



### **Replacement for DOLS – briefing for Care Forum Wales members – September 2018**

The Mental Capacity (Amendment) Bill was introduced into the House of Lords in July 2018 and reaches committee stage on 5 September – you can see the bill here: [mental capacity amendment bill](#) The Bill follows a lengthy consultation by the Law Commission on replacing the Deprivation of Liberty Safeguards with new “Liberty Protection Safeguards”. One of the key objectives of the consultation was to establish a clear definition of liberty that would reduce the huge number of applications made to local authorities as Supervising Bodies in the wake of the Cheshire West court decision. The Bill, however, seeks to reduce the burden of bureaucracy and cost by transferring many of the responsibilities to registered managers of care homes. This was never part of the original consultation and as far as we have been able to determine, there has been no engagement with the sector in England and Wales or with Welsh Government.

The draft Bill sees registered managers become responsible for arranging and evidencing the initial assessment of mental capacity; consulting with the resident and their representatives to decide whether they object to arrangements; determining who would be an “appropriate person” to act on their behalf and completing the draft authorisation for the local authority to sign off. The Department of Health says that this is an extension of current responsibilities that will enable liberty safeguards to become integral to care planning, drive improvements and cut down on duplication and they anticipate that local authorities will continue to carry out these functions where they place the resident. Since the supervising body remains responsible for the final decision to authorise, they believe that there is no conflict of interest for the care home and no additional risk of being sued. We would like to see this made clearer in the bill and have already made it clear that we expect to be consulted when the accompanying Code of Practice is drafted.

Care Forum Wales representatives have attended a couple of meetings with the All Wales DoLS and Mental Health Network, Welsh Government and the UK Department of Health where we have begun to map the new process so that we can better understand the impacts. We have been very vocal about additional costs in time and training, the potential for conflict with families and the unreasonable expectation that registered managers will have a level of knowledge and understanding that local authority staff have accrued over years of experience and professional training. Interestingly these concerns are supported by colleagues in local authorities. Our overriding message is that beleaguered registered managers, already under immense pressure and in short supply, cannot assume another responsibility that takes them further away from the actual business of caring for people and makes the job increasingly unattractive.

We will continue to work for a sensible approach on your behalf.

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