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OPEN LETTER

Mental Capacity (Amendment) Bill [HL]

8 February 2019

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

Caroline Dinenage
Minister of State for Care
Department of Health and
Social Care

Via email:
contctholmemberr@parliament.uk

Via email:
MSC@dh.gsi.gov.uk

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

Rhidian Hughes	CEO	Voluntary Organisations Disability Group
David Abbey	Managing Director	My Safe Homes
Mark Adams	CEO	Community Integrated Care
Nadra Ahmed	CEO	National Care Association
Matthew Airey	Chair	Wiltshire Care Partnership
Paul Allen	CEO	Vibrance
Helen Appleton	Director	MyMil
Paul Ashton	CEO	Karrek Community
Noelle Blackman	CEO	Respond
Sue Bott	Deputy CEO	Disability Rights UK
Philipa Bragman	CEO	Change People
Paula Braynion	Managing Director	Future Directions
Christine Burke	Director	Foundation for People with Learning Disabilities
Jan Burns	Chair	National Dignity Council
Sarah Burslem	Managing Director	MacIntyre
Andrew Cannon	CEO	Voyage Care
Jo Clare	CEO	Three Cs
Lisa Clark	Managing Director	Sunderland People First
Samantha Clark	CEO	Learning Disability England
Antony Coomb	Director	Care Homes of Distinction
Anne Cooper	Director of Operations	Outlook Care
Tim Cooper	CEO	United Response
Siún Cranny	CEO	Autism Wessex
John Crawford	CEO	Yarrow Housing
Will Davies	Director	Lewisham Speaking Up

Judy Downey	Chair	Relatives & Residents Association
Aisling Duffy	CEO	Certitude
Eva Eriksson	CEO	Grace Eyre
Helen England	CEO	Livability
Gary Fitzgerald	CEO	Action on Elder Abuse
Matthew Flinton	Co-Chair	Learning Disability Voices
Anna Galliford	CEO	FitzRoy
Lydia Gardner	Manager	Dementia Friends
Andrew Geoghegan	Director	Geoghegan Group
Karolina Gerlich	CEO	National Association of Care & Support Workers
Ruth Gorman	CEO	Imagine, Act and Succeed
Jonathan Green	CEO	Choice Care Group
Martin Green	CEO	Care England
Heath Gunn	CEO	Enham Trust
Chris Hampson	CEO	Look Ahead
Elizabeth Harding	Manager	Wispington House
Claire Hayward	CEO	Freeways
Larry Hollando	CEO	Avalon Group
Lisa Hopkins	CEO	SeeAbility
John Hoskinson	CEO	Milestones Trust
Pete Hughes	Acting CEO	Leeds Autism Services
Dorothy Jarvis-Lee	CEO	Ubu
Huw John	CEO	Camphill Village Trust
Martyn Jones	CEO	Learning Disability Wales
Luke Joy-Smith	Managing Director	Discovery
Ann Kenney	Director	Halow Project
Peter Kinsey	CEO	Care Management Group
Karyn Kirkpatrick	CEO	KeyRing
Adam Knights	Managing Director	Knights Care
Richard Kramer	CEO	Sense
Tracey Lazard	CEO	Inclusion London
Mark Lee	CEO	Together Trust
Jayne Leeson	CEO	Changing Our Lives
Lisa Lenton	England Director	Association for Real Change
Mark Lever	CEO	National Autistic Society
Sue Livett	Managing Director	Aldingbourne Trust
Erica Lockhart	CEO	Surrey Care Association
Len Lofts	CEO	Northam Care Trust
Robert Longley-Cook	CEO	Hft
Peter Loose	CEO	Bethphage
Sarah Maguire	CEO	Choice Support
Susie Maguire	Director	St Anne's Community Services
Peter McCabe	CEO	Headway
Sarah Miller	CEO	Papworth Trust
Mark Milton	CEO	Heritage Care
Emily Morton	CEO	Disability Sheffield

Karen Parry	CEO	Inclusion North
Simon Patient	Managing Director	Heritage Manor
Tom Pey	CEO	Royal Society for Blind Children
Michael Raven	Managing Director	Regency Care
Vic Rayner	Executive Director	National Care Forum
Piotr Rejek	CEO	Outlook Care
Kathy Roberts	CEO	Association of Mental Health Providers
Dave Rogers	CEO	Midland Mencap
Adrian Roper	CEO	Cartrefi Cymru
David Sargent	CEO	Real Life Options
Jodie Scott	Director	Wessex Care
Steve Scown	CEO	Dimensions
Jonathan Senker	CEO	VoiceAbility
Jeff Skipp	CEO	Ability Housing
Paul Snell	CEO	Walsingham Support
Leo Sowerby	CEO	Affinity Trust
Philippa Thompson	CEO	Sussex Oakleaf
Steph Thompson	Managing Director	Waymarks
John Tonner	CEO	Orione Care
Dee Tormey	Director	Baronsmede Homes
Ian Turner	Chair	Registered Nursing Homes Association
Justin Tydeman	CEO	Lifeways Group
Ellen Vick	CEO	New Prospects Association
Michael Vaughan	Managing Director	Red Rocks Nursing Home
Michael Voges	Chair	Care Provider Alliance
Helena Wallis	CEO	Heart of England Mencap
Melanie Weatherley	Chair	Lincolnshire Care Association
Peter Webb	Director	London Care & Support Forum
John White	Director	Sunbury Nursing Homes
Andrea Wiggins	CEO	Lewisham Nexus Service
Richard Williams	CEO	Options for Supported Living
Mary Wimbury	CEO	Care Forum Wales
Doreen Woodward	CEO	New Directions Rugby

Copies:

Matt Hancock MP, Secretary of State for Health and Social Care, Department of Health

Vaughan Gething AM Minister for Health and Social Services (Wales), National Assembly for Wales