

BOROUGH OF TELFORD & WREKIN

HEALTH AND WELLBEING BOARD – 13 MARCH 2013

CARE AND SUPPORT BILL & CARE AND SUPPORT FUNDING UPDATE

REPORT OF THE ASSISTANT DIRECTOR – SOCIAL CARE SPECIALIST

1. SUMMARY

- 1.1 The report summarises Government proposals for adult care and support contained in the Care and Support White Paper, Care and Support Bill, Caring for our Future progress report on funding reform and more recently a “Policy Statement on care and support funding reform and legislative requirements”
- 1.2 Generally there is support for the proposals however there are significant concerns about the delay in addressing the adult social care funding situation for at least another 3 years at a time when budgets are already under such pressure.
- 1.3 The proposals will impact on the way the service is currently delivered by the Council, there will be more assessment activity for more people and new systems will need to be put in place.

2. RECOMMENDATIONS

- 2.1 **Board members note the content and implications of these proposals and receive further updates at regular intervals as the Bill proceeds through Parliament and more detail is developed.**

3. IMPACT

COMMUNITY IMPACT	Do these proposals contribute to specific Priority Plan objective(s)?	
	Yes	Protect and support our vulnerable children and adults
	Will the proposals impact on specific groups of people?	
	Yes	In particular people who are ill or disabled, but their informal carers will be dispersed across our population
DELIVERY DATE	2012-2015	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	The key financial aspects of the proposals and vision included in the white paper and Bill are included in the body of this report. The 2012/13 expenditure forecasts reveal a continuation in the recent trend of increasing care costs and resulting pressure on the Care and Support budget. The costs of care have escalated in recent months due

	<p>to; (i) the review of eligibility of clients for NHS funded care and (ii) in some client groups a continued increase in demand. The “additional funding”, referred in the white paper etc made available from Government through the NHS has resulted in around £2m of funding being made available to the Council in 2012/13, and forms part of funding totals to 2014/15, but this has not been sufficient to meet pressures on budgets of around £5m. In addition this funding has been made available at a time of significant real term cuts of 28% in the grant settlement to Local Authorities over four years, and to this Council of around £27m over four years.</p> <p>The objective of improving all aspects of the care experience to those in need is laudable, but is likely to push up costs on LA’s both in front line care costs from the impact of changes to market provision (such as removing home care charging by the minute), and the transfer of risk into the private sector with the implementation of personal budgets and in back office functions to manage the changes proposed in the funding report. Some additional funding is proposed with the announcement of £100m in 2013/14 and £200m 2014/15 but it is not possible to determine at this stage what level of funding is actually required to meet the additional costs.</p> <p>The forecast financial impacts of the proposed changes to the funding of Social Care from the Dilnot report recommendations are documented in the body of this report. It is not possible to evaluate the local impacts except to say that the costs of care locally will continue to rise in the light of demographic changes. The current strategy being pursued in Telford & Wrekin is to improve and enhance preventative services. This is in order to avoid a reactive approach to providing care when a client has costly high needs. This strategy, should prove to be successful in helping to contain cost increases in future but unlikely to reduce care costs overall. Therefore, cost pressures are likely to remain and will require additional Government resource. Delay in the implementation of funding reform and the placing of Social Care funding on a sustainable footing will result in the continuation of increasing pressure on Local Authority Care budgets. One further key point to note is the proposal to extend the availability to use of deferred payments in order for clients to meet</p>
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		costs once a property has been sold. An increase in the use of this scheme will require debt to be resourced during the period the property remains unsold for whatever reason. The charging of interest is proposed to offset any financing costs.
LEGAL ISSUES	Yes	<p>On 11 July 2012, the Government published a White Paper <i>Caring for our future: reforming care and support</i> and the draft Care and Support Bill 2012 Bill setting out reforms for the care and support system in the UK.</p> <p>The draft Bill was announced in the Queen’s Speech on 9th May , and proposes a single, codified law for adult care and support which will replace existing legislation. The Government says that the draft Bill aims to consolidate “provisions from over a dozen different Acts into a single, modern framework for care and support” and to enact “a fundamental reform of the way the law works.”</p> <p>The Bill sets out the responsibilities for local authorities in relation to the provision of care and support (including charges for such care) and sets out plans to establish Health Education England and the Health Research Authority.</p> <p>Consultation on the draft Bill closed on 19 October 2012.</p> <p>This draft Bill, if it receives Royal Assent , will radically overhaul the current care and support system and its progress through Parliament will need to be closely monitored. Many of the proposals , which are summarised in the body of this report and in the background papers/factsheets detailed at paragraph 6, are aimed at increasing independence but at the same time encouraging personal autonomy and less reliance on state-provided care and support.</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	Any other risks and opportunities will be appropriately managed and reported if necessary.
IMPACT ON SPECIFIC WARDS	No	<i>Borough-wide impact.</i>

4.0 INFORMATION

- 4.1 The Council’s Cabinet on 20 September 2012 were informed of the government’s publication on the 11 July 2012 of the Care and Support White

Paper, the draft Care and Support Bill and a progress report on Funding Reform.

