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Lack of safeguards in response to restrictive public health measures

Psychiatrists are familiar with the necessity of weighing up an individual's right to liberty, against the risk that an individual may pose to themselves, to others, and to the wider public, as a result of mental ill health. However, we are also aware that the detention of individuals, whether under the UK's Mental Health Act 1983 or in the criminal justice system, disproportionately affects already marginalised groups, with people from those groups being more likely to be detained than their more privileged counterparts. As psychiatrists, we are particularly aware of this reality—with black men being much more likely to be detained under the Mental Health Act than their white peers.¹

However imperfect, legal safeguards are in place for detention in health-care settings in the UK—via the tribunal and appeal process in the Mental Health Act, or via independent advocates via the Mental Capacity Act 2005. It would not be ethical, or legal, to detain individuals without such a legal system being in place.

It is deeply concerning that no similar legal or appeal system is in place for those detained under the public health measures enacted in response to the COVID-19 pandemic.

Public health measures for the COVID-19 pandemic make it possible to place individuals in full at-home detention with isolation measures² and to place whole communities in partial detention via local lockdowns.³ It is essential that appropriate legal safeguards are put in place to make sure such detentions are appropriately scrutinised. These powers should not be left for the government and police to exercise unchecked, particularly in view of their likely disproportionate impact to already marginalised, less privileged, and over policed groups.

Safeguards must be established for those detained by the public health response to COVID-19. Such measures, which could include external scrutiny from independent community leaders, might also increase trust in the public health response and therefore result in higher levels of compliance with the public health restrictions.

Such legal safeguards do not need to prevent swift action from taking place where necessary; however, as doctors, we must ensure that health-care interventions (including public health interventions) are appropriately balanced against individual rights to various freedoms and that appropriate legal safeguards are in place to prevent the exercising of unchecked power.

We declare no competing interests.

**Robert Freudenthal, Mark Horowitz, Sushrut Jadhav, Joanna Moncrieff*
 robert.freudenthal@nhs.net

Barnet Enfield Haringey NHS Mental Health Trust, St Ann's Hospital, London, UK (RF); and University College London, London WC1E 6BT, UK (RF, MH, SJ, JM)

- 1 The Independent Review of the Mental Health Act 1983. Modernising the Mental Health Act—final report from the independent review. Dec 6, 2018. <https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review> (accessed Sept 24, 2020).
- 2 UK Government. Press release: new legal duty to self-isolate comes into force today. Sept 28, 2020. <https://www.gov.uk/government/news/new-legal-duty-to-self-isolate-comes-into-force-today> (accessed Oct 6, 2020).
- 3 Welsh Government. Newport City Council area lockdown: frequently asked questions. Sept 22, 2020. <https://gov.wales/newport-city-council-area-lockdown-frequently-asked-questions> (accessed Oct 6, 2020).



Published Online
 October 8, 2020
[https://doi.org/10.1016/S0140-6736\(20\)32118-8](https://doi.org/10.1016/S0140-6736(20)32118-8)

For the **Mental Health Act** see
<https://www.legislation.gov.uk/ukpga/1983/20/contents>

For the **Mental Capacity Act** see
<https://www.legislation.gov.uk/ukpga/2005/9/contents>

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