



## BRIEFING PAPER

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# Learning Disability - overview of policy and services

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### Inside:

1. What is a learning disability?
2. Health and social care policies
3. Employment
4. Welfare and benefits
5. Education
6. Criminal justice

# Contents

<b>Summary</b>	<b>3</b>
<b>1. What is a learning disability?</b>	<b>4</b>
<b>2. Health and social care policies</b>	<b>5</b>
2.1 Reducing premature mortality	5
2.2 Reducing the use of inpatient services	6
2.3 The “No voice unheard, no right ignored” consultation	10
2.4 Health and social care services	12
<b>3. Employment</b>	<b>14</b>
The Disability Confident Campaign	14
NHS Learning Disability Employment Programme	14
Back to work schemes	14
The Equality Act 2010 – discrimination and reasonable adjustments	16
<b>4. Welfare and benefits</b>	<b>17</b>
Welfare changes	17
Employment and Support Allowance	17
Personal Independence Payment	19
Universal Credit	20
<b>5. Education</b>	<b>22</b>
<b>6. Criminal justice</b>	<b>24</b>
Liaison and Diversion	24

## Summary

This briefing provides an overview of policies and services for people with a learning disability in England.

The Government and NHS England have committed to reducing health inequalities for people with learning disabilities and have established national programmes to improve treatment and outcomes. The *Government's Mandate to the NHS 2016-17* set an objective for the NHS to close the health gap between people with mental health problems, learning disabilities and autism and the population as a whole.

In June 2015, NHS England commissioned the *National Learning Disability Mortality Review Programme* led by the University of Bristol, to review and learn from deaths of people with a learning disability with the aim of improving services, care and support nationally. The three-year project will investigate the causes of premature mortality for people with a learning disability and will develop a strategy to reduce this inequality. The *Government's Mandate to the NHS 2015-16* and 2014-15 also set specific objectives to reduce excess mortality for adults under 60 with a learning disability.

The Government and NHS England have also committed to reducing the number of people with a learning disability who are placed in inpatient services. NHS England's *Transforming Care* programme intends to improve the quality of life of those with learning disabilities by substantially reducing the number of people placed in hospital, reducing the length of time those admitted spend there, and enhancing the quality of both hospital and community settings. The *Government's Mandate to the NHS 2016-17* set an objective for the NHS to increase the number of people with learning disabilities/autism being cared for by community not inpatient services.

In 2015, NHS England, in partnership with local government leaders, published a national action plan to develop community services and close inpatient facilities for people with a learning disability and/or autism. The *Building the Right Support*<sup>1</sup> plan aims to shift money from inpatient services to the community, and reduce the use of inpatient beds by 35% - 50% in the next three years.

From June 2016, the Department of Health will publish independently assured, ratings of the quality of healthcare offered to people with learning disabilities in all CCG areas, to highlight variations and to allow rapid action to be taken when improvement is needed.

NHS England and NHS Employers are also working together on a national programme to support NHS organisations to increase employment of people with learning disabilities in the NHS.

The briefing also looks at recent policy changes in the areas of employment, welfare, education and criminal justice.

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<sup>1</sup> NHS England, [Building the right support](#), October 2015

# 1. What is a learning disability?

A learning disability affects the way that someone communicates and understands information. This means that someone may have difficulties:

- understanding new or complex information;
- learning new skills; and
- coping independently

It is estimated that around 1.5 million people in the UK have a learning disability, and around 350,000 people have a severe learning disability.<sup>2</sup>

A learning disability can affect children and adults, although children and young people with a learning disability may also have special educational needs.

The broad term 'learning disability' can cover a spectrum of conditions, from a mild learning disability where someone can manage independently but might take longer to learn new skills, to a profound and severe learning disability where an individual may need substantial care and support with every aspect of their life.

Further information on severe, moderate and mild learning disabilities can be found on the NHS Choices page on [What is a learning disability?](#)

The UK Government supports the social model as a way of understanding disability. This model, unlike the medical model, says that disability is not caused by an individual's health condition or impairment itself, but by the way that society treats and creates barriers for people with health needs. The barriers generally fall into three categories:

- the environment – including inaccessible buildings and services
- people's attitudes – stereotyping, discrimination and prejudice
- organisations – inflexible policies, practices and procedures

Using the social model enables the Government and wider society to identify the barriers that prevent disabled people from fully participating in society or experiencing disadvantage compared to non-disabled people. The social model is supported by disabled people and their organisations, and encourages society to become more inclusive.<sup>3</sup>

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<sup>2</sup> NHS Choices, [What is a learning disability?](#) [last accessed 4 November 2014]

<sup>3</sup> Gov.uk, [Creating a fairer and more equal society](#), last updated 18 August 2014

## 2. Health and social care policies

The Government has mandated the NHS to reduce the health gap between people with mental health problems, learning disabilities and autism and the population as a whole, and support them to live full, healthy and independent lives.<sup>4</sup>

The Government's has also mandated the NHS to introduce a new Ofsted-style CCG framework for 2016-17, including health economy metrics to measure progress on priorities set out in the Mandate and the NHS planning guidance, including assessments for learning disabilities services.<sup>5</sup>

From June 2016, the Department of Health will publish independently assured, ratings of the quality of healthcare offered to people with learning disabilities in all CCG areas, to highlight variations and to allow rapid action to be taken when improvement is needed.<sup>6</sup>

### 2.1 Reducing premature mortality

There is evidence that people with a learning disability experience inequalities in healthcare. Research has found that men with a learning disability die on average 13 years sooner, and women with a learning disability 20 years sooner, compared to those without learning disabilities.<sup>7</sup>

The Department of Health established a [Confidential Inquiry into the Premature Deaths of People with Learning Disabilities](#) (2013). The Confidential Inquiry investigated the avoidable or premature deaths of people with learning disabilities through a series of retrospective reviews of deaths. The aim was to review the patterns of care that people received in the period leading up to their deaths, to identify errors or omissions contributing to these deaths, to illustrate evidence of good practice, and to provide improved evidence on avoiding premature death. The inquiry focused on five Primary Care Trust (PCT) areas of South West England.