- 4.2 **The White Paper** updated the Vision for Adult Social Care that the Government released in November 2010. It confirmed that local authorities will “sit at the heart of how care and support will work in the future”. Central to the vision is the principle of promoting wellbeing and independence instead of waiting for people to reach crisis point, availability of better information and high quality services.
- 4.3 Actions identified in the White Paper included:
- development of initiatives that help people share their time, talents and skills with others in their community.
 - establishing a new capital fund, worth £200 million over five years, to support the development of specialised housing for older and disabled people.
 - establishing a new national information website, to provide a source of information on care and support, and investing £32.5 million in better local online services.
 - introducing national minimum eligibility threshold to ensure consistency in access to care and support, and ensuring that no-one’s care is interrupted if they move.
 - extending the right to an assessment to more carers, and introducing a clear entitlement to support to help them maintain their own health and wellbeing.
 - Working with a range of organisations to develop comparison websites that make it easy for people to give feedback and compare the quality of care providers.
 - Placing dignity and respect at the heart of a new code of conduct and minimum training standards for care workers.
 - Training more care workers to deliver high-quality care, including an ambition to double the number of care apprenticeships to 100,000 by 2017.
 - Appointing a Chief Social Worker by the end of 2012.
 - Legislating to give people an entitlement to a personal budget.
 - Improving access to independent advice to help people eligible for financial support from their local authority to develop their care and support plan.
 - Developing, in a small number of areas, the use of direct payments for people who have chosen to live in residential care, to test the costs and benefits.
 - Investing a further £100 million in 2013/14 and £200 million in 2014/15 in joint funding between the NHS and social care to support better integrated care and support.
- 4.4 **The Care and Support Bill** (For electronic link see Section 6 below) underpins many of the above proposals and completely overhauls care and support law as recommended by the Law Commission’s review in 2011.
- 4.5 The Bill if it becomes law would replace nearly all the existing adult social care law that has been built up on an ad-hoc basis since the National Assistance Act, 1948 which is still applied today. The Bill was published in draft for public

consultation (deadline for comment was the 19 October 2012) followed by Parliamentary pre-legislative scrutiny.

4.6 Eight Factsheets (for electronic link see Section 6 below) were produced to summarise the main components of the Bill:

- **Assessments & Eligibility** – Will create duty on local authority to carry out assessments and determine eligibility against a new national threshold
- **Charging and Financial Assessments** – Will bring all charging for social care together, using a single approach. Also extends right for people to use a deferred payments scheme against the value of their property and will allow local authorities to charge interest.
- **Who is entitled to care & support?** – will clarify in a single piece of legislation the entitlements of people and their carers for eligible needs to be met as opposed to current legal duty to provide certain services
- **Personalising care and support planning** – Will set out new duty, following establishing eligibility, to provide a care and support plan, including legal entitlement to a personal budget and/or direct payment
- **The law for carers** – Creates a single duty for local authorities to undertake carers assessments, whilst removing requirement that they must provide “a substantial amount of care on a regular basis”. Carers would be put on same legal footing as the adults they care for.
- **Protecting adults from abuse or neglect** – For the first time will introduce a legal framework for adult safeguarding, requiring establishment of a Safeguarding Adults Board with a core membership, publication of a Safeguarding Plan and requirement for local authorities to make enquiries where there are concerns. A separate consultation exercise, ended on 12 October 2012 took place as to whether a specific power of entry is required - <http://www.dh.gov.uk/health/2012/07/safeguardingadults/>

The other 2 factsheets summarise a small number of health measures which have been included in the Bill concerning establishing Health Education England and the Health Research Authority as non-departmental public bodies

4.7 The **Caring for our future: progress report on funding reform** report made it clear that the Government agreed with the principles of the Dilnot Commission’s recommendations published in 2011 which were:

- Government should put a cap on the lifetime care costs (less general living costs) that people face, and raise the threshold at which people lose means tested support; and

- There should be universal access to deferred payments for people in residential care
- 4.8 The report modelled the estimated costs to the nation depending on the different levels of cap and capital limits. Currently there is no cap, upper capital limits are set at £23,250 and individuals pay an assessed contribution based on level of annual income. Dilnot estimated that a cap set at £35,000, an upper capital limit of £100,000 and an annual average contribution of £10,000 a year by each individual towards general living costs associated with residential care would cost an additional £2.2billion in 2015/16, rising to £3.6billion by 2025/26 (at today's prices).
- 4.9 However in taking the matter forward they added some very significant riders, in particular "if a way to pay for them can be found". In addition they make it clear that no announcements can be expected until the outcome of the next spending review is known, which is outside the planned life of the current parliament (2015)

Initial response to announcements

- 4.10 Generally the response to the principles in the White Paper was positive though there was a need for more clarity, certainty and a definite time frame. In respect of the Care and Support Bill the simplification of the legislative framework for Adult Social Care was seen as a big step forward though there is a lot of work still to be done, which will be led by an Implementation Group (on which the Directors of Adult Social Services (ADASS) will be represented)
- 4.11 However there were some significant concerns expressed by ADASS, which we would support about the delay in addressing the funding issues at a time when adult social care budgets are already under pressure. There is a risk that in the medium term the funding gap could widen as expectations are further heightened by the White Paper & Bill and demographic trends. However it is important to recognise that the idea of capping individual's liability for care costs and extending the means test threshold would cost billions of pounds and requires a shift in the priority given to adult social care nationally.

Summary of consultation responses to the draft Care and Support Bill

- 4.12 The Department of Health published a summary of the views received as part of the consultation on the 10 December, 2012. Over 1,000 comments were received, with around 430 unique respondents submitting written comments via email, post and the dedicated website. Some of the findings from the summary of consultation responses include:
- 4.13 **Part 1: Care and Support:**

- respondents were on the whole very supportive of the consolidation, clarification and modernisation of existing law and the increased emphasis on outcomes
- there was an eagerness to see the regulations and guidance that will provide further detail on the provisions in the draft bill, and suggestions were made about what they should cover.
- strengthened rights for carers to access support were particularly welcomed.
- respondents were supportive of the principle of a national threshold for eligible needs but wanted to see more detail about where the threshold would be set and how it would work.
- there was a strong desire to expand the duty to provide information and advice to include more detailed requirements to help the person understand and make use of information, and to support the role of advocacy.
- some felt that the provisions should go further in ensuring that the balance of decision-making lies with individuals rather than the local authority, so that people are supported to feel in control of their care and support in line with the wider personalisation agenda, and people's ability to challenge decisions made about them is clarified.
- some wanted to see a stronger focus on prevention of needs and the role of communities in providing universal services.
- concerns were raised about the pressures on local authority budgets and the consequential impact on care and support. People also expressed disappointment about the absence of clauses in the draft Bill to implement the recommendations of the Dilnot Commission.

Part 2: Health Education England (HEE) and Health Research Authority (HRA)

- respondents broadly welcomed the proposals to establish HEE and HRA as non-departmental public bodies and local education and training board (LETB) governing bodies as committees of HEE.
- they were keen to understand more about how HEE will ensure that the system is accountable, integrated, professionally informed, and that quality improvement underpins all education and training activity.
- they welcomed clarification of the HRA's role in promoting standardised practice in the regulation of health and social care research and in ensuring such regulation is proportionate, but wanted to see greater clarification of its role in facilitating research governance to address the complexity, duplication and delays in obtaining approval to undertake research in the NHS.

4.14 The comments are being used to assist and challenge the government in considering how to improve the proposals in the draft bill. The draft bill is currently coming to the end of pre-legislative scrutiny by a joint committee made up of members of the House of Commons and the House of Lords which will report with recommendations by the 7 March 2013. The LGA and ADASS submitted joint written evidence to the joint committee on the 17 January 2013 (Appendix 1). The government will in due course respond formally to the public consultation alongside its response to the recommendations of the joint committee.

Funding of Care and Support

4.15 Possibly recognising the major criticism of delay in implementing Dilnot, the Government released its decision about implementing the Dilnot recommendations on the 11 February 2013 in a short paper titled "Policy statement on care and support funding reform and legislative requirements" (Appendix 2).

4.16 In summary they are proposing at 17/18 prices:

- Placing a cap on the total amount an individual will have to pay for care of £75,000 (a lower cap will be set for people of working age and a zero cap for those entering residential care for adults immediately they turn 18. Currently there is no cap. However under the new proposals everybody will be expected to contribute towards general living costs (non care costs) such as food, accommodation rent and utilities of around £12000 a year - £230 a week from their income including benefits, which will not count towards the £75,000 cap
- Setting an upper capital limit threshold for means-tested Council funded support of £123,000 (including the value of their home) for residential care. Currently individuals have to fund all residential costs when they have capital of over £23,250
- Setting a lower capital limit threshold for the means test at £17,500 (compared to £14,250 currently) for when a notional weekly income against capital is assumed as part of the means test

4.17 In addition the Government have accepted Dilnot's recommendations to introduce from April 2015:

- deferred payments against the value of their property for people in residential care, with the aim of giving people peace of mind that they will not have to sell their home in their lifetime to pay for care
- a national minimum threshold of eligibility with the aim of helping remove the variation in access to care depending on where people live
- information and advice (available from local authorities) on planning and paying for care costs

4.18 Clearly there will be significant additional costs associated with the cap and extended means-test

4.19 There will also be significant additional costs for local authorities in carrying out more assessments - currently self funders do not always enter the system but will be required to do so for local authorities to administer the cap (and agree eligibility and a reasonable weekly care related cost). The general public are likely to find these proposals very complex.

- 4.20 We will need to understand how disability related benefits are off set in the cap as self funders carry on receiving attendance allowance under the current system but Council supported residents do not.
- 4.21 We will also have to recognise that a new national minimum eligibility threshold will reduce the scope for individual councils to manage their budget and allocation of resources for adult social care by varying the eligibility threshold
- 4.22 Obviously all of this is going to cost, estimated to be £1billion a year by the end of the next Parliament. Local Authorities can expect to receive increased national funding but it would be prudent for the Council to remain fully aware of the implications, particularly as some of the changes are only 2 annual budgets away.
- 4.23 Even if the new costs are fully funded these announcements have not addressed the financial sustainability of the current system. Failure to adequately plan for and resource these policy changes could leave the Council open to increasing likelihood of legal challenge and impact on the whole local health and social care system
- 4.24 It has also been identified that the variation in house ownership and prices across local authorities will have varying impact for Councils in financial terms and it is hoped government will take this into account in due course.

5. PREVIOUS MINUTES

- 5.1 Cabinet – 20 September 2012

6. BACKGROUND PAPERS

- 6.1 A Vision for Adult Social Care – Capable Communities and Active Citizens, DH, 16 November 2010
- 6.2 Care and Support White Paper – HM Government, 11 July 2012
- 6.3 Care and Support Bill – HM Government, 11 July 2012,
<http://www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/>
- 6.4 Factsheet 1 – Assessments and eligibility
<http://www.dh.gov.uk/health/files/2012/07/Care-and-Support-Bill-Factsheet-1-Assessments-and-eligibility.pdf>
Factsheet 2 – Charging and financial assessments
<http://www.dh.gov.uk/health/files/2012/07/Care-and-Support-Bill-Factsheet-2-Charging-and-financial-assessment.pdf>
Factsheet 3 – Who is entitled to care and support?
<http://www.dh.gov.uk/health/files/2012/07/Care-and-Support-Bill-Factsheet-3-Who-is-entitled-to-care-and-support.pdf>
Factsheet 4 – Personalising care and support planning

<http://www.dh.gov.uk/health/files/2012/07/Care-and-Support-Bill-Factsheet-4-Care-and-support-planning.pdf>

Factsheet 5 – The law for carers

http://www.dh.gov.uk/health/files/2012/07/2900021-Fact-sheet-5-v1_1W-21.pdf

Factsheet 6 – Protecting adults from abuse or neglect

<http://www.dh.gov.uk/health/files/2012/07/Care-and-Support-Bill-Factsheet-6-Protecting-adults-from-abuse-and-neglect.pdf>

Factsheet 7 – Health Education England

<http://www.dh.gov.uk/health/files/2012/07/Care-and-Support-Bill-Factsheet-7-Health-Education-England.pdf>

Factsheet 8 – Health Research Authority

<http://www.dh.gov.uk/health/files/2012/07/Care-and-Support-Bill-Factsheet-8-Health-Research-Authority.pdf>

- 6.5 Consultation on new safeguarding power, DH
<http://www.dh.gov.uk/health/2012/07/safeguardingadults/>
- 6.6 Caring for our future: progress report on funding reform – HM Government
<http://www.dh.gov.uk/health/2012/07/scfunding/>
- 6.7 Joint written evidence submission from the LGA and ADASS – 17 January 2013
- 6.8 Policy statement on care and support funding reform and legislative requirements – Department of Health – 11 February 2013

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