

Eluned Morgan AS/MS  
Y Gweinidog Iechyd Meddwl, Llesiant a'r Gymraeg  
Minister for Mental Health, Wellbeing and Welsh Language



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA/EM/1065/21

Helen Whately MP  
Minister of State for Care  
39 Victoria Street  
London SW1H 0EU

Chief Secretary to the Treasury – Stephen Barclay

29 March 2021

Dear Helen

On 10 February, I wrote to you regarding the implementation of the Liberty Protection Safeguards (LPS) in Wales and the UK Government's revised planned coming into force date of 1 April 2021.

Since then, officials in the Department of Health and Social Care have confirmed to Welsh Government officials that Her Majesty's Treasury will not be releasing funding to Welsh Government for the implementation of LPS in Wales. In particular, I understand that Her Majesty's Treasury has stated that the Department of Health and Social Care will be expected to absorb the costs of implementing LPS in England within existing Departmental budgets. Her Majesty's Treasury has also stated that Welsh Government has received Barnett consequentials based on the Department for Health and Social Care's existing budget, which includes funding for LPS implementation – and that on this basis, the Welsh Government should absorb the implementation costs of what is a UK Government driven legal reform.

The Mental Capacity (Amendment) Act 2019 is UK Government legislation that will apply to England and Wales – and because this is law that is led by the UK Government and impacts on reserved policy, we would fully expect there to be a funding flow to Wales to cover its implementation. This is a key principle of the UK Government Statement of Funding Policy. As set out in paragraph 1.17 of the Statement of Financial Policy: "Where decisions taken by any of the devolved administrations or bodies under their jurisdiction have financial implications for departments or agencies of the UK government or, alternatively, decisions of UK government departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs, the body whose decision leads to the additional cost will meet that cost".

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The latest impact assessment of the Mental Capacity (Amendment) Act 2019 – published by the UK Government in January 2021 – specifically highlights the estimated costs associated with transition to the LPS system, including those costs that relate to workforce development and training, the new role of the Approved Mental Capacity Professional, Responsible Bodies' roles in undertaking assessments and determinations as part of LPS system, and estimated costs for monitoring and reporting.

As highlighted in my previous letter, I am fully committed to the implementation of LPS in Wales. The safeguards will help to protect the rights of some of our most vulnerable populations in Wales, help to improve outcomes for those people being deprived of their liberty, and ensure that the Mental Capacity Act is working as intended – where the individual is at the heart of all decision making. However, it is UK Government led legislation regarding a reserved area of policy that is prompting the reform of the current system. Therefore, in line with the UK Government Statement of Funding Policy, it is the UK Government's responsibility to fund implementation in Wales. We acknowledge that an element of running the current system is covered by existing health consequential to Welsh Government, but the principle remains that the additional costs of this new UK legislation should be met by the UK Government in full.

I would ask that the UK Government reconsiders its position in relation to funding the implementation of LPS to ensure the policy intent to strengthen and simplify the current system to better safeguard vulnerable individuals is realised.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

**Eluned Morgan AS/MS**

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