The inquiry found that the most common reasons for deaths being assessed as premature were: delays or problems with diagnosis or treatment; and problems with identifying needs and providing appropriate care in response to changing needs:

for 29% there was significant difficulty or delay in diagnosis, further investigation or specialist referral, and for 30% there were problems with their treatment. The lack of reasonable adjustments to facilitate healthcare of people with learning

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<sup>4</sup> Department of Health, [The Government's mandate to NHS England for 2016-17](#), page 10

<sup>5</sup> Department of Health, [The Government's mandate to NHS England for 2016-17](#), page 12

<sup>6</sup> [PO HL443 \[on Health Services: Learning Disability\], 22 December 2015](#)

<sup>7</sup> Department of Health, [Premature Deaths of People with Learning Disabilities: Progress Update](#), September 2014

disabilities, particularly attendance at clinic appointments and investigations, was a contributory factor in a number of deaths...<sup>8</sup>

The inquiry made 18 recommendations, including:

- Clear identification of people with learning disabilities on the NHS central registration system and in all healthcare record systems;
- The establishment of a national mortality review programme for people with learning disabilities;
- A named healthcare coordinator to be allocated to people with complex or multiple health needs, or two or more long-term conditions; *and*
- Standardisation of Annual Health Checks and a clear pathway between Annual Health Checks and Health Action Plans.

The [Government's response to the Confidential Inquiry into premature deaths of people with learning disabilities](#) (July 2013), stated that the Department of Health is committed to addressing the issues identified by the Confidential Inquiry in order to improve the quality of care and outcomes for people with learning disabilities and family carers. The response set actions to be delivered by the Department of Health, NHS England, Public Health England and other statutory organisations, under each of the 18 recommendations. Progress on these actions is monitored by the [Learning Disability Programme Board](#).

In September 2014, the Government published the [Premature Deaths of People with Learning Disabilities: Progress Update](#) which summarised action taken or underway against each of the themes identified by the Confidential Inquiry.

The [Government's Mandate to the NHS 2014-15](#) set a specific objective to reduce excess mortality for adults under 60 with a learning disability. This was repeated in the 2015-16 Mandate.

In June 2015, NHS England announced a national review of premature deaths of people with learning disabilities. Led by the University of Bristol, the *National Learning Disability Mortality Review Programme* was commissioned by Healthcare Quality Improvement Partnership (HQIP) on behalf of NHS England, and will seek to improve the quality of health and social care delivery for people with learning disabilities through a retrospective review of their deaths. The three-year project will investigate the causes of premature mortality for people with a learning disability and will develop a strategy to reduce this inequality.<sup>9</sup>

NHS England has further information on its work on [Reducing premature mortality in people with a learning disability](#).

## 2.2 Reducing the use of inpatient services

In 2011, the BBC's Panorama programme exposed the abuse of patients at Winterbourne View, an independent hospital for people with learning disabilities and/or autism. Further inspections by the CQC of 150

<sup>8</sup> [Confidential Inquiry into the Premature Deaths of People with Learning Disabilities \(CIPOLD\), March 2013, page 4](#)

<sup>9</sup> NHS England, [NHS launches world's first national review of deaths of people with learning disabilities](#), 18 June 2015

## 7 Learning Disability - overview of policy and services

hospitals and care homes for people with a learning disability found inadequate practice in some services, included poor person-centred care, limited appropriate activities and a lack of monitoring and learning from incidents of restraint.<sup>10</sup>

The Department of Health's national policy response, [Transforming care: A National response to Winterbourne View Hospital](#) (December 2012) stated that "hospitals are not where people should live" and pledged that everyone inappropriately in hospital will move to community-based support as quickly as possible, and no later than 1 June 2014. Other key pledges included:

- By Summer 2015 NICE will publish quality standards and clinical guidelines on challenging behaviour and learning disability.
- By Summer 2016 NICE will publish quality standards and clinical guidelines on mental health and learning disability.
- The Department of Health will revise statutory guidance and good practice guidance to reflect new legislation and address findings from Winterbourne View, to be completed in time for the implementation of the Care and Support Bill (subject to parliamentary approval).
- CQC will take steps now to strengthen the way it uses its existing powers to hold organisations to account for failures to provide quality care.

A full timetable of actions can be found in the report's Annex.<sup>11</sup>

The [Learning Disability Programme Board](#), chaired by Department of Health, monitors delivery of the [Transforming care](#) programme.

The review was accompanied by the [Winterbourne View Review: Concordat](#); an agreement signed by the NHS, statutory organisations and stakeholders committing themselves to provision of appropriate services for people with learning disabilities.

In 2014, NHS England commissioned Sir Stephen Bubb to consider how a new national framework for learning disability services could be implemented. This came after the pledge to enable people with learning disabilities and/or autism inappropriately placed in hospital to move to community based support by June 2014 was missed.<sup>12</sup>

Sir Stephen's starting point was that it is not acceptable in the twenty-first century for thousands of people to be living in hospitals when, with the right support, they could be living in the community. His report [Winterbourne View - Time for Change](#) (November 2014), found that people with learning disabilities are still being placed inappropriately in long-term institutional care rather than being supported in the community. The report found that there are still more people being

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<sup>10</sup> Care Quality Commission, [Learning Disability reports](#) [last accessed 5 November 2014]

<sup>11</sup> Department of Health, [Transforming care: A national response to Winterbourne View Hospital](#), page 56

<sup>12</sup> A report by the Transforming Care and Commissioning Steering Group, chaired by Sir Stephen Bubb, [Winterbourne View - Time for change](#), November 2014, page 8

admitted to such institutions than are being discharged. The report's key recommendations were:

- To urgently close inappropriate in-patient care institutions;
- To introduce a Charter of Rights for people with learning disabilities and/or autism and their families;
- To give people with learning disabilities and their families a 'right to challenge' decisions and the right to request a personal budget;
- To require local decision-makers to follow a mandatory framework that sets out who is responsible, for which services and how they will be held to account, including improved data collection and publication;
- To improve training and education for NHS, local government and provider staff;
- To start a social investment fund to build capacity in community-based services, to enable them to provide alternative support and empowering people with learning disabilities by giving them the rights they deserve in determining their care.<sup>13</sup>

Sir Stephen's progress report - [Winterbourne View - Time is Running Out](#) (July 2014) – found that the number of people with learning disabilities and/or autism being discharged from inpatient institutions was now greater than the number being admitted. However, the review declared that the pace of change has been slow, and the *Transforming Care* programme has not yet delivered anything tangible in terms of new community facilities or closures.

