

Written evidence submitted by the British Association of Social Workers (BASW) (ADY0385)

1. Summary

- 1.1 Any proposed change to the law concerning Assisted Dying will need to take into account existing legislation with regard to mental capacity (the Mental Capacity Act 2005 and Mental Capacity (Amendment) Act 2019) and existing legislation on Adult Safeguarding (The Care Act 2014). The Mental Capacity Act 2005 would have to be amended as it specifically rules out assisted dying at present. While the mental capacity legislation cited above applies to England and Wales, and the Care Act applies to England only, legislation with similar functions is in place in Scotland, Wales and Northern Ireland.
- 1.2 The essence of the mental capacity legislation is to protect people who because of their age, condition or disability may not have the capacity to make significant long-term decisions. Our contention is that for many people suffering extreme long-term pain or disability *may* have their capacity impaired. While capacity deals with ability to make an informed choice, adult safeguarding legislation is in place to ensure that vulnerable adults (who may include some older people or people with extreme long-term pain or disability) are not coerced by others into situations or decisions.
- 1.3 The title of 'social worker' is a protected title. Social workers must be qualified and registered with the national regulator to practice. The British Association of Social Workers (BASW) represents 22,000 social workers across the UK.
- 1.4 This paper sets out legal, ethical, and operational considerations that relate to the mental capacity legislation and adult safeguarding.

2. BASW's position

- 2.1 Our society, historically and currently, has discriminated against those with severe disabilities, chronic illness, and old age. Any 'dependency' tends to be viewed as socially undesirable rather than something which is part of life. These attitudes can often be internalised by people, consciously or unconsciously. For example, during the COVID-19 pandemic there were many press reports about Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) notices being used inappropriately. There must be reflection on how we are ensuring that people who want to live are given the support to do so and that our policies and practice reflects this.
- 2.2 Mental capacity legislation helps determine whether a person has the capacity to make significant decisions that will have a lasting impact, such as major financial commitments or decisions concerning serious medical treatment.
- 2.3 A choice to participate in Assisted Dying would fall under the remit of the mental capacity legislation. Some older people, or people with a disability, or people with a terminal illness may well have their capacity impaired by extreme long-term pain.

- 2.4 There are an estimated 2,000,000 people in England alone who suffer from some form of impairment of capacity (NIHR, 2022). For example, it is estimated that some 900,000 people have dementia (Alzheimer's Society 2022). With an aging population, and more complex conditions, significant waiting lists have built up to undertake mental capacity assessments. In addition, it is envisaged that the most recent legislation will need significant resourcing if waiting lists are not to grow further.
- 2.5 It seems likely that an effect of any change to legislation around Assisted Dying lead to an increase in the number of mental capacity assessments taking place.-
- 2.6 While mental capacity legislation addresses the need of vulnerable individuals who may be making a significant long-term decision, safeguarding legislation exists to protect vulnerable people who may be coerced into a decision.
- 2.7 In England in 2021/22 there were 541,535 adult safeguarding concerns raised with 161, 925 Section 42 enquiries concerning 129, 685 individuals. As with the mental capacity legislation any introduction of Assisted Dying would need to take into account resource issues concerning further adult safeguarding referrals.
- 2.8 Access to comprehensive specialist support and holistic care in hospices or at home is not universally available. Extra resources and training are required to ensure good practice in pain control and the proper integration of support to those who are dying, whether in their own homes, hospitals, or residential care.

[BASW UK, *Position Statement: Social Work support to people who are dying*, 2016]
<https://www.apcsw.org.uk/wp-content/uploads/sp-client-document-manager/-1/position-statement-sw-in-dying-2102161.pdf>

- 2.9 Care to those who are disabled, in extreme long-term pain or suffering a terminal condition rely not simply on medical services, crucial though they are, but also social care services which have been under extreme pressure for several years. Lack of appropriate care, or insufficient services, may well propel individuals to an Assisted Dying option, which if they were given adequate social care would be an option they might not consider.

3. What, if any, are the physical and mental health criteria which would make an individual eligible to access assisted dying/assisted suicide services?

- 3.1 Mental capacity would be essential to any criteria which would make an individual eligible to access Assisted Dying services, as it would determine whether they are able to make a decision of this scale and permanence.
- 3.2 The five principles listed in the Mental Capacity 2005 Act are:
- *A person must be assumed to have capacity unless it is established that he lacks capacity.*
 - *A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.*

- *A person is not to be treated as unable to make a decision merely because he makes an unwise decision.*
- *An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.*
- *Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.*

3.3 Determining whether someone has capacity to make their own decisions is done on a case-by-case basis. Some people may have capacity to make one decision, but not another. The capacity to make the same decision may differ at different times.

3.4 BASW would be happy to provide to the committee either oral evidence or further written evidence on how mental capacity is assessed.

4. What protections could be put in place to protect people from coercion and how effective would these be?

4.1 Adult safeguarding might be a necessary consideration for a proportion of individuals who may seek to access Assisted Dying services. There must be resources and training readily available to all professionals involved so that they can recognise when someone might be subject to coercion.

5. What capabilities would a person need to be able to consent to assisted dying /assisted suicide?

5.1 Although capabilities are an important part of being able to consent, the capacity to consent must be considered first.

5.2 As discussed above, mental capacity is an important factor of being able to consent to assisted dying.

6. About BASW

6.1 The British Association of Social Workers (BASW) represents over 22,000 social workers across the four countries of the UK. Social workers have distinct legal duties (enshrined in a variety of laws both UK-wide and nation specific) which address a range of responsibilities relating to specific groups. In relation to adults, social workers have responsibilities in relation to mental capacity, those with severe mental health needs, care assessment planning and delivery, the safeguarding of adults and those with a disability, including those with a learning disability.

- 6.2 This response represents work undertaken by and is drawn from agreed policy documents and public statements. In this submission, we have only responded to questions that may relate directly to social work practice.
- 6.3 BASW provides this material as a resource to the Select Committee to include in their considerations. We would be happy to provide further information as needed.

Bibliography

Alzheimer's Society (2022) *Facts for the media about dementia*.

<https://www.alzheimers.org.uk/about-us/news-and-media/facts-media> Accessed 9th August 2022

<https://www.nihr.ac.uk/documents/2211-hsdr-implementing-the-mental-capacity-act-in-practice-mental-capacity-assessments-supporting-information/29712> Accessed 20 Jan 2023

Adult safeguarding: <https://digital.nhs.uk/data-and-information/publications/statistical/safeguarding-adults/2021-22> Accessed 20 Jan, 2023

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