



Department  
of Health &  
Social Care

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Minister of State for Care*

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11<sup>th</sup> February 2019

Voluntary Organisations Disability Group  
30/34 New Bridge Street  
London  
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Re: Mental Capacity (Amendment) Bill

Dear Rhidian and VODG members,

I am writing in response to your letter dated 8 February  
(<https://www.vodg.org.uk/wp-content/uploads/20190208-Caroline-Dinenage-Nicola-Blackwood-ltt-fn.pdf> ).

I have recently set out, in a letter to Inclusion London, the Government's rationale for the proposed reforms to replace the current "Deprivation of Liberty Safeguards" with the new "Liberty Protection Safeguards" system ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/775066/Open\\_Letter\\_to\\_inclusion\\_from\\_the\\_Minister\\_of\\_State\\_for\\_Care.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775066/Open_Letter_to_inclusion_from_the_Minister_of_State_for_Care.pdf) ).

I believe that these new safeguards will offer greater protection for some of the most vulnerable in our society. The Liberty Protection Safeguards will provide robust protections and be simpler so that those protections can be afforded to everyone who needs them quickly and effectively.

Let me state unequivocally that this is not a cost-cutting exercise. It is the case that the Liberty Protection Safeguards model is designed to be more efficient by reducing duplication. Under this new system existing assessments can be used when it is reasonable to do so, which means there is no need to commission a new doctor at significant cost for each person for each and every authorisation. The new Approved Mental Capacity Professionals will be deployed in a targeted way, with certain cases being referred as well as where there is an

objection. We intend that these referrals will be complex cases which require additional scrutiny. By introducing the role of the ‘appropriate person’ we are strengthening the role of family, friends and carers and enabling them to provide advocacy where suitable. An updated Impact Assessment will be published imminently following detailed scrutiny of the costs and benefits of the new system. However, no money will be removed from the system and any savings identified will be reinvested in delivering care and support.

I recognise the concerns that have been raised regarding potential conflicts of interest that could arise in care home cases. The new system has a series of checks and balances in place to protect against this, such as independent assessments and pre-authorisation reviews: none of these will be conducted by anyone with a prescribed connection to the care home, and this applies to the care home manager too. The responsible body has the ability to take a greater role in care homes if there is cause for concern; this includes completing the consultation. The Government has brought forward for Report stage a number of additional amendments to the Bill to strengthen further such safeguards following dialogue with the sector. These new amendments include:

- Including a duty to provide information to the cared-for person, at various points in the process, with the principle that it should be as early as possible. This information should be accessible and the responsible body must take all practicable steps to ensure the person, and their appropriate person, understands it. Making this information readily available will be crucial for ensuring that the person is able to exercise their human rights so I am pleased we have been able to include this duty in the face of the Bill.
- Increasing the power of “whistleblowers” so that concerns can be raised directly with the responsible body at any point in the process, without having to go through the care home manager. This is designed to empower friends, family and carers, as well as any member of staff at a care home, to speak up on behalf of the person.
- Regulation making powers to ensure that assessors and those making other determinations have appropriate experience and knowledge, as set out in such regulations.

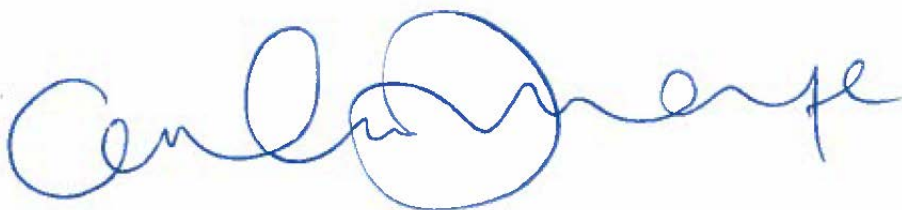
Additionally, we have strengthened safeguards in respect of arrangements in independent hospitals. We have been listening to the concerns of stakeholders

throughout the Bill's passage through Parliament and this feedback has directly informed all of the amendments to date, leading to a Bill with greater protections for the vulnerable.

You raise the code of practice and associated guidance. The Code of Practice is a critical document as it is statutory guidance to which all those with functions under the legislation must have regard. But more than having a legal status, this comprehensive document, will provide supplementary information on how the Liberty Protection Safeguards will work in practice in a range of different situations and scenarios to aid interpretation of the legislation. It will emphasise safeguards as well as being intelligible and of real help to all using it. The Department has begun the process to develop the Code of Practice and is committed to developing this in partnership with the sector, with a wide range of representative organisations and with people with lived experience. We have committed to a public consultation on the draft as I recognise that is important we have as much input as possible. The draft Code will be laid before Parliament, giving each House the opportunity to scrutinise and to resolve not to approve the draft: and the Act will not come into force before the Code of Practice has passed this process and been published. To reinforce the commitments that I have already made, section 43 of the Mental Capacity Act requires both this consultation and Parliamentary oversight for the Code.

I would welcome all VODG members and signatories to the letter to participate in the work on the Code of Practice to ensure the system works as envisaged and with robust safeguards in place to protect those whose liberty is being deprived.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Caroline Dinénage', written in a cursive style.

**CAROLINE DINENAGE MP, MINISTER OF STATE FOR CARE**