In January 2015, the Government published [Winterbourne View: transforming care 2 years on](#), to report on progress against their original report. In a Written Statement, then Minister Norman Lamb outlined the recommendations that have been achieved:

A significant number of the recommendations have been achieved. We now know how many people are in inpatient settings, where they are and who is responsible for them. NHS England has introduced Care and Treatment Reviews for everyone in inpatient settings, with a multi-disciplinary team from health and social care, alongside Experts by Experience. 181 people are benefitting from £7m DH capital funding to support people inappropriately placed in inpatient settings to move to more suitable housing. We have strengthened the accountability and corporate responsibility arrangements to assure the quality and safety of care services. A duty of candour which requires providers to inform service users where there are failings in care came into force for NHS providers last November, and will be extended to all other providers registered with the Care Quality Commission in this April. A fit and proper person's test which requires providers to ensure that Directors are fit to carry out their role came into force last November for NHS providers in NHS Trusts, foundation trusts and special health authorities. All other providers will be required to comply by this April. The introduction of the forthcoming statutory offences of ill-treatment or wilful neglect

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<sup>13</sup> A report by the Transforming Care and Commissioning Steering Group, chaired by Sir Stephen Bubb, [Winterbourne View - Time for change](#), November 2014



## 9 Learning Disability - overview of policy and services

will also send a clear message throughout the health and care system that intentionally poor care will never be tolerated. We have new guidance on minimising restrictive interventions and work is underway to improve data about the use of restraint. A more rigorous registration, assessment and inspection approach is in place for learning disability services. The Care Act 2014 enshrines new principles for adult social care including the principle of individual wellbeing which encompasses people having control of their day to day life, suitable accommodation and being able to contribute to society. The Act requires local authorities to consider people's views, wishes and beliefs and focuses on the outcomes people themselves want to achieve. The Act also underpins and reinforces the importance of good quality, independent advocacy and will support people, their families and carers to raise concerns.<sup>14</sup>

The Minister however also stated that not enough progress had been made:

The report is also clear, however, that we have not made nearly enough progress to transform services. This cannot be tolerated. We recognise that there is still much more to do to reduce the need for inpatient care. There are many people with very complex needs, in many different types of inpatient settings and we need to ensure the right decisions are made about their care, listening to individuals, their families and carers. All partners involved in Transforming Care have agreed the need for a single programme to collectively drive forward the changes needed. A strengthened programme will be put in place, which takes into consideration the recommendations of Winterbourne View – A Time to for Change (2014) by Sir Stephen Bubb, and will drive a better co-ordinated approach to achieve faster and sustainable progress. The details of this approach can be accessed at: <http://www.england.nhs.uk/ourwork/qual-clin-lead/ld/transform-care/>.<sup>15</sup>

In February 2015, the National Audit Office (NAO) published its report *Care Services for People with Learning Disabilities and Challenging Behaviour*. The report found that the Government had not met its central goal of moving people with learning disabilities and challenging behaviour out of hospital by 1 June 2014, because it “underestimated the complexity and level of challenge in meeting the commitments in its action plan”.

During a Public Account Committee evidence session on the NAO report in February 2015, the Chief Executive of NHS England announced that there would now be a planned closure programme for NHS mental health hospitals, and a change in commissioning practices for NHS inpatients within the independent sector.<sup>16</sup> This would be accompanied by a transition plan for the people with learning disabilities within these hospitals, from 2016–17.<sup>17</sup>

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<sup>14</sup> [Written statement - HCWS231 \[on Winterbourne View: Transforming Care Two Years On report\], 29 January 2015](#)

<sup>15</sup> [Written statement - HCWS231 \[on Winterbourne View: Transforming Care Two Years On report\], 29 January 2015](#)

<sup>16</sup> Public Accounts Committee, [Care services for people with learning disabilities and challenging behaviour](#), 27 March 2015, HC 973 2014-15, para 15

<sup>17</sup> Public Accounts Committee, [Care services for people with learning disabilities and challenging behaviour](#), 27 March 2015, HC 973 2014-15, page 5

In October 2015, NHS England, in partnership with the Local Government Association (LGA) and the Directors of Adult Social Services (ADASS), published a national action plan to develop community services and close inpatient facilities for people with a learning disability and/or autism. The *Building the Right Support* plan aims to shift money from inpatient services to the community, and reduce the use of inpatient beds by 35% - 50% in the next three years.<sup>18</sup>

To help shape a national approach to supporting change, six 'fast track' areas drew up plans over the summer of 2015 and envisage shifting money into community services in order to reduce their usage of inpatient provision by approximately 50% over the next three years. Their plans will result in the development of a range of new community services and the closure of hospital units, including the last standalone learning disability hospital in England.<sup>19</sup>

To support commissioners, NHS England will make available up to £30 million of transformation funding over three years, to be matched by CCGs, and £15 million in capital funding. This funding is in addition to the £10 million made available to six fast track areas in 2015/16.<sup>20</sup>

## 2.3 The “No voice unheard, no right ignored” consultation

In March 2015, the Government published the consultation paper - [\*No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions.\*](#)

The consultation examined how people’s rights and choices could be strengthened. The then Minister for Care Services, Norman Lamb, said the Government wants to see four key things:

- People in charge, supported by family and friends – not as passive patients or “prisoners” of a system, as they so often feel they are;
- Inclusion and independence in the community – people should not routinely be sent away from their homes and communities or to institutions which restrict access to their community or to inappropriate care;
- The right care in the right place –there should be real person centred planning with the individual themselves at the heart; and
- Very clear accountability and responsibility throughout the system – there can be no excuses for a lack of clarity over responsibility or for people falling through the gaps between services.<sup>21</sup>

The scope of the consultation primarily related to:

- assessment and treatment in mental health hospitals for people (all age) with learning disability or autism;

<sup>18</sup> NHS England, [Building the right support](#), October 2015

<sup>19</sup> NHS England, [Building the right support](#), October 2015, page 5

<sup>20</sup> [PQ 32675 \[on Community Care: Learning Disability\], 18 April 2015](#)

<sup>21</sup> [HCWS355 \[on No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions\], 6 March 2015](#)

## 11 Learning Disability - overview of policy and services

- adult care and support, primarily for those with learning disability but also for adults with autism (and the links to support for children and young people); and
- all those to whom the Mental Health Act currently applies (including children and young people).<sup>22</sup>

The Government provided its response to the consultation in November 2015: [\*Government response to No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions\*](#). This reported that the consultation had found varying provision for people with learning disabilities:

The consultation recognised stark variability in commissioning approaches and in resulting outcomes across the country. This reflected the fact that some commissioners have failed to grasp and act on the urgency of putting in place suitable community provision.

In its response, the Government set a series of proposals grouped into three implementation phases:

- early actions that seek to sustain momentum generated, chiefly through the use of existing powers and building on work currently underway
- further changes, including proposed legislative changes that cannot be achieved via existing powers (and which relate principally to the Mental Health Act 1983), and
- a third phase, which explores more radical solutions to longer-term issues, as well as ongoing monitoring and review, and a commitment that the Government will intervene further, including through legislation if necessary, if the improvements sought continue not to be realised in practice.<sup>23</sup>

Detailed information on each of the above proposals is available in the Government's response.

In November 2015, Health Minister Alistair Burt also outlined further work the Government is carrying out to improve care for people with learning disabilities, autism and mental health problems:

The proposals in this document go hand in hand with the substantial programmes of work being put in place under the Transforming Care Programme, including the recently announced "Building the Right Support" national transformation plan. This was published on 30<sup>th</sup> October by NHS England, the Local Government Association and the Association of Directors of Adult Social Services to reduce reliance on inpatient capacity and increase community-based provision. A national NHS England fund of £45 million will be available to Transforming Care Partnerships over the next three years to aid the transition, focussing on ensuring that the right support is available in local areas to enable the first discharges. Central to the progress set out by the plan over the next three years will be new, high-quality, community-based services. The plan predicts that, as these

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<sup>22</sup> ibid

<sup>23</sup> Department of Health, [\*Government response to No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions\*](#), November 2015 para 6

services are put in place, there will be a reduction of up to 50% in the number of inpatient beds, meaning that some units will close altogether.<sup>24</sup>

## 2.4 Health and social care services

### Social care

Many people with a learning disability will use social and personal care services. Once someone is diagnosed with a learning disability, they should be given a needs assessment to determine what care they require. An individual should be involved, along with their carer and/or family if consent is given, in drawing up a personalised care and support plan to choose services that meet their needs. This could include social care services such as help in getting dressed, washed and cooking, or managing finances. Many people will have a local care coordinator, to help them plan and organise a tailored range of services.

Mencap's *Face the facts* campaign into reported reductions in social care funding estimated that 142,500 people with a learning disability in England use social care services.<sup>25</sup>

The *Care Act 2014* made changes to funding social care; information on how this is expected to work in practice is set out in the Standard Note [Social care funding reform: FAQs](#) (SN/SP/6863).

### Self-directed support

*Direct payments:* Adults, including those with a learning disability, who qualify for state-funded care services may be entitled to receive payments instead of a care package from the local authority. The payments, known as direct payments, are then used by the recipient to arrange and pay for their own, independently contracted, care and support services.

*Personal budgets:* Personal budgets are an allocation of funding given to people after an assessment of their needs. People can either take their personal budget as a direct payment, or - while still choosing how their care needs are met and by whom - leave councils with the responsibility to commission the services. Or they can have a combination of the two.

Under the *Health and Social Care Act 2001*, local authorities have a duty to provide direct payments for people who qualify for social care services. The *Care Act 2014* introduced a legislative basis for personal budgets for social care.

Further information is set out in the Library Standard Note on *Direct payments and personal budgets for social care* (SN03735).

### Hospital care

People with a learning disability who also have a mental health problem and/or significantly challenging behaviours may spend time in a

<sup>24</sup> [Written Statement HCWS302 \[on Government response to 'No voice unheard, no right ignored' consultation\], 10 November 2015](#)

<sup>25</sup> Mencap, ['Face the facts' cuts dossier](#), [last access 20 November 2014]

## 13 Learning Disability - overview of policy and services

specialist hospital unit. There are different kinds of specialist hospital units, including:

- Specialist Assessment and Treatment Units
- General Psychiatric Units
- Secure Units

### **Admission to hospital**

Voluntary admission to hospital can be made if someone has the *mental capacity* to consent, and a psychiatrist agrees it is in their best interest.

If someone lacks the mental capacity to consent, they can still be admitted to hospital as an informal patient under the *Mental Capacity Act 2005* if the admission is in their best interests and does not deprive them of their liberty. Being an informal patient means someone is able to come and go, provided a doctor does not deem there to be a risk to themselves or others. Deprivation of liberty safeguards (DOLS) cover people who are in hospital or a care home, and do not have mental capacity. DOLS exist under the *Mental Capacity Act* to prevent deprivations of liberty without proper protection for people, including independent consideration and authorisation.

Compulsory admission, or 'sectioning' can take place if an individual has a mental disorder that requires them to be detained under the *Mental Health Act 1983*. Someone would usually be admitted under section 2 or section 3 of the Mental Health Act:

- Section 2 is a compulsory admission to hospital for up to 28 days, to allow for assessment
- Section 3 is a compulsory admission to hospital to enable treatment, initially up to 6 months but it can be renewed for up to a year

NHS England provides further information on legislation for admission: [Going into hospital because of mental health difficulties or challenging behaviours: What families need to know.](#)

### **After-care**

People who have been detained in hospital under Section 3 of the *Mental Health Act* have a right to free 'aftercare' when they are discharged. Section 117 of the *Mental Health Act* imposes a duty on health and social care services to provide aftercare services, according to an individual's needs, such as supported housing, help managing money and regular meetings with a psychiatrist. For example, if someone was paying for their residential care prior to compulsory admission under section 3, this would subsequently be paid for by the CCG after discharge, if in England.

S117 does not apply to certain sections of the *Mental Health Act*, including patients who have been detained in hospital for assessment under Section 2.

### 3. Employment

The Government has committed to “ensuring that all disabled people have the opportunity to fulfil their potential and realise their aspirations”. The Government has set an aspiration to half the disability employment gap – the difference in the percentage of disabled and non-disabled people in work.

The latest employment figures for Q4 2015 show that 46.7% of disabled people were in employment compared to 80.3% of non-disabled people.<sup>26</sup>

#### The Disability Confident Campaign

The [Disability Confident Campaign](#) was launched by the Prime Minister in July 2013, and aims to encourage employers to become more confident in employing disabled people, by removing barriers and increasing understanding.

The DWP published its report [Disability Confident 1 year on: Breaking down the barriers to employment](#) in October 2014. It states that the Department has “made a great start to breaking down the barriers that stop disabled people getting work”, and over 1000 employers have signed up to the campaign so far.

#### NHS Learning Disability Employment Programme

NHS England and NHS Employers are working together to support and encourage NHS organisations to remove barriers and increase employment of people with learning disabilities in the NHS.

NHS England have published tools and guidance to support NHS organisations in meeting this objective. NHS England have also launched a three step pledge and are inviting organisations to make a pledge to demonstrate their commitment to employing people with learning disabilities. The Chief Nursing Officer of NHS England and the Chief Executive of NHS Employers wrote to NHS Chief Executives to:

- increase awareness of tools and guidance/ the programme;
- encourage Chief Executives to show their commitment by signing the pledge;
- invite them to meet Simon Simons, Chief Executive of NHS England, and showcase the work of their organisation in June 2016.

Further information is available from NHS England - [NHS Learning Disability Employment Programme](#).

#### Back to work schemes

##### Work Programme

Disabled people may receive back-to-work support through the Work Programme, the Government’s main welfare-to-work scheme. This scheme provides support, work experience and training for up to two years to help individuals find and stay in work.

<sup>26</sup> House of Commons Library, [Key statistics on people with disabilities in employment](#), 21 March 2016

## 15 Learning Disability - overview of policy and services

There have been concerns about the success of the Work Programme in supporting people with a learning disability. Some providers of the programme have said that the complex needs of disabled people cannot be met under the scheme, particularly for people in receipt of Employment and Support Allowance<sup>27</sup>.

The Government have defended the success of the Programme, and said:

The 10% of people being helped through the Work programme is a significant improvement, and a significant number of people who go through Work Choice get into work. That is a very considerable record, and 116,000 more disabled people are in work this year than last year.<sup>28</sup>

The Public Accounts Committee carried out an inquiry into the Work Programme in November 2014. The Chair of the Committee, Margaret Hodge MP, said:

Almost 90% of Employment and Support Allowance claimants on the Work Programme have not moved into jobs.

Evidence shows that differential payments have not stopped contractors from focusing on easier-to-help individuals and parking harder-to-help claimants, often those with a range of disabilities including mental health challenges.<sup>29</sup>

Further information is available in the Library briefing on [Work Programme: background and statistics](#) (April 2016).

*Specialist disability employment programmes are also available:*

### **Work Choice**

Work Choice supports people with a more severe disability, by providing support tailored to individual needs. It is a voluntary scheme.

Participants initially receive support intended to help them get work; once they have found work, the programme provider helps the participant and their employer to identify support needed to help them start and stay in work and then progress in their job.

Further information is available from Gov.uk: [Work Choice](#).

### **Access to Work**

The [Access to Work](#) scheme provides financial support for the extra costs of being in work which go beyond the “reasonable adjustments” that are required in law (see below). Access to Work is delivered by the Department for Work and Pensions through Jobcentre Plus and is available to those aged 16 years or over who live and work in Great Britain.

For further information see the Library briefing on [‘Access to Work’ scheme for people with disabilities](#) (March 2016).

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<sup>27</sup> [‘Work Programme not doing enough for sick and disabled, providers say’](#), BBC, 19 June 2013

<sup>28</sup> [HC Deb 3 November 2014 c534](#)

<sup>29</sup> Public Accounts Committee, [Work programme: report published](#), 6 November 2014



## The Equality Act 2010 – discrimination and reasonable adjustments

Discrimination on the grounds of disability is unlawful under the *Equality Act 2010* and the United Nations Convention on disability rights. The *Equality Act 2010* means it is unlawful for an employer to discriminate against someone with a disability in areas including application forms, interview arrangements, and terms of employment, including pay.

The *Equality Act 2010* also places a duty on employers to make “reasonable adjustments” for their staff so that a disabled person is not at a substantial disadvantage compared to a non-disabled person. The reasonable adjustment duty applies to recruitment practices as well as arrangements for existing staff members. The definition of what is “reasonable” will depend on factors such as the time and cost of making an adjustment. Reasonable adjustments might include:

- providing recruitment literature in large print
- providing in interview situations extra equipment at reasonable cost, removing movable barriers like furniture, or holding the interview in a different, wheelchair accessible room;
- allowing a guide or hearing dog into the workplace;
- purchasing specialist equipment, such as an ergonomic chair;
- discounting disability-related sickness leave for the purposes of absence management;
- providing additional supervisory guidance / support;
- including a disabled parking space in the car park;
- allowing different start and end times to the working day.<sup>30</sup>

As detailed above, the Access to Work scheme can provide additional financial support for adjustments which go beyond the remit of mandatory reasonable adjustments requirements.

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<sup>30</sup> [Equality Act 2010: Duty on employers to make reasonable adjustments for their staff](#)



## 4. Welfare and benefits

Social security policy is a matter reserved to the UK, meaning that policies generally apply to England, Scotland, Wales and Northern Ireland.

People with a learning disability may be entitled to a range of different benefits. This includes income-replacement benefits, such as [Employment and Support Allowance \(ESA\)](#), or benefits to help with the extra costs of a disability, such as [Disability Living Allowance \(DLA\)](#) which is being replaced by [Personal Independence Payment \(PIP\)](#) for working-age adults.

