



Department  
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From Caroline Dinanage MP  
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The Rt Hon George Howarth MP

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By email to: [george.howarth.mp@parliament.uk](mailto:george.howarth.mp@parliament.uk)

Dear George,

Thank you for your correspondence of 24 January on behalf of a number of your constituents about the Deprivation of Liberty Safeguards (DoLS) system.

I appreciate your constituents' concerns and would like to reassure them that we continue to consult and debate changes to DoLS. The proposed changes are to ensure that all people, including those with dementia, learning disabilities, autism or brain injuries, and their family or carers are fully involved in the process, and to ensure their voices are heard.

We are committed to improving the DoLS system for the vulnerable people it protects. The current system is broken, and the model is failing to provide the protections they needed. We are taking forward proposals put forward by the Law Commission, to ensure vulnerable people who need care are properly protected. The reformed Bill is about increasing access to justice, delivering greater protection to individuals, and improving the experience of those who care for them.

Furthermore, it remains the case, as set out in the Mental Capacity Act (2005), that any deprivation of a person's liberty is in their best interest, is the least restrictive possible, is assessed independently and is challengeable in court.

The primary legislation on deprivation of liberty aims to ensure that people who do not have the mental capacity to consent to their health and care arrangements have the least restrictive care possible and receive the safeguards they are entitled to under the European Convention on Human Rights. It covers around 200,000 people in England each year. A Supreme Court judgment in 2014 has significantly widened the number of people entitled to the safeguards, which has led to a major backlog of unprocessed applications.



The role of the care home manager in the new model is built on the role they currently have within DoLS. Importantly, care homes are not approving authorisations themselves. The role of approving authorisations remains with the local authority or clinical commissioning group, which provides the necessary independent scrutiny in all care-home cases.

Under the Bill, all applications must undergo an independent review before any authorisation is made. The assessment must be carried out by someone with no connection to the care home or delivery of the person's care. The cared-for person will have representation from either an Independent Mental Capacity Advocate (IMCA) or an Appropriate Person. An Appropriate Person may be a family member or carer, thus ensuring the views of the individual and their loved ones are central to the person's care. If a person objects, the subsequent review must be carried out by an Approved Mental Capacity Professional (AMCP).

We will be extending the capability of those with an interest in the person's welfare, for example 'whistleblowers' and others such as families or carers, to raise concerns for a review by an AMCP. We will also be considering how to strengthen safeguards in independent hospitals through the role of the AMCP.

In order to make the necessary improvements for the new model, training and implementation will be essential. We will work closely with delivery partners and other stakeholders to make sure that training and support for the new model will be available to ensure a successful transition and implementation. We will work with a wide range of stakeholders and delivery partners to develop a new statutory Code of Practice that will support the implementation of the Bill and make clear the rights of the individual and the roles of all people in the assessment process.

In developing these safeguards, we have ensured that they are in line with the Human Rights Act, and are Article 5 and 8 compliant. If those who implement these safeguards fail to comply, they will be held liable in the High Court for breach of human rights.

Putting the person at the heart of the system is one of our top priorities for Liberty Protection Safeguards (LPS). The wishes and feelings of the individual will be central to the new process and will be considered as part of the necessary and proportionate assessment. We have changed the Mental Capacity (Amendment) Bill so that it explicitly states that the cared-for person must be consulted with. This, combined with the requirement to consult with anyone with an interest in the welfare of the person, such as family or carers, will ensure their views are put forward and their voice is fully heard.

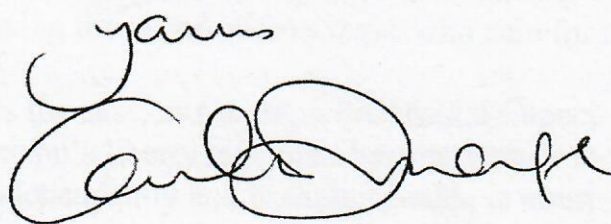


Independent advocacy is a key concern; we know that it is absolutely vital to protect the rights of people. We have addressed this with an amendment that means that the appointment of an IMCA is not contingent on notification from the care home, and they can be appointed directly by the responsible body. We appreciate concerns about the conditions under which an IMCA is appointed. Under the Bill, an IMCA is automatically appointed unless there is an Appropriate Person or it is not in the person's best interests to do so. We expect these to be the very rare circumstances in which a person objects to having an IMCA appointed.

With regard to 16- and 17-year-olds, the Law Commission's initial recommendation was to include them in the model, in order to better align LPS with the Mental Capacity Act. Therefore, we have changed the Bill so that 16- and 17-year-olds will have the same access to safeguards as those aged 18 and over. This will work alongside legislation, such as the Children's Act (2004), to ensure that all 16- and 17-year-olds have the safeguards and protections they need.

The passing of the Bill to Royal Assent provides the opportunity for concerns to be considered. We have engaged, and will continue to engage, with stakeholders and are listening to feedback and concerns raised. For example, we will introduce an amendment in the Commons in response to calls for a statutory definition of deprivation of liberty. The aim of this is to give clarity over when LPS should and should not be applied, to bring proportionality and make the system easy to navigate for all. We will be working closely with stakeholders and peers on this definition.

I hope this reply is helpful.

A handwritten signature in dark ink, appearing to read 'Caroline Dinénage', with a stylized 'yann' written above it.

**CAROLINE DINENAGE**