



Department
of Health

Government response to the Safeguarding Power of Entry consultation

10 May 2013

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Government response to the Safeguarding Power of Entry consultation

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Introduction

1. On 11 July 2012, the Government published the draft Care and Support Bill, setting out ambitious plans for transforming care and support. Our aim is that everyone in England can plan and prepare for their care needs, access high quality care when they need it, and exercise choice and control over the care they receive.
2. The draft Care and Support Bill contains a clause requiring local authorities to make enquiries where they suspect an adult with care and support needs is at risk of abuse or neglect.
3. Alongside the draft Bill, we issued a consultation seeking views as to whether or not a specific power of entry for adult safeguarding (for a social worker and police officer to enter someone's home by means of a warrant) would be an effective, proportionate and appropriate way to support the duty to make enquires. This could allow a social worker to speak to someone who they think could be at risk of abuse and neglect, in order to ascertain that they are making their decisions freely.
4. We recognise that many individuals and organisations within the social care sector hold strong views on this subject and we wanted as many people to have their say and all these views to be taken into account.
5. Through this consultation, we wanted to hear how people's experiences have shaped their views – would this proposed new power be an effective and suitable way to support the recommendations made in the draft Care and Support Bill?

Conducting the consultation exercise

6. We launched the consultation on the new adult safeguarding power on 12 July 2012.
7. Through-out the consultation, we encouraged stakeholders and experts in the field to provide their views via the dedicated Safeguarding Consultation (Power of Entry) email address. We also received a small number of responses by post.
8. We held two stakeholder events. The Safeguarding Adults Advisory Group (SAAG), which combines stakeholders from health and social care professionals and providers from both public and independent sectors who

meet with DH to discuss key issues in relation to Safeguarding Adults, met to discuss the consultation on 25 September 2012.

9. The Care and Support Alliance hosted a meeting on 18 September 2012.

10. The consultation document was featured in the Social Care bulletin as well as the GP and Practice Team bulletin which is aimed at the NHS workforce.

11. The consultation's aim was to determine the strength of the case for creating a new safeguarding power of entry. This issue is at the interface between issues of protection and civil liberties. We were not looking to override the choices of people with capacity who make decisions professionals may disagree with, but address possible circumstances where the ability to make a choice may be restricted by the behaviour of another person.

12. The consultation ended on 12 October 2012. We received 212 responses. This compared very favourably with our expectation of between 100-150 responses. See Annex A for the list of respondents.

Consultation questions

Question 1: Do you agree that there is a gap in the proposed legislative framework for people with mental capacity, which this power would address?

Question 2: What are your views on the proposal that there should be a new power of entry, enabling the local authority to speak to someone with mental capacity who they think could be at risk of abuse and neglect, if a third party prevents them from doing so?

Question 3 (for care and support professionals working in adult safeguarding): How many times in the last 12 months, have you been aware of a situation where, had this power existed, it would have been appropriate to use it? What were the circumstances?

Question 4: What safeguards would we need to ensure local authorities use such a power effectively and appropriately?

For example, would the following provide adequate safeguards?

- ***A warrant would be applied for from a Circuit Judge (e.g. a nominated judge of the Court of Protection).***
- ***The local authority would present the court with evidence of the need for the warrant.***
- ***The local authority would ensure that there is a process by which the occupiers of the premises understand that they can complain about the way in which a power has been used. The local authority would have to verbally inform the affected persons how they might access that process***

Question 5: Do you have any other comments?

Key findings

13. The responses we received were from a variety of sources. These included local authorities, the health sector, private individuals, police, solicitors and third sector organisations. Of the 212 responses, 49% were in favour of a new power and 40% against, with 11% undecided / not stated – see Table 1.

14. As we analysed the responses further, a much clearer distinction between those in favour and those against emerged – see Table 2.

15. The majority of the responses from local authorities and health were in favour (72% and 90% respectively). However, it is highly significant that only 18% of members of the public who responded were in favour.

16. This indicates that respondents who would be responsible for using the power were much more in favour of it than those who were not working in health and social care, or even might be the focus of such a power.

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Table 1 – Total responses

Total responses	Number (out of 212 total)	Percentage
Total in favour	105	49.5%
Total against	84	39.6%
Total undecided/not stated	23	10.8%

Table 2 – Breakdown by type of respondent

Type of respondent	In favour	Against	Undecided/not stated
Individual	18%	77%	5%
Health	90%	0%	10%
Local authority (inc. SABs)	72%	12%	16%
Other (third sector/police)	60%	23%	17%

Summary of responses: Issues raised and supporting quotes

A. Examples of how the power might be used

17. Respondents gave examples of where they had experienced a situation the power might have helped resolve. These situations confirmed that there are cases where such a power could be used to secure a better outcome for the person concerned.

“[A safeguarding adult] referral was made for an elderly lady living with her son who refused access to services and pressure relieving equipment - situation only resolved by hospital admission and discharge to care home. The son made access to the lady in the family problematic and was present at all home visits - nurses could not speak freely to the lady.”

NHS Trust Head of Safeguarding [36]

18. Examples were also given where, although having such a power might have resolved the situation more quickly, the circumstances were ultimately addressed through other means (e.g. GP gained access, social workers spoke to the person in the day centre they visited, district nurse was allowed to speak to the person). This suggests the power is not the only possible way to address the situation.

“We have gone to the High Court in the last 12 months and asked them to exercise their inherent jurisdiction in the case of a[n ethnic minority] woman who children’s social workers were sure was being abused by her husband - she had capacity. [The lady] did not wish to meet with adult social workers or the Police to discuss what protection could be put in place for her.

In the end, however, she decided to let the social workers in and confirmed - through a carefully chosen interpreter and accompanied by another woman who could speak [her first language] - that she wished no action and that there was no abuse. We therefore did not need to use the injunction. We are continuing to try and work with her.”

Local authority Head of Safeguarding [34]

B. Responses where it was felt the power should never be used

19. Some respondents felt strongly that there were no circumstances under which such a power would be appropriate.

“During my entire career I was never aware of any situation where, had this power existed, it would have been appropriate, useful or desirable to use it. If it had existed I fear it may have promoted lazy thinking, slipping standards and a detrimental view of people’s rights.”

Former police officer [89]

20. We believe it is highly significant that members of the public were far more strongly against the proposal compared to health and social care professionals. There was some misunderstanding of what was proposed, with the third party element often omitted. Despite this, it is still clear that some people perceive themselves at greater risk of unwanted intervention by social workers than of abuse in their home.

“[The state] never should have the power or right to force entry into a law abiding person's home under any circumstances, even if someone *'thinks someone is at risk.'*”

Individual [116]

C. Comments on proportionality

21. Most felt the power would be used rarely, if at all. This applied both to those in favour and those against. Some stated that they had no recent cases where it would have been appropriate to use the power, but they felt it would be valuable in the few cases where current options available had not been satisfactory. Respondents also raised issues around training and warrant costs.

22. The opposing view was that the very small number of cases where the power would be helpful would be outnumbered by cases where it could be misused. People also mentioned their fears that the scope of the power could be extended beyond the original intention.

“We feel that the benefit to even at least one individual in making a safe resolution for that person and preventing harm justifies a new power.”

Social care specialist, NHS Foundation Trust [106]

“Potential abuse of the new power is likely to be limited but staff would require specialist training and a code of practice, and given the low use of the new powers, would require regular refresher training.”

Herefordshire Council [169]

“There is not sufficient evidence that such a power is proportionate to the level of cases arising.”

Local authority Safeguarding Adults Board [38]

“[A]s has been witnessed many times before with the introduction of blanket legislation, such as the Regulation of Investigatory Powers Act 2000 (RIPA), local authorities will take any power given to them by the State and abuse it, however well meaning its original intention.”

Individual [119]

“Look at the way RIPA has been abused for e.g. matter relating to waste disposal, and spying on people to check their residence in school admission cases.”

Individual [79]

D. Potential negative consequences of the power

23. Most respondents felt there were only a few cases where the power would be used. But some also pointed out that there is a risk that, in some cases, the power could make matters worse for the individual. Several respondents highlighted risk of abuse escalating as a result.

24. Given the small number of cases where people thought the power might be used, however useful in those few cases, the consultation did not provide compelling evidence that we could guarantee the power would do more good than harm. People who expressed this view made the point that efforts should continue to resolve the situation in other ways, without requiring a new power.

“New powers change nothing on the front line, but could make people more scared to have contact with the system and to seek help when needed.”

Individual [95]

“Who will safeguard the person from the third party after the member of local authority has left the property having spoken with that person as there is great danger that the third party will punish the person speaking to an outsider?”

Individual [103]

E. Demand for further compulsory powers of intervention

25. In the views of some people in favour of the power of entry, it would inevitably mean we should consider further powers. These included a power of removal, a power to compulsorily assess someone and other interventions.

“If this were considered then there should also be a power to remove an alleged victim of abuse where they are at risk of being seriously harmed, and / or removal of the perpetrator.”

Durham County Council [23]

26. Some respondents supported a more interventionist approach along the lines of Scotland’s legislation, which includes further compulsory powers of intervention. The approaches taken in Scotland and England are different although their goals are the same – to protect people in vulnerable situations.

In Scotland, social workers appear to appreciate that such powers must be used only as last resort and are happy to use the powers responsibly and sensibly. The mere threat of using the statutory power gives the social worker “teeth” with which to investigate allegations of abuse.

Royal College of General Practitioners [47]

27. Some of those in favour of the power went on to request further regulation, secondary legislation and very prescriptive guidance to set out how the power would be used.

28. Even if we wished to centrally dictate what local authorities should do in all circumstances, it would not be possible to capture every scenario. It is important to remember the skills of the people who deal with these issues and not risk burdening them with over prescriptive guidance. Such action risks disempowering them in making professional judgements based on the circumstances of each individual's case. Working with people in these circumstances, as in any other, requires building a relationship based on trust. Policies and procedures cannot deliver that.

29. Alternative options to legislation are available and preferable, for example working with the sector to co-produce best practice guidance, containing scenarios where people have resolved the situation in another way.

“The nature of all legislation granting powers to organisations is that those powers are later amended and extended but rarely retracted or removed.”

Individual [101]

Conclusion

30. We would like to thank all the stakeholders who gave their support to this consultation and all those who have responded to the consultation with their comments.

31. The consultation showed that, as we expected, this was a very sensitive and complex issue which divided opinion.

32. We particularly noted the strength of feeling from members of the public who were against such a power, and the risk of unintended consequences highlighted by some respondents. There is also no conclusive proof that this power would not cause more harm than good overall, even though in a very few individual cases it may be beneficial.

33. Based on the views expressed, and the qualitative evidence provided by respondents, we have concluded that the responses to the consultation did not provide a compelling case to legislate for a new power of entry. Therefore we will not be adding a safeguarding power of entry to the Care and Support Bill.

Annex A – List of Respondents (in alphabetical order)

Private Individuals (88)

2gether NHS Foundation Trust
Age UK
Age UK Camden
Age UK Redbridge
Age UK Warwickshire
Bath and North East Somerset Council
Bedford Borough Council and Central Bedfordshire Council
Berkshire Healthcare NHS Foundation Trust
Birmingham City Council
Birmingham Community Health Care Trust
Blackburn with Darwen and Lancashire LSABs
Borough of Poole
Bracknell Forest Safeguarding Adults Partnership Board
Bradford Safeguarding Adults Board
British Association of Social Workers
British Red Cross
Buckinghamshire County Council
Bupa
Bury Council
Cambridgeshire County Council
Care and Health Law
Caroline Coats & Co. Notary and Legal Services
Central London Community Healthcare NHS Trust (CLCH)
Central Manchester University Hospitals
County Durham and Darlington NHS Foundation Trust
Coventry City Council
Croydon Adult Safeguarding Board
Cumbria County Council
Deafblind UK
Derby City Council
Dimensions

Diocese of Liverpool
Doncaster Metropolitan Borough Council
Dorset Adult Services
Dudley Council
Durham County Council
East Coast Community Healthcare CIC
East Riding of Yorkshire Safeguarding Adults Board
Eastleigh Southern Parishes Older People's Forum
Equality and Human Rights Commission
Essex Safeguarding Adults Board
Every's Solicitors
Gateshead Metropolitan Borough Council
Halton Borough Council
Hampshire County Council
Herefordshire Council
Herefordshire Safeguarding Adults Board
Hertfordshire County Council
Hertfordshire Safeguarding Adults Board
Hillingdon Safeguarding Adult Partnership Board
Isle of Wight Council
Joint Safeguarding Liaison Groups of the Methodist and Anglican Churches
Kent Community Health NHS Trust
Kent County Council
KeyRing Living Support Networks
Kingston-Upon-Thames Safeguarding Adults Partnership Board
Lancashire County Council
Leeds Safeguarding Adults Board
Leicester City Council
Leonard Cheshire Disability
Local Government Association / Association of Directors of Adult Social Services (joint response)
London Borough of Bexley
London Borough of Brent
London Borough of Newham
Luton Safeguarding Adults Board

Mencap
Mental Health Foundation
Mind
National LGB&T Partnership
Newcastle City Council
Newcastle Hospitals Foundation Trust
NHS Birmingham and Solihull Cluster
NHS Oldham
North Somerset Safeguarding Adults Partnership Board
North Tyneside Council
North Yorkshire Safeguarding Adults Board
Northumberland Safeguarding Adults Board
Nottingham CityCare Partnership
Nottinghamshire County Council
Nottinghamshire County LINK
Oldham Adult Safeguarding Partnership Board
Optical Confederation
Oxfordshire County Council
Practitioner Alliance for Safeguarding Adults (PASA UK)
Reading Social Services Safeguarding Adult Team
Ringrose Law Group, Lincolnshire
Riverside (Social landlord)
Rochdale Borough Safeguarding Adult Board
Royal College of General Practitioners
Royal College of Psychiatrists
Royal College of Speech and Language Therapists
Salford City Council and Salford Adult Safeguarding Board
Sandwell LINK
Sandwell Safeguarding Adults Board
Sense
Sheffield Safeguarding Adults Partnership
Shropshire Council
Solicitors for the Elderly
Solihull Metropolitan Borough Council (on behalf of Solihull Safeguarding Adults Board)

South London and Maudsley NHS Foundation Trust
St Mary's Hospital, Newport, Isle of Wight
St. George's Healthcare Trust
Staffordshire County Council
Stockton Borough Council
Surrey County Council
Swindon Borough Council
Tameside Adult Safeguarding Partnership
Telford & Wrekin Council
The Care Standards Consultancy
The College of Social Work
The Lesbian & Gay Foundation
UNISON
University of Portsmouth
University of East Anglia
Waltham Forest Safeguarding Adults Board
Wandsworth Borough Council
Warwickshire Safeguarding Adults Partnership Board
West Midlands Older Peoples Forum
West Sussex County Council
West Yorkshire Police
Wirral Department of Adult Social Services
Wirral Safeguarding Adults Partnership Board
Wokingham Borough Council
Wolverhampton Safeguarding Vulnerable Adults Board