understand that during any restrictive intervention their human rights will be respected and the least restrictive intervention will be used to enable them to exercise their rights (for example, their right to follow religious or cultural practices during restrictive interventions) as much as possible. Identify and reduce any barriers to a service user exercising their rights and, if this is not possible, record the reasons in their notes. There are ethical issues about whether, when and how professionals should intervene in the lives of people who have capacity and those who have been assessed as lacking the capacity to make their own decision about an aspect of their life at a particular point in time.

To be effective, named social workers need to research the relevant law and the underpinning ethical principles. Practice should be underpinned by the professions value base with adherence to The Code of Ethics for Social Work: www.basw.co.uk/about-basw/code-ethics and the Professional Regulatory Standards: www.socialworkengland.org.uk/standards/professional-standards

Social workers should discuss with the person they are supporting and their carers if adjustments are needed to ensure that their rights and those of their carers are respected and that any adjustments that are needed are made. [Equalities and Reasonable Adjustments](#)

The following NICE guideline can be used to explore reasonable adjustments:

1.1.11 Evaluate, together with the service user, whether adjustments to services are needed to ensure that their rights and those of their carers (including rights related to protected characteristics as defined by the Equality Act 2010) are respected, and make any adjustments that are needed. Adjustments might include providing a particular type of support, modifying the way services are delivered or the approach to interaction with the service user, or making changes to facilities. Record this in the service user's care plan.⁴

1.5.10 Record a person's learning disability and any reasonable adjustments in their health records and share this information when making referrals. With the person's consent, make sure all relevant practitioners in community and acute settings can access this. Also record any specific needs or wishes, for example to do with the person's communication or mobility.⁵

1.5.26 When planning a hospital admission, arrange a pre-admission planning meeting, including the hospital liaison team or liaison nurse, a representative of the community learning disability team, the person and their family members, carers or advocate. At this meeting:

- complete the pre-admission documentation, which should include information from the person's [hospital passport](#)
- discuss any reasonable adjustments needed, for example, arranging for the person to visit the hospital before their admission to meet the learning disability liaison nurse who will be their contact.⁶

Communication and making information accessible

Social workers should support people's communication in line with NHS England's Accessible information standard. NICE guideline: NG96 supports best practice⁷

1.1.5 Support people's communication and information needs in line with [NHS England's Accessible Information Standard](#).

⁴ Violence and aggression: short-term management in mental health, health and community settings, NG10 www.nice.org.uk/guidance/ng10

⁵ NICE Guideline: NG96 1.5.10 and 1.5.26: Care and support of people growing older with learning disabilities www.nice.org.uk/guidance/ng96

⁶ NICE Guideline: NG96 1.5.10 and 1.5.26: Care and support of people growing older with learning disabilities www.nice.org.uk/guidance/ng96

⁷ Care and support of people growing older with learning disabilities, NG96 www.nice.org.uk/guidance/ng96

The named social worker

The aim of the Named social worker pilots commissioned by the Department of Health and Social Care was to support people to lead fulfilling and independent lives and to have the support to make choices that are right for them.⁸

The aim of the pilots was to support people to lead as fulfilling and independent lives and to have the support to make choices that are right for them.

The description outlining the role of the named social worker has been reviewed and refreshed by the Homes not Hospitals roundtable group to strengthen and reflect the context within which social work is taking place.

NICE Quality Standard QS101 Learning disability: behaviour that challenges statement 4 is about people with a learning disability and behaviour that challenges having a named lead practitioner.⁹

BASW is advocating for the role of the named social worker to be implemented across the country:

Named Social Worker Role Description

- Championing the rights and views of people
 - creating an environment where co-production can flourish
- Listening to people and respecting and acting on their views
- Developing a strong and trusting relationship with the person and their family and using that relationship to facilitate change
- Understanding the person's hopes and dreams and working co-productively to make these real
- Provide professional advice and support to the person, family, support network
- Be the primary point of contact for the person, their family/carers wherever the person is being supported
- Confidence to challenge other professionals in the system whilst being a partner in the system- speak up, asserting – active allyship, speaking out and knowing when to speak out and equality focus

- Recognise and challenge systemic oppression, prejudice and inequalities
- Maintaining a focus on well-being in line with Care Act duty
- Provide a professional presence and voice across the system for social work and social work values
- Supporting people to live independently with the least restrictive arrangements

These are the attributes- skills, knowledge and values of a named social worker:

- Truly ambitious for the people they support, believing in what they can do not what they can't; strengths based approach to working with people
- An empathetic listener;
- An open-minded problem solver;
- A team player, always ready to share and learn with and from people, families and colleagues
- Literate of key legislation, policy and guidance and able to apply this to in practice
- A strong communicator, able to connect and communicate with people with different communication needs and preferences
- Able to advocate for the people they are supporting with colleagues across disciplines;
- Confident and able to use their judgement in tricky situations;
- Able to take risks and be flexible; know when to ask for advice and seek supervision and guidance
- Knowledgeable about the local service offer and about local communities;
- Well connected with colleagues in partner agencies and the voluntary sector

The role description, the attributes, knowledge and skills can be embedded within social work teams and roles in specialist or generic teams across children's and adults services and can be used by organisations to support social workers practice with ways of working that lead to the best outcomes for people being supported in their home and community.

There is alignment with the Capabilities statements for social work with people with learning disabilities:

⁸ www.innovationunit.org/publications/department-of-health-named-social-worker

⁹ www.nice.org.uk/guidance/qs101

www.basw.co.uk/capabilities/adults-with-learning-disabilities and social work with autistic adults
www.basw.co.uk/capabilities/autistic-adults
www.basw.co.uk/learning-disabilities-and-autistic-adults-capabilities-statements-new-resources

The named social worker has a key role to play in relation to the following:

Building Trust and positive relationships

The NHS Long Term Plan and Implementation Framework¹⁰ includes a commitment to improve health and wider life outcomes for children and adults with a learning disability, autism or both and their families.

A soon to be published study carried out by The Family Trauma Project, identifies that trauma may already have been experienced by people and families finding their way through the system, can be exacerbated when professionals focus on the wrong thing (challenging behaviour, safeguarding, and physical health of individual ignoring parental wellbeing). This can result in families being re-traumatised.¹¹

In recognition of the impact of psychological trauma on the lives of individuals and families, there is a role for the named social worker to develop a more trauma focussed and informed approach to the care and support of children and adults in proactive support and in crisis, in local communities and in inpatient mental health settings.

Named social workers need to be given the time and space to build trust with individuals and families, other professionals and across organisations in order to work pro-actively and in a preventative way with people and families.

The named social worker pilot found that time, resources and permission to do great social work improved outcomes, collaboration with other professionals and reduced crises and pressure in the longer term. Working in this way was found to impact positively in terms of co-designing outcomes and participation.

Knowledge of community resources and commissioning good quality community-based support

“Keeping the individual rather than systems as the focus of social work practice has been key to the success of the named social worker pilot.”

Named social workers develop knowledge about community resources including those run by autistic people and people with learning disabilities, build relationships with a range of organisations and providers so that they are able to connect people to the right type of support for them, support families and enable the person to develop relationships and networks that improve and promote health and wellbeing.

Named social workers understand the barriers for autistic people and people with learning disabilities in being able to access support that meets their needs at the time this is needed. Ensuring that information is presented in an accessible way, jargon free and uses images or symbols if this is appropriate.

Named social workers support access to healthcare services that enable people to maintain good mental and physical health, enabling any assessment or treatment needs to be identified early on.

“Good service commissioning for autistic people recognises the cost effectiveness of good quality community-based support and does not allow short-term budgetary constraints to dictate decisions which are not in the long-term interests of autistic people and their local communities.”¹²

In line with the principles outlined in this document, named social workers promote a social care model which includes the principles of social care embedded into all care and support arrangements after treatment.

¹⁰ NHS Long Term Plan (2019) www.longtermplan.nhs.uk/wp-content/uploads/2019/08/nhs-long-term-plan-version-1.2.pdf

¹¹ Trauma and families a collaborative response to 3 inter-connected proposals from NHS England Respond, the Challenging Behaviour Foundation, the Tizard Centre and Three Cs- Full report in publication

¹² Social Work with Autistic People: Essential Knowledge, Skills and the Law for Working with Children and Adults Paperback – 21 Sept. 2020, by [Yo Dunn](#) (Author)

Care and Treatment Reviews (CTRs) or Care, Education & Treatment Reviews (CETRs)

The care and treatment review pathway is closely aligned with social work values and ethics, rooted in the principles of human rights, a person-centred approach and co-production. The aim of this review pathway is to bring a person-centred and individualised approach to ensuring that the individual support and treatment needs of the autistic person and/or the person with learning disabilities and their families are met, and that barriers to progress are challenged and overcome.

The named social worker has a key role to play in ensuring the following:

- The person's support networks have been identified and they are supported to maintain relationships with their family, friends and links with their home community.¹³
- The person is made aware of their rights and is able to exercise them. That the person has access to an advocate.¹⁴
- That a holistic, person centred assessment of the person's needs and causes of their distress is undertaken.
- That the person (and their family/advocate) are supported to be involved in the assessment of their needs and the development of their treatment plan.
- Information about the care and treatment plan and arrangements are accessible to the person and their family.
- Start with presumption of capacity and support the person to make their own decisions and to take and manage risks.
- The person has access to meaningful and culturally appropriate activities.¹⁵
- Ensure that the person is being treated with empathy, dignity and respect, recognise and challenge abusive organisational cultures.

- Identify and challenge the use of restrictive practices and the rationale for using restraint, seclusion and segregation. Use NICE guidance to inform discussions about best practice.¹⁶
- Promotion of and support for the social model of disability and mental health.
- Ensure care and treatment reviews are scheduled and that restrictive practices are explored as part of this, with alternatives proposed that are less restrictive and proportionate.
- Retain oversight of the person's care and treatment whilst in hospital in or out of area, this is essential in order to align care plans with care and treatment reviews.¹⁷
- Challenge barriers to progress and decision making that does not enable the person to be discharged as quickly as possible.
- Support and promote relationship-based approaches to commissioning with co-production at the centre.¹⁸
- Recognition of the importance of peer support for people being discharged from hospital.¹⁹



¹³ NICE Guideline: Transition between inpatient mental health settings and community or care home settings, NG53- www.nice.org.uk/guidance/ng53

¹⁴ NICE Service user experience in adult mental health: improving the experience of care for people using adult NHS mental health services, CG136- www.nice.org.uk/guidance/CG136

¹⁵ NICE Quality statement 8- Service user experience in adult mental health services, QS14- www.nice.org.uk/guidance/qs14/chapter/Quality-statement-8-Inpatient-meaningful-activities

¹⁶ NICE Guideline: [Violence and aggression: short-term management in mental health, health and community settings](#) NG10 and NICE quality standard, Learning disability: behaviour that challenges, QS101- Quality statement 10 and 11- www.nice.org.uk/guidance/qs101

¹⁷ NICE Guideline NG53- [Transition between inpatient mental health settings and community or care home settings](#), NG53

¹⁸ NICE Guideline NG86- [People's experience in adult social care services: improving the experience of care and support for people using adult social care services](#)

¹⁹ NICE Guideline: Transition between inpatient mental health settings and community or care home settings, NG53- [Transition between inpatient mental health settings and community or care home settings](#) NG53

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