

Response to Mental Capacity Amendment Bill

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(all responding in a personal capacity).

We would like to comment on the MCA amendment Bill as follows:

- 1) The current DoLS process ensures that the views, wishes and feelings of the incapacitated persons are central to the assessment process. This ensures compliance with the wider MCA (2005) which places the person at the heart of any decisions made on their behalf but ensures that the person is not further marginalised by the process. In order to ensure that the new legislation is compliant with current legislation and supports people's human rights, the requirement to consult with the person themselves needs to be strengthened within the new bill.
- 2) The objective and impartial assessment by a BIA (AMCP in new legislation) in all DoLS assessments has been key to ensuring the care arrangements for somebody who is deprived of their liberty is in their best interests and the restrictions in place are proportionate and necessary. In our experience, BIA's by bringing into play their specialist knowledge as well as their objective view, will challenge care arrangements which are restrictive and have ensured there have been many good outcomes for service users in terms of lessening the restrictions in place and improving the quality of life of an incredibly marginalised and vulnerable group of service users. The loss of this objective assessment has potential to undermine the human rights and the voice of this group of people.
- 3) Under the new legislation LAs are responsible for the supply of AMCPs. This means that other responsible bodies will call on the supply of these AMCPs. We recommend that the LA is responsible for registering and approving AMCPs but the supply of them rests with each responsible body for each LPS assessment.
- 4) in relation to the role of Care Home managers undertaking assessments in relation to LPS, this has huge potential for a conflict of interest. I have spoken to a group of care home managers and they are hugely disappointed that the objectivity provided by the BIA/AMCP (which gave them re-assurance and challenge in relation to the restrictions in place) will be removed under new legislation. They quickly identified major conflicts of interest for them in taking on this role. Furthermore, they felt this role would further burden them when in their view, their responsibility should be the provision of good quality care which is compliant with the MCA. We suggest that the new role for care home managers to complete assessments is removed from the new legislation.
- 5) Under Dols, conditions were central in lessening the restrictions in place and gives the assessment process meaning. The lack of reference to conditions in the new

legislation is concerning and removes some of the protective measures to overly restrictive care which the old legislation provided. We suggest that the legislation should properly reference conditions within the body of the legislation.

- 6) These new proposals give the opportunity for a robust and meaningful code of practice to be developed which supports practitioners in their work. The lack of a draft code of practice is concerning and is a missed opportunity. If a draft was available for scrutiny this would help to inform Parliament and useful input in to its usefulness could be provided from practitioners and professionals who work with this specific legislation every day.
- 7) There is an inadequate assessment of the funding implications for this new legislation. It does not take into account the training requirements of the new legislation across the board, the assessment of the numbers of people 'objecting' appears to low. Parliament needs to understand the significance of the new scheme not being properly funded.