BRIEFING NOTE ON THE MENTAL CAPACITY (AMENDMENT) BILL
THE RELATIVES & RESIDENTS ASSOCIATION
ATTACKING THE RIGHTS OF CARE HOME RESIDENTS

About the R&RA

I. The Relatives & Residents Association (R&RA) speaks up and speaks out on behalf of older people in care homes. It is the only national charity for older people providing a daily helpline, which concentrates entirely on residential care for this age group.

II. R&RA was founded to campaign for a better quality of life for older people living in care homes. By using the unique perspectives of relatives and residents, we work in harness with others to help improve service and standards. We also try to influence policy and practice by reflecting the experience of our members and callers who use our daily Helpline and thus can make evidence based comments on the case we make, the research and training we carry out and the policies we advocate.

III. We provide support and information through our Helpline and enable older people and their relatives make better informed decisions about looking for a home, explain their rights under guidance and regulations, and the benefits and standards they should expect.

IV. We also act as a listening ear to help support families and individuals at what is often a time of crisis and trauma for them, when it becomes apparent that a partner, parent or friend can no longer live at home. We also help them when there are difficulties, complaints and concerns about the standard of care and often act as brokers between the relative/concerned individual and the care home.

V. Our comments are based on our Helpline service and our activities, including training, research and feedback about the reality of daily life in care homes for older people. Inevitably, our Helpline service is largely sought by relatives experiencing problems within care homes. However, we acknowledge there are many homes where very good care is provided and that there many frontline members of staff who are doing their utmost to provide the best quality of life they can for older people living in residential and nursing homes.
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1. Care home residents without mental capacity - an increasingly high proportion of residents of both residential care homes and nursing homes - are being let down by these proposed changes in their rights.

2. As a result of changes being proposed by the Government in this Bill, currently going through Parliament, the current Deprivation of Liberty Safeguards (DoLS) are being replaced by Liberty Protection Safeguards (LPS), which are radically different and weaken the current safeguards for vulnerable care home residents.

3. The main reason for the change is the huge increase in the number of cases and the consequential cost to local authorities. It is not clear who will finance this cost. It could, presumably, result in vulnerable residents being charged for this additional work. The Impact Assessment assumes a zero cost to care homes and that half a day's training will suffice.

4. One of the most worrying changes proposed is to move the responsibility from local authorities to the care provider for the new assessments when an individual or someone acting on their behalf wishes to challenge a restriction to their liberty. This means that in effect care managers will be become responsible for organising and conducting the assessments necessary for the LPS when they are responsible for the person’s care.

5. As a result, care home managers will have new responsibilities to make crucial decisions about restricting a resident’s freedom, previously made by independent people, known as Best Interests Assessors. It assumes that the resident’s best interests will generally coalesce with those of the provider.

6. Such restrictions vary widely. They may be in relation to leaving the home either temporarily or permanently or about actions or activities individuals wish to undertake. We have worked with a number of families in conflict with their care home where the resident and their next of kin, or Lasting Power of Attorney, may wish to move elsewhere, or about who may or may not visit, or who they may or may not wish to see. These sometimes result in relatives or friends being restricted or banned or residents given notice to quit by the care provider.

7. The new proposals seem to confuse the current role of the care provider in producing a care plan i.e. about how a home can meet the individual’s needs on a daily basis, preferably in consultation with the person concerned and their wider network, with the new more complex LPS role in preparing a much more comprehensive assessment.

8. It also appears that the care home manager will have the power to set aside the views of the person’s preferred representative, even though they have the status of the LPA for Welfare.

9. In addition, the existing right of a POA for Welfare to refuse an assessment has not been included in the new Bill, thus undermining people’s ability to choose who should represent their wishes by removing these powers.
10. In addition, what is now being put forward is a much more demanding and wide-ranging process, which will involve great investment by care providers in training and development for this new role. Despite the statement in the Government’s Impact Assessment that they have ‘engaged with service providers’, we have no evidence that care providers are in any way content with these additional burdens on care managers.

11. These proposals do not conform to Article 5 of the Human Rights Act in a number of respects nor do they adopt the sensible recommendations in the Law Commission’s draft bill, without a convincing explanation of why they have been discarded or contradicted. For example, one of the Law Commission’s key proposals was to get away from ‘self-authorisation’ which will increase under the current Bill.

12. The Amendment Bill is silent on ensuring that the person’s wishes and feelings, the essence of the former role, is taken into account, again an abuse of their human rights.

13. It also neglects to emphasise the role of the person or their representative in their key role of challenging decisions and having the power to request a review. It pays little heed to the particular susceptibilities of the self-funder, who may have no kith and kin and who had capacity on admission.

14. In summary, it is not appropriate to give care home managers these new and inappropriate responsibilities for vulnerable and often isolated residents for the following reasons:

- it requires care home managers to be judge and jury all too often about decisions in which they themselves were involved. If required, we can produce a number of examples from our Helpline of recent serious conflicts of interests, which have led to a range of restrictions and, sometimes, evictions;
- one in five care homes has no registered manager in post, despite this being a mandatory requirement and turnover is estimated to be approximately 27%;
- care managers do not have the background, time or training to carry out this onerous role (their mean annual salary is £30K) and the vast majority of managers of care homes have neither the appropriate training nor the qualifications for this new and complex role;
- care home managers are already overburdened with a range of ever-increasing responsibilities in what is a demanding and challenging role, often with little support and no mandatory training;
- care home residents are part of the community, yet will be treated quite differently from their peers who may be equally vulnerable in their own homes, but will remain under the aegis of the local authority;
- the recent publicity and prosecution of a home owner and his manager in Liverpool this month only too graphically illustrates the dangers of such conflicts of interest and the power differential. The owner and manager abused their positions of trust by alienating the family and friends of a number of wealthy residents to exploit their liberty and assets by using and exploiting undue
influence. It is worth noting that the David Barton case is relatively rare, since similar frauds are rarely pursued, reported or prosecuted.

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