

Joint Committee on the Draft Care and Support Bill

Joint written evidence submission from the Local Government Association (LGA) and the Association of Directors of Adult Social Services (ADASS)

17 January 2013

About us

The **LGA** is here to support, promote and improve local government.

We will fight local government's corner and support councils through challenging times, focusing our efforts where we can have real impact. We will be bold, ambitious, and support councils to make a difference, deliver and be trusted.

The LGA is an organisation that is run by its members. We are a political organisation because it is our elected representatives from all different political parties that direct the organisation through our boards and panels. However, we always strive to agree a common cross-party position on issues and to speak with one voice on behalf of local government.

We aim to set the political agenda and speak in the national media on the issues that matter to council members.

The LGA covers every part of England and Wales and includes county and district councils, metropolitan and unitary councils, London boroughs, Welsh unitary councils, fire, police, national park and passenger transport authorities.

We work with the individual political parties through the political group offices.

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The **Association of Directors of Adult Social Services (ADASS)** represents directors of adult social services in councils in England. As well as having statutory responsibilities for the commissioning and provision of social care, ADASS members often also share a number of other responsibilities for the commissioning and provision of housing, leisure, library, culture, arts, community services and a significant proportion also hold the statutory children's director role.

1. What is your view of Part 1 of the draft Bill (care and support)? In your view, are there omissions in this part of the draft Bill?

1.1. The LGA and ADASS broadly welcome the proposals set out in Part 1 of the Draft Care and Support Bill (DCSB). For some time, local government (which is inclusive of adult social care) has been at the forefront of making the case for change in the way that support and care is commissioned and delivered. Making these changes is essential for a number of reasons, in particular:

- to meet the demands of demographic change (in terms of an increase in the numbers of both younger disabled people and older people, and the complexity of presenting need)
- to meet the rising expectations of increasingly diverse communities
- to enable cost-effective, sustainable care and support when people need it and however funded.

1.2. Achieving these changes requires modernisation, consolidation and clarification of the existing legal framework. We are pleased therefore, to support the principle of a single legal framework and we are committed to supporting a care and support bill passing into law in order to achieve these reforms. In addition to the benefits that simplification of the legal framework will bring – for people, organisations and professionals – we particularly welcome:

- The principles set out on the face of the DCSB.
- A single, streamlined statute that gives greater clarity to legal entitlements to care and support.
- The focus on ensuring that people have a better understanding of (i) the care and support ‘system’ in order to plan for the future, and (ii) how to secure help when needed.
- The recognition of, and intention to provide for, the needs of carers and young carers.
- Proposals to encourage and enable delivery of better integrated and responsive care and support, and the introduction of both general and specific duties on partner organisations to cooperate.
- Recognition of the essential role of housing in delivering the care and support that people want.
- Proposals to ensure continuity of support for young people in need and in transition to adulthood.
- Placing Local Safeguarding Boards on a statutory footing and, in general terms, the proposals relating to safeguarding adults whose circumstances make them vulnerable.

- The flexibility to delegate a range of functions where this appears to be locally appropriate.

1.3. However, we also have substantial concerns. In summary these are:

- **Funding:** There is a fundamental difficulty with the proposals in that both the White Paper and the DCSB have detached policy direction and decisions from financial direction and decisions. These need to be realigned and, in our view, need to include:
 - A sustainable funding settlement for adult social care.
 - Funding reform.
 - Financial impact on local government of wