

Response to Department of Health: Consultation on New Safeguarding Power.

Submitted by: [REDACTED]

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Summary of Response:

- Are LA's 'fit for purpose' to take on this power?
- Will such a power further undermine social work values & ethics?
- Is there the resource & professional competence to ensure it is not abused?
- Is such a power recasting '*freedom de jure*' into '*freedom de facto*'?
- Comments are made in regard to questions 1 & 2 detailed in the consultation paper.

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?

Response.

There are sufficient existing legislative powers. A new power is not required. What is required is competency in knowledge, & practice to use the existing powers. Through current changes in the way Local Authorities are able to deliver services, budget cuts etc. The impact of which has meant the reduction of the number of social workers employed by LA's, the break up of multi disciplinary & integrated working involving LA social services & other agencies. Such undermine both the capacity & the ability of LA's to undertake their duties. Giving them more powers will I fear leads to 'lazy' & 'off the hoof' decision-making.

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 could be at risk of abuse & neglect, if a third party prevents them from doing so?

Response:

1. This is not necessary. If social workers are allowed to practice in meaningful ways informed by their professional role this should contribute more effectively to adult safeguarding.

"Social work promotes social change, problem solving in human relationships & the empowerment of & liberation of people to enhance well being. Utilising theories of human behaviour & social systems, social work intervenes at the points where people interact with their environment. Principles of human rights & social justice are fundamental to social work". [IFSW 2000].

They are:

"Independent thinkers, and use independent judgment; they resist individual, organizational and professional phenomena that are morally harmful; and they engage in dialogue and feedback rather than avoidance".

2. The professions role is being undermined by the continuing vagaries of Local Authority management. This coupled with the intentions of central government of returning public and state services to private capital & the redrawing of social & health care architecture, leaves many Local Authorities depleted of the leaderships & skills to undertake such an important responsibility of power of entry. Local Authorities & the social workers they employ are not alternatives to the police in undertaking 'uninvited entry', if such is deemed to be necessary.

Police Authorities are facing their own budget cuts. This is likely to inform that resources for any robust investigation of possible coercion &/or abuse of a person(s) that may be at risk

or is being subject to abuse & neglect from other members of that household, is not realistic.

Budget cuts required of Local Authorities are being instituted in different ways across the country. This has led to variances in how a local authority social services department undertakes their existing statutory duties & to the number of professional officers available to carry out existing powers. Worryingly some LA's are now barely meeting their statutory duties as evidenced in recent court cases.

Risk aversion appears to be more about first looking at what may be an end result that won't draw attention from the media, rather than about what is really appropriate to an individual's needs & is truly person centered.

3. Social work continues to suffer a poor public image. There is evidence of considerable mistrust by the general public as to the roles social workers perform. Generally this is portrayed as either they under respond in protecting children & adults at risk or are pilloried for overreacting (in such cases as Martin Neary, noting also the recent episode of East Enders etc.). Providing an additional power, which is not necessary, will just make a bad situation worse.

What is needed both from Government & from the profession itself is a firm commitment & reassurance of the value & contribution of social work to communities. Without this the risk remains of being sucked further into a culture of 'learnt helplessness' & of there being a profession everyone can have license to 'kick'.

References:

Manchester City Council v G, E & F, [August 2011]

In this case, however, I am entirely satisfied that the local authority's blatant disregard of the processes of the MCA and their obligation to respect E's rights under the ECHR amount to misconduct which justifies departing from the general rule. Miss Irving boldly relies on the ignorance of the local authority's staff as an excuse and submits that the complexity of the statutory

provisions left large numbers of professionals uncertain as to the meaning of "deprivation of liberty".

Given the enormous responsibilities put upon local authorities under the MCA, it was surely incumbent on the management team to ensure that their staff were fully trained and properly informed about the new provisions.

Mr Justice Baker

"While we strongly believe we did the right thing, the judge has made it clear that we went about it the wrong way."

Manchester City Council.

"Victory for father after autistic son's 12-month ordeal in the clutches of social work"

Headline in the Daily Mail in response to Steven Neary; LB Hillingdon v Steven Neary (2011) [Hillingdon deprived Steven Neary of his entitlement to take proceedings for a speedy decision by a court on the lawfulness of his detention, contrary to Article 5 (4) ECHR.]

These are not exceptional cases. From work undertaken by [REDACTED] over the past 5 years we know of many LA's & NHS Health Trusts that have behaved in similar ways. Not all have come to the attention of the Courts.

4. Despite regulation, statutory powers, duty of care, duty of protection such as under the Mental Health Act, the Children's Act etc. Despite numerous inquiry reports, investigations, guidance, policies & procedures things go wrong – badly & tragically.

[Reference most recent examples: Winterbourne View Hospital & the Rochdale abuse case].

Giving an additional power to that proposed is not a panacea to preventing such circumstances again. To paraphrase Karl Marx; history tends to happen twice. The first time is drama: the second time is farce.

5. Is such a power at risk of recasting '*freedom de jure*' into '*freedom de facto*'?

Who controls. Who is the 'servant' of the state & who is the 'executive' of the state in regards to the proposal of a power of entry?

They do not seek to be "controlled" by the State or by the local authority. And it is not for the State in the guise of a local authority to seek to exercise such control. The State, the local authority, is the servant of those in need of its support and assistance, not their master".

"More recently one has found, too frequently for comfort, examples of the same mind-set – the same erroneous beliefs by local authorities – in the context of the removal of incapacitated adults from the care of their relatives into residential accommodation, without the sanction of the court and, therefore, without any legal authority."

Right Hon. Lord Justice Munby

6. In using the proposed power will Local Authorities be able to provide satisfactory alternative provision that will make real qualitative improvements in a person's life?

"At the end of the day, the simple point, surely, is this: the quality of public care must be at least as good as that from which the child or vulnerable adult has been rescued. Indeed that sets the requirement too low. If the State is to justify removing children from their parents or vulnerable adults from their relatives, partners, friends or carers it can only be on the basis that the State is going to provide a better quality of care than that which they have hitherto been receiving".

Right Hon. Lord Justice Munby.

7. '*Justice must be seen to be done*'. [Chief Justice Lord Hewitt, 1924]. Is it & how do we know that there is equity for all in being able to access the judicial system ?

Noting the costs of our judicial system, can we make improvements in their efficiency & costs? Can there be available funding, independent of Local Authorities' budgets for them to access courts & for the courts to exercise their appropriate judicial authority in safeguarding adults at risk?

We need to know much more about how the judicial system work:

- ✓ Who is using the courts?
- ✓ For what purpose (e.g. the case detail)
- ✓ The result.

We know that the cost of the judicial system [2008/09]

- £1.48 billion.
- In addition, Legal Aid costs came to £2.1 billion.
- Senior Judges are paid a total of £180 million of which 491 are judicial officers & 281 w.t.e. District Judges - paid by the day.

Access to the courts, & if required to a senior judge, can be arranged within the timescales of a few hours. What is more difficult to establish is whether access to the courts in cases of urgency is equitable to all. If you are a frail older person, or someone with a severe learning disability, someone without capacity or the physical means to say 'help' and the presence of others placing a person at risk, what can be done?

Is it not possible for someone acting on concerns that a person is at risk, to have the same access to the courts as say a premier league footballer, a politician or celebrity, or a corporate company? The answer most likely would be 'Yes'. In terms of costs & of liability for those costs, 'No'! Local Authorities are frequently not able to act on cases using a judicial means simply because they can't afford to 'bear this financial burden'.

Giving the executive power to the Local Authorities instead is not an acceptable solution to this funding matter.

Finally taking inspiration from Cervantes book 'Don Quixote, in which this hapless hero sets out as a Knight errant to challenge what he sees as injustice & unfairness. Of a society in it's time that had lost many key markers for informing the responsibility of it's public sector & professional officers in serving their communities as a duty. Underpinned by standards of morality & ethics to guide the behavior of the nations citizens

Social work today may not be called upon to charge at windmills, thinking they are some dragons to be slain for the protection of others, but neither do they need new powers.

To be given the proposed power of entry by Parliament moves Local Authorities & their social workers further along the slippery slope of just being about control & policing & not about empowerment for change. The former is relatively easy; the latter harder, being that it underpins true professionalism, working in respectful and equitable ways as servants of the state.