**Mental Capacity (Amendment) Bill**

**Second Reading – 16 July 2018**

**Baroness Finlay of Llandaff - Crossbench**

Those who know P best—the family and those important to P—must be consulted, not sidelined as has happened sometimes with DoLS. Can the Minister confirm that the code of practice will signpost the involvement of expert assessment of those with speech and language difficulties, who are too often labelled as having impaired capacity because they have appeared unable to communicate?

<http://bit.ly/2moEfvB>

**Baroness Greengross – Crossbench**

It is good news that £200 million a year will be saved by local authorities. However, we have to suppose that the increased role of NHS and independent sector providers will lead to increased costs elsewhere, while the new responsibilities being imposed on care homes, hospitals and CCGs will need some thought, resources and training. For example, the Royal College of Speech and Language Therapists argues that assessors often do not recognise or know how to support communication difficulties. One can envisage that this could be a real problem if English is not the first language of the patient or their family.​

<http://bit.ly/2Ju4ZUk>

**Baroness Browning - Conservative**

Then there is the question of communication. Across this whole spectrum of people are people with communication disorders. How they communicate, whether they need speech and language therapists to assist them or whether they are non-verbal but can still communicate, needs to be taken into account. For that process to take place and for that assessment and decision to be made, it is absolutely essential that time is given.’

I know that many Members of both Houses—I am not sure how many—have taken part in training courses run by the Alzheimer’s Society in how to communicate with somebody who has advanced Alzheimer’s. To be frank, it is not all that different from how you communicate with people who are learning disabled or on the autism spectrum. When asking a question or putting information to them, you wait for them to process that information and give them plenty of time before they then express, in whatever way is appropriate for them, an answer to that question or indicate what their preference would be. That is not a cheap option. That type of assessment is not cheap or fast.

<http://bit.ly/2JuwfSV>

**Baroness Hollins - Crossbench**

I am grateful to several organisations for their briefings in advance of today’s debate, including Mencap, the Royal College of Psychiatrists, the Royal College of Speech and Language Therapists and others. I refer to my interests in the register. I speak also as the carer of an adult relative for whom I hold a lasting power of attorney.

Recommendation 37 of the post-legislative scrutiny committee suggested that,

“replacement legislative provisions and associated forms be drafted in clear and simple terms, to ensure they can be understood and applied effectively by professionals, individuals, families and carers”.

Some of the briefings received in the last few days remind us of the complexity of this legislative area and how easy it is to misunderstand it.

Any adult, regardless of any communication or cognitive impairment, has the right to make or be supported to make their own decisions wherever possible. The Mental Capacity Act supports this principle while also providing a legal framework, the DoLS, so that decisions can be made when someone lacks capacity. When the Government introduced those safeguards over 10 years ago, the rules required that they would allow a deprivation of liberty if the chosen restraints or restrictions worked in a person’s best interests. I am grateful to my noble friend Lady Finlay for clarifying that best interests will remain integral to the amended Act. I look forward to confirmation from the Minister that that is indeed the case, as it has been a matter of some concern to the organisations briefing me. That takes us to the heart of what they were intended to do, but implementation of the Mental Capacity Act and the deprivation of liberty safeguards has been poor. The health and care sector does not have the training, awareness and skills to carry it out effectively. It takes a willingness and considerable skill to protect people’s liberty.

A key concern of the post-legislative scrutiny committee was the abject failure of many services to understand how to increase someone’s capacity by, for example, providing them with accessible information; patiently making up for limited educational opportunities by increasing their understanding; assessing their communication skills, as recommended by the Royal College of Speech and Language Therapists in its briefing; and assessing their capacity to make a specific decision on more than one occasion. This is what supported decision-making involves and it takes time.

<http://bit.ly/2mpmpIM>

**Baroness Thornton – Labour**

I also thank the many organisations and individuals that have sent us their briefs and their views on the Bill, and which are, at this moment, working to see how it might be best improved—Mencap, the LGA ADSS, Age UK, VoiceAbility, Sense, Alzheimer’s Society, the Royal College of Psychiatrists and the Royal College of Speech and Language Therapists, a doctor from Cardiff University called Lucy Series, who sent me an excellent brief, the National Autistic Society and so on.

<http://bit.ly/2mk4gMm>

**Full debate**

[https://hansard.parliament.uk/lords/2018-07-16/debates/7B729E36-43F2-4D5D-9DCD-8CF46C5F383B/MentalCapacity(Amendment)Bill(HL)](https://hansard.parliament.uk/lords/2018-07-16/debates/7B729E36-43F2-4D5D-9DCD-8CF46C5F383B/MentalCapacity%28Amendment%29Bill%28HL%29)

[https://hansard.parliament.uk/lords/2018-07-16/debates/DCE2DAC6-770A-42BB-ABD7-CB4ADB0D40EA/MentalCapacity(Amendment)Bill(HL)](https://hansard.parliament.uk/lords/2018-07-16/debates/DCE2DAC6-770A-42BB-ABD7-CB4ADB0D40EA/MentalCapacity%28Amendment%29Bill%28HL%29)