



Sheffield

**Written evidence to the
Parliamentary committee
considering the Mental
Capacity Act (Amendment Bill)**

January 2019

Citizens Advice Sheffield – written evidence to the Parliamentary committee considering the Mental Capacity Act (Amendment Bill) January 2019

Introduction

1. Citizens Advice Sheffield is the lead partner in Sheffield Advocacy Hub, along with Cloverleaf Advocacy and Disability Sheffield. We directly employ 26 staff and currently provide independent advocacy support in response to around 2000 referrals for people in Sheffield each year. Around 25% of these referrals are directly related to the current Deprivation of Liberty Safeguards, where there is no one else appropriate to support the person. There are many more people in Sheffield directly affected by these arrangements who receive support from family or friends. This is therefore a sizeable population in the city and nationally.
2. Our comments and views are based on the experiences of our advocates on the ground, the draft legislation, the proposals put forward by the Independent Review of the Mental Health Act and the commentary put forward within the health and social care sector about this Bill.
3. We note that these amendments directly affect some of the most vulnerable in society – people unable to make decisions for themselves about their care and accommodation, who are subject to care plans and arrangements over which they have no power to make decisions and often very little voice. As advocates, we therefore feel compelled to make this submission.

Executive Summary

- There is too little parliamentary time allocated to give these issues the serious consideration they deserve
- We have serious concerns about the proposals in tandem with the proposed reforms of the Mental Health Act
- Further work is required to embed the principles of the Mental Capacity Act in the health and social care sector, for this approach to work in practice
- Serious consideration should be given to the resources being made available at all levels of the process
- This approach does not contain the safeguards proposed by the Law Commission
- The reliance on the Code of Practice is too great
- A 'valid consent' approach to a definition is preferred
- Advocates should be appointed in all cases (where there is no appropriate person) as a duty, with clear instructions to ascertain and support the person's wishes and feelings and in particular to act where a person appears to wish to apply to the Court
- We do not believe an IMCA should be required to act in the person's best interests in the way this applies to the current role of the Relevant

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Person's Representative as this is not in accord with fundamental principles of advocacy.

The voices of the most vulnerable are not being properly considered

4. We note that whilst government ministers have indicated a willingness to work with others to improve the draft bill, we are very concerned that so little parliamentary time has been given to properly debate the impact of these measures on the fundamental rights and liberties of those affected.
5. We have significant concerns about the impact on people judged to lack capacity to consent to treatment in mental health settings, largely people with dementia, learning disabilities and autistic people. There has been less public debate about these issues though the Joint Committee on Human Rights has recently heard evidence about [the treatment of people in learning disability inpatient units](#) (Assessment and Treatment Units or ATUs). Lucy Series has also helpfully catalogued the much weaker nature of the proposed reforms when considered alongside the proposals of the Independent Review of the Mental Health Act. [The concerns outlined](#) helpfully with clear data, are a key shortcoming of the proposals as they stand.

The principles of the Mental Capacity Act are not sufficiently embedded

6. We note that fundamentally the Bill relies on the key principles of the Mental Capacity Act being fully embedded in health and social care practice. Whilst we wholeheartedly support the aim of achieving these principles being fully embedded, our advocates know this is not the case from their work on a daily basis. There remains widespread confusion and lack of knowledge about the MCA in practice. For example, an advocate recently visited one care home which was entirely unaware of its responsibilities with regard to deprivation of liberty, even in late 2018.

Resources

7. We note that widespread concern has been raised about resources, and that the Bill appears to prioritise cutting costs over protecting human rights. One key reason cited to our advocates on a daily basis by care homes and commissioning bodies for failing to follow the principles of the Mental Capacity Act, and for overly restricting individuals' liberties contrary to human rights requirements is a lack of resources. We cannot support this approach.
8. We note for example that the government envisages a reduction in the rates of appeal to the Court of Protection, despite the current rates of appeal being

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extremely low at 1% and far lower than those who exercise the equivalent right under the Mental Health Act to appeal to the Tribunal.

The Law Commission's Recommendations are not being followed

9. We welcome the government's acceptance of the approach taken by the Law Commission however we note that the draft Bill does not contain the safeguards recommended, despite the extensive consultation the Law Commission undertook to reach their detailed recommendations.
10. We note that the draft Bill does not for instance, include the establishment of a supported decision making scheme. We think this is a key oversight, as the second principle of the Mental Capacity Act is potentially the most effective safeguard and yet also the most neglected in day to day practice.

Use of the Code of Practice rather than primary legislation

11. We note that much of what is proposed is not in the draft legislation but is to be left to the Code of Practice. We are concerned about the limitations this may place on the rights of those affected.

Definition of deprivation of liberty

12. We note the consideration of a definition of deprivation of liberty, and welcome [the Joint Committee on Human Rights proposals in this matter](#). In our view, the 'valid consent' approach outlined at paragraph 26 of their report and enshrined in Amendment 2 would be the best way forward in this regard. Advocates could play a key role in promoting more widespread uptake of advance decisions and similar mechanisms.

Advocacy Support and Representation

13. We welcome the amendments made in the House of Lords with regard to the appointment of Independent Mental Capacity Advocates (IMCAs) to support people without an appropriate person. We believe these need further tightening with a requirement to appoint an advocate where there is no appropriate person to provide the support and that this role should continue throughout the authorisation where required (equivalent to the right to an Independent Mental Health Advocate (IMHA) under the Mental Health Act).
14. We propose clear direction to advocates to support and empower the person based on the wishes and feelings of the person insofar as they can be ascertained, in particular:
 - Through the process of assessment and review;

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- Any case where an Approved Mental Capacity Professional (AMCP) is involved or otherwise where a person may appear to be objecting;
 - To support the person to exercise their right to appeal, to raise concerns or make complaints about their care and treatment to the particular institution and/or the responsible body
 - To make such appeals, and raise concerns or make complaints if it appears to the IMCA that the person would wish to do so
15. There should be clear guidance to instruct advocates to act without delay on the wishes and feelings of the people involved where there is an indication that the person would like to exercise their right to have their case reviewed by a Court, if they could understand and/or articulate this.
16. We do not believe an IMCA should be required to act in the person's best interests in the way this applies to the current role of the Relevant Person's Representative as this is not in accord [with fundamental principles of advocacy](#). Rather, the IMCA should be there to promote the wishes and feelings of the person affected to the decision maker, whatever the IMCA's views of those wishes and feelings – it is for decision makers to consider best interests taking the person's views and/or the IMCA's representations into account when deciding on a course of action.
17. We would also note that the plethora of independent advocacy roles with separate eligibility criteria, powers and duties leads to significant confusion amongst people in need of support, their families, and health and social care professionals alike. We would welcome appropriate proposals to bring the varying roles together into a single framework. We appreciate that this is not the ambition of this Bill.

Citizens Advice Sheffield is a charity.

We provide free, confidential, independent and impartial advice and advocacy.

Our service is provided digitally, by phone and in person.

Many of the people we help are among the most vulnerable and disadvantaged in Sheffield.

We are supported by over 40 funders.

As well as our paid staff, we have 130 volunteers.

Would you be willing to support us?

If you are interested in volunteering, please take a look at our website.

If you would like to support us financially, please see our mydonate page.

You can contact us at:

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Thank you



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