

OPEN LETTER

Mental Capacity (Amendment) Bill [HL]

8 February 2019

Nicola Blackwood
Parliamentary Under-Secretary of State
Department of Health and Social Care

Caroline Dinenege
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Dear Ministers

Mental Capacity (Amendment) Bill [HL]

The system known as 'Deprivation of Liberty Safeguards' requires reform. However, reform should not be at the cost of human rights for people who rely on essential social care services.

Social care providers, disabled and older people's organisations, charities and the national representative organisations have serious concerns about the content and passage of the Mental Capacity (Amendment) Bill. As the organisations responsible for delivering reform, we are putting on public record the significant objections our sector has to government's proposals.

- First, consultation by the Department of Health and Social Care (DHSC) with the sector has been piecemeal. It is unclear what consultation and sector evidence has been used to inform the changes DHSC has made to the Law Commission's recommendations.
- Second, serious conflicts of interest will be placed upon care managers who will be in control of key information about assessments and review processes.
- Third, the construction of the Mental Capacity (Amendment) Bill has been explicitly designed to save money in what is an already over-stretched care sector. Impact assessments have been both late and limited in coverage. There is no guidance or code of practice that the sector can comment and feedback on. Nor is there clarity about how the proposed system will be regulated with independent oversight.

It is for these reasons we believe that the reforms in their current guise pose a threat to the human rights of those requiring the greatest support in life.

We therefore call on the government to:

- pause the passage of the bill and work with the sector to ensure there is no erosion to human rights protections for people who rely on essential care services
- be more transparent about the process and evidence which has informed DHSC's consultation(s) with the sector and the significant departure from the original Law Commission recommendations
- resolve the conflict of interest regarding care managers responsible for business delivery and processes that could lead to a deprivation of liberty
- co-produce the draft legislation and adequately fund the changes it will bring, given our sector is already at financial breaking point.

Our collective view is that legislation affecting our sector should not be railroaded through parliament and we cannot support it in its existing shape.

Yours sincerely

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Copies:

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