

LGA briefing - The Mental Capacity (Amendment) Bill Second Reading, House of Lords 16 July 2018

KEY MESSAGES

- We have been calling for an overhaul of the current Deprivation of Liberty Safeguards (DoLS) process to ensure there is adequate protection for human rights. The decision to focus on how we best protect people's liberty is positive and we support it.
- We support the aim of the Mental Capacity (Amendment) Bill which seeks to create a system for the Deprivation of Liberty Safeguards (DoLS) which is simpler and less bureaucratic. The new framework being brought forward to the Bill should be proportionate and aligned to current adult social care practice to avoid the new scheme being as complex as the present one.
- We look forward to working with government on the development and implementation of a reformed, fully-funded scheme so that councils can ensure that those people who lack mental capacity are at the centre of decisions made about their care.
- Councils have been working hard to protect the rights of the most vulnerable people since the well-documented increase in responsibilities following the 2014 Supreme Court Judgement. Despite this, local government has continued to prioritise those most in need. Even with an 11 per cent increase in applications from 2015/16 to 2016/17, the number of DoLS applications completed in 2016/17 increased by 45 per cent.¹
- The well-documented increase in activity has caused significant cost pressures on council budgets at a time when adult social care faces a funding gap of £3.5 billion by 2025. Any failure to provide sustainable funding for adult social care will have a damaging impact on the crucial council services on which people rely.
- The transition to the new framework and its future framework implementation should receive additional resources to reflect that there may be additional costs associated with the change, such as those associated with the ongoing need to train and equip the social care and health workforce with the skills they will need. Without this, some of the most vulnerable people in our communities could continue to face long waiting times for assessments or be left without legal protection.
- It is important that the Government recognises that the new provision relating to care homes will create additional responsibilities, and therefore financial pressures, for the care home provider market. This is at a time when that sector is already facing significant challenges, both in terms of resources and in relation to their workforce recruitment and retention.
- We support the Law Commission's proposal to extend the safeguards to 16-17 year old given the importance of having approach across social care that supports vulnerable people of all ages. This Bill is an opportunity to introduce this recommendation and would align with the Mental Capacity Act.

FURTHER INFORMATION

The Mental Capacity (Amendment) Bill

The Mental Capacity (Amendment) Bill seeks to replace the current system known as 'Deprivation of Liberty Safeguards' (DoLS).² DoLS is an assessment currently carried out on people who do not have the mental capacity to make their own decisions about their care, for example because they are living with dementia. The reforms seek to:

- introduce a simpler process that involves families more and gives swifter access to assessments.
- be less burdensome on people, carers, families and local authorities.
- allow the NHS, rather than local authorities, to make decisions about their patients, allowing a more efficient and clearly accountable process.
- consider restrictions of people's liberties as part of their overall care package.
- get rid of repeat assessments and authorisations when someone moves between a care home, hospital and ambulance as part of their treatment.

LGA RESPONDS TO REFORMS TO DEPRIVATION OF LIBERTY SAFEGUARDS

Responding to a new Bill published today on reforms to Deprivation of Liberty Safeguards (DoLS), Cllr Linda Thomas, Vice Chair of the Local Government Association's Community Wellbeing Board, said:

"These reforms, which the LGA has long-called for, are much-needed to help councils fulfil their statutory duties and ensure the rights of vulnerable people are protected.

"Councils have completed four times as many DoLS applications as those received in the past year, but this has added yet more worrying cost pressures on overstretched council budgets at a time when adult social care faces a funding gap of £3.5 billion by 2025.

"We are keen to work with government on further details so councils can ensure that people who lack mental capacity are at the centre of decisions made about their care and to ensure that transition arrangements cause minimal impact on individuals, their carers and the workforce. We also need clarification on whether councils and their local partners providing health, care and support will have to develop the new scheme within existing budgets.

"However, if we are to truly help protect some of the most vulnerable people in our communities, a sustainable solution to funding adult social care as a whole is still urgently needed to tackle immediate pressures and long-term funding gaps which cannot be ignored."

¹ Further information available at: <https://digital.nhs.uk/data-and-information/publications/statistical/mental-capacity-act-2005-deprivation-of-liberty-safeguards-assessments/mental-capacity-act-2005-deprivation-of-liberty-safeguards-england-2016-17-official-statistics>

² Further information available at: <https://www.gov.uk/government/news/new-law-introduced-to-protect-vulnerable-people-in-care>