### Welfare changes

People with a learning disability may be affected by recent welfare changes, including changes provided for in the [Welfare Reform and Work Act 2016](#).

### Employment and Support Allowance

Employment and Support Allowance (ESA) replaced incapacity benefits for new claimants from 27 October 2008. It replaced both Incapacity Benefit, and Income Support for people judged incapable of work.

Eligibility for ESA is determined by the Work Capability Assessment (WCA). Claimants are assessed on whether they have a "limited capability for work", and also whether they are capable of engaging in "work-related activity." This second part of the assessment determines whether the person is placed in the "Support Group" or the "Work-Related Activity group". For claimants placed in the Work-Related Activity Group, access to the full rate of benefit may be conditional on participation in work focused interviews and mandatory "work-related activity", such as work experience, training programmes or participation in the Work Programme. Claimants are not however expected to apply for jobs or undergo medical treatment.

The *Welfare Reform and Work Act 2016* legislates changes to ESA. From April 2017, new Employment and Support Allowance claimants who are placed in the "Work Related Activity Group" (WRAG) will no longer be eligible for the additional Work-Related Activity Component, which is currently worth £29.05 a week. The corresponding limited capability for work element in Universal Credit will also be abolished for new claims. The changes only affect new claims from that date – people already getting the ESA Work-Related Activity Component or the UC limited capability for work element at April 2017 will continue to receive it.

The Government has announced a package of measures to provide additional help people with health conditions and disabilities get into work. Further details will be set out in a forthcoming White Paper on improvements to back to work support for people with health conditions and disabilities.

For general background on the ESA changes, the rationale for them and initial reactions from disability organisations and others see [section 7 of](#)

[\*Library briefing paper CBP-7252 produced for the Commons Second Reading of the Welfare Reform and Work Bill 2015-16.\*](#)

Developments during the Lords stages are covered in the Library's briefing [\*Welfare Reform and Work Bill 2015-16: Lords amendments.\*](#) This also details the various concerns voiced about the impact of the changes, and the main findings from the report [\*Halving The Gap? A Review into the Government's proposed reduction to Employment and Support Allowance and its impact on halving the disability employment gap.\*](#) published by disability charities on 8 December 2015.

### **The assessment process**

Mencap has raised concerns about the suitability of the ESA assessment process for people with a learning disability:

The assessment is a cause of great fear and anxiety for people with a learning disability, whose only wish is to be able to live their lives like everyone else, but who are often prevented from doing so by an unfair and flawed process.

Wrong decisions are disturbingly commonplace, with almost four in ten appeals found in favour of the person claiming ESA. This process not only causes avoidable stress and worry for tens of thousands of people, many of whom are in vulnerable situations, but it also wastes huge amounts of the taxpayers' money - an estimated £66 million was spent on appeals last year alone.<sup>31</sup>

Dr Litchfield's [\*fifth Independent Review of the Work Capability Assessment\*](#), November 2014, also expressed concerns about the disadvantages faced by people with a learning disability during the WCA process. He raised concerns about the difficulties people with a learning disability may face in engaging with and navigating the ESA process, including barriers to engaging with standard communications; a lack of easy read versions of materials; and interview practices that are not adapted to enable people with a learning disability to fully understand the questions being asked:

Many people with learning disabilities will answer questions literally and neither understand nor express subtleties of interpretation...Similarly, a number of people with learning disabilities will wish to please someone asking them questions and will consequently give the responses that they think are wanted rather than those which most accurately reflect reality.<sup>32</sup>

Dr Litchfield made recommendations to improve the WCA process, such as reviewing the learning disability training that the DWP provides to its staff and assessments providers.<sup>33</sup>

### **Jobseekers' Allowance**

People who apply for ESA but are not deemed to have "limited capability for work" due to an illness or disability may apply for JSA. To get JSA, a person has to sign on as available for and seeking work, and

<sup>31</sup> Mencap, [Mencap deems Work Capability Assessment "an unfair and flawed process"](#), 23 July 2014

<sup>32</sup> Dr Paul Litchfield, [An Independent Review of the Work Capability Assessment – year five](#), November 2014, page 60

<sup>33</sup> Dr Paul Litchfield, [An Independent Review of the Work Capability Assessment – year five](#), November 2014, page 60

must be prepared to accept any reasonable offer or work, even though reconsideration/appeal is pending.<sup>34</sup> A JSA claimant with a health condition or disability may however be allowed to restrict their availability for work if it is reasonable in light of their condition.

### Personal Independence Payment

The *Welfare Reform Act 2012* provided that Disability Living Allowance (DLA) would be replaced with Personal Independence Payment (PIP) for working-age disabled adults starting from April 2013. The changes will affect existing working age DLA claimants, as well as those making a new claim. For those existing DLA claimants found not to satisfy the conditions for PIP on reassessment, DLA will stop. Existing DLA claimants are being reassessed for PIP, but the new benefit is not expected to be fully introduced until 2018.

The 2010 Government's stated intention was that PIP will focus support on those "who face the greatest challenges to living independently". The Government estimated that by 2018, 607,000 fewer people will receive PIP than would have got DLA under the existing rules, saving £2.5 billion a year.<sup>35</sup>

### Withdrawn PIP changes

The Government announced on 11 March 2016, and confirmed in Budget 2016, its intention to change the assessment criteria for the daily living component of Personal Independence Payment.

The Government reached this decision following consultation on the way in which points are assigned for use of, and costs incurred by, aids and appliances within the PIP claimant assessment. It reached this decision as:

Further work by DWP health professionals has found that aids and appliances are not a reliable indicator of extra costs in all cases. In 96% of the cases they reviewed their view was that claimants were likely to have low, minimal or nil on-going extra costs. Many of the aids and appliances likely to be used are also often provided free of charge by the NHS and local authorities or can be purchased for a low one-off cost.<sup>36</sup>

In Budget 2016 the Chancellor confirmed that the Secretary of State for Work and Pensions will continue to deliver PIP in line with its original intentions and to ensure support is better targeted.<sup>37</sup>

Specifically, the DWP decided to halve the number of points awarded for aids and appliances used in relation to activity five of the PIP claimant assessment, dressing and undressing, and for activity six,

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<sup>34</sup> See Work and Pensions Committee, [Employment and Support Allowance and Work Capability Assessments](#), 23 July 2014, HC 302-I 2014-15, paras 103-109

<sup>35</sup> DWP, [Personal Independence Payment: Reassessment and Impacts](#), 13 December 2012

<sup>36</sup> DWP; [The Government response to the consultation on aids and appliances and the daily living component of Personal Independence Payment](#); page 4

<sup>37</sup> HM Treasury, [Budget 2016, Chancellor's speech](#); also see page 26 of the [Budget 2016 red book](#)

managing toilet needs.<sup>38</sup> The Department regarded these activities as less reliable indicators of extra, repeat costs incurred by claimants.

However, following the resignation of Iain Duncan Smith as Secretary of State for Work and Pensions on 18 March and the appointment of Stephen Crabb as his successor, the Government announced that it would not be proceeding with the PIP changes and has no further plans to make welfare savings beyond the savings already legislated for by Parliament, which it would now focus on implementing.

In his statement on welfare to the House on 21 March, Mr Crabb said:

The commitment that I am making today, based on some very long conversations with the Chancellor of the Exchequer and the Prime Minister over the weekend, is that we will not go ahead with the proposed PIP cuts, that we will not be seeking alternative offsetting savings, and that as a Government we are not seeking further savings from the welfare budget.<sup>39</sup>

## Universal Credit

Under the *Welfare Reform Act 2012*, from April 2013 Universal Credit began to replace a range of means-tested benefits and tax credits for working age families. Universal Credit will replace income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support, Child Tax Credit, Working Tax Credit and Housing Benefit. Contributory ESA will remain as a separate benefit. The DWP have stated that Universal Credit aims to simplify the current system of benefits and tax credits associated with disability.

For further information on how the introduction of Universal Credit will affect disabled people, see Library briefing SN06548 [Draft Universal Credit Regulations 2013](#).

Disability organisations have expressed concerns that the "Severe Disability Premium" which is currently payable with means-tested benefits will not be carried over into Universal Credit, meaning that some disabled people will be worse off. Further information is available from Citizen's Advice - "[Half a million disabled people could lose out under universal credit](#)<sup>40</sup>" – and the Disability Benefits Consortium [response to the Legislation Scrutiny Committee](#).<sup>41</sup>

All Universal Credit claimants will be required to agree to a Claimant Commitment. This will record the activities they are required to undertake, including, where appropriate, doing all that can reasonably be expected of them to find work or prepare for work.<sup>42</sup>

Unlike ESA, claimants for Universal Credit who are waiting for a Work Capability Assessment or waiting for the outcome of an appeal will,

<sup>38</sup> DWP; [The Government response to the consultation on aids and appliances and the daily living component of Personal Independence Payment](#); page 5

<sup>39</sup> [HC Deb 21 March 2016 c1279](#)

<sup>40</sup> Citizen's Advice Bureau, "[Half a million disabled people could lose out under universal credit](#)", 16 October 2012

<sup>41</sup> Disability Benefits Consortium, [Legislation Scrutiny Committee examination of the Statutory Instruments on Universal Credit \(UC\): DBC submission](#)

<sup>42</sup> [EXPLANATORY MEMORANDUM TO THE UNIVERSAL CREDIT REGULATIONS 2013](#), para 7.10

with some exceptions, be subject to the all work related requirements level of conditionality. These requirements will be personalised to their circumstances. The DWP stated that:

This approach is intended to support more claimants by keeping them in touch with the labour market to reduce the damage caused by labour market detachment.<sup>43</sup>

The DWP have produced a guide on [Universal Credit if you have a disability or health condition](#).

### Other benefits and funding sources

Other benefits that people with a learning disability, or their carer, could be entitled to include:

- Carer's Allowance
- Housing Benefit
- Motability Scheme
- Blue Badge scheme
- Help with Council Tax

In addition to benefits and assessments, there are other sources of support available for people with a learning disability. For example, the [Family Fund](#) is a charity which provides grants to families in the UK caring for severely disabled children.

Responsibility for people who were supported by the Government's Independent Living Fund, which will be closed on 30 June 2015, will be transferred to local authorities. Further information is in the Library note on the [Independent Living Fund](#).

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<sup>43</sup> Work and Pensions Select Committee, *Employment and Support Allowance and Work Capability Assessments*, 23 July 2014, HC 302-I 2014-15, [Ev 17 WCA0196](#)

## 5. Education

### Special Educational Needs and Disability

The *Children and Families Act 2014* provides for a new special educational needs and disability (SEND) support system, covering education, health and social care.

In England, the dual system of SEN statements for children and Learning Difficulty Assessments for 16 to 25 year olds is being replaced by a new single system of birth-to-25 assessments and Education, Health and Care Plans. The reformed system was introduced in September 2014, with transitional arrangements for those who already have plans in place. Transition to the reformed system is intended to be complete by April 2018. In January 2015, the Government published a new [Special educational needs and disability code of practice](#) for children and young people aged between 0 to 25 years and provides statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities.

Further information can be found in the Library Standard Note on [The reformed system for children and young people with Special Educational Needs in England](#).

It is estimated that there are 1.8 million pupils in England with a SEND, of which 234,000 children have a diagnosis associated with a learning disability. There are concerns that children and young people with a learning disability, and SEND more broadly, are not receiving adequate support in the education system. For example, pupils with SEND are eight times more likely to be permanently excluded than pupils without SEN, and by the age of 19 young disabled people are three times more likely to not be in education, employment or training.<sup>44</sup>

#### Further education (FE)

The Government has issued separate [guidance to post-16 colleges and academies](#) about implementing the new 0 to 25 SEND system, which sets out the new duties for FE providers. While EHC plans may cover eligible students up to the age of 25, guidance on the legislation makes it clear that this does not mean that students have an automatic entitlement to education up to the age of 25.<sup>45</sup>

As well as providing information on how FE institutions should work to fulfil their part of the reformed system, the guidance highlights new statutory duties for the FE sector that are in place now the *Children and Families Act 2014* is in operation. For example, all FE and sixth form colleges must use their best endeavours to secure the special education provision that a young person needs, and they also, along with specialist

<sup>44</sup> Mencap, [Hear our voice: the change we want to see 2015-2020](#), page 20

<sup>45</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), July 2014 page 190

post-16 institutions, have a duty to admit students if the institution is named in an EHC plan.<sup>46</sup>

### **The Local Offer**

From September 2014, all local authorities must publish a 'Local Offer', which sets out education, health and social care provision for children and young people with SEN or disabilities in the area. The offer must include:

- the education and training provision available in FE and sixth form colleges, special post-16 institutions and other post-16 providers; and
- services available to support young people in preparing for adulthood and independent living, including:
  - finding employment
  - obtaining accommodation
  - participating in society<sup>47</sup>

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<sup>46</sup> Department for Education, [Implementing a new 0 to 25 special needs system: further education](#), page 7

<sup>47</sup> Department for Education, [Implementing a new 0 to 25 special needs system: further education](#), April 2014, page 8

## 6. Criminal justice

### Liaison and Diversion

Liaison and diversion services seek to identify offenders who have mental health problems or learning disabilities, so that they can either be supported diverted into health treatment, social care services or other relevant support, where appropriate.

Liaison and diversion services are currently provided to over 50% of the population of England.<sup>48</sup>

Full roll-out by 2020/21, as recommended by the [Five Year Forward View for Mental Health](#) (February 2016), is subject to a decision from HM Treasury on the full business case. A formal response is expected from HM Treasury in early May 2016 and an announcement will be made shortly thereafter.<sup>49</sup>

Full roll-out of liaison and diversion services was initially expected by 2017.

A summary of the development of liaison and diversion policy is provided below:

#### Bradley Review

[The Bradley Report](#) (2009) - Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system - was commissioned by the Justice Secretary to examine how offenders with mental health problems or learning disabilities could be diverted away from the criminal justice system to other services.

Lord Bradley examined how diversion could take place at all stages of the criminal justice system, but emphasised that there should be better identification and assessment of mental health problems and learning disability at the start of the offender pathway. He found that "that the police stage in the offender pathway provides the greatest opportunity to effect change". This would enable screening of detainees with a learning disability at the police arrest stage. The report recommended that:

All police custody suites should have access to liaison and diversion services. These services would include improved screening and identification of individuals with mental health problems or learning disabilities, providing information to police and prosecutors to facilitate the earliest possible diversion of offenders with mental disorders from the criminal justice system, and signposting to local health and social care services as appropriate.<sup>50</sup>

The report also recommended that mental health awareness and learning disabilities should be a key component in training programmes

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<sup>48</sup> [PO 35524 \[on Mental health services: Offenders\], 4 May 2016](#)

<sup>49</sup> [PO 35524 \[on Mental health services: Offenders\], 4 May 2016](#)

<sup>50</sup> [The Bradley Report](#): Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system, April 2009, page 53



for staff throughout the criminal justice system, including the police, probation officers and the judiciary.

### **The Bradley Report five years on (June 2014)**

In June 2014, the Bradley Commission published a review into what has changed since 2009 regarding the support provided to people with learning disabilities and mental health problems in the criminal justice system. It also looked ahead to the next five years to see what remains to be done.

The report's foreword provides a brief summary of progress made in the last five years:

In that time, we have seen significant progress towards achieving the vision set out in that report with the clear and unambiguous support of both governments.

[...]

In looking back at what has changed over the last five years, it has been encouraging to see the development of more liaison and diversion teams, both for adults and for children and young people, offering early intervention in police stations and courts across the country. While there is a lot more to be done in making sure liaison and diversion is available everywhere, the commitment of the Department of Health, Ministry of Justice and NHS England to the successful completion of this job has been key to the continued progress we are making.

We are also now seeing the emergence of new and creative ways of supporting people with mental health problems and those with learning difficulties across the criminal justice system. Initiatives like street triage, which offers a more humane crisis response, and youth justice liaison and diversion, which provides support to children and young people when they come into contact with the police. We still have a lot to learn from these as we build the evidence of what makes the biggest difference to people's lives and the most cost-effective use of public money.

### **National roll-out of liaison and diversion services**

In January 2014, the Department of Health announced an extra £25 million of funding for mental health nurses and other mental health professionals to work with police stations and courts so that people with a mental illness, learning disabilities or substance misuse problems can receive treatment at the earliest possible stage.

Ten areas across the country received part of the funding to test a new model of liaison and diversion services. The Department of Health said these services will be evaluated and if successful, extended to the rest of the country by 2017.<sup>51</sup>

As noted above the full roll-out of liaison and diversion services nationally was expected by 2017. Further information is provided in the PQ below:

**Lord Beecham:** To ask Her Majesty's Government why the deadline for full roll-out of liaison and diversion services for

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<sup>51</sup> Department of Health, [Extra funding for mental health nurses to be based at police stations and courts across the country](#), 4 January 2014

offenders with mental health needs or learning disabilities has been extended from 2014 until 2017; and how many offenders will be affected by the delay.

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con):** National roll-out of liaison and diversion services by NHS England will follow HM Treasury approval of a full business case. It has taken time to develop the business case and it will not be complete until 2015. This is because there is no existing evidence for the effectiveness of liaison and diversion services and this has to be developed as part of the phased roll-out of liaison and diversion services.

Information is not available about the potential number of offenders who would be affected by roll-out in 2017 instead of roll-out in 2014. Liaison and diversion services enable people entering the criminal justice system with mental health-related conditions and learning disabilities to get the right support and the best possible care as soon as possible. For offenders whose needs are not identified by a liaison and diversion service in police custody or the courts, these will continue to be identified through court procedures or at reception in prison.

However, national-roll out of liaison and diversion services is now expected for 2020/21, subject to HM Treasury approval of a full business case, for which a decision is expected in early May 2016:

**Alistair Burt:** Liaison and Diversion services are currently provided to over 50% of the population of England. Full roll out by 2020/21, as recommended by the "Five Year Forward View for Mental Health" report published in February 2016, is subject to a decision from HM Treasury on the full business case. A formal response is expected from HM Treasury in the next few days and an announcement will be made shortly thereafter.<sup>52</sup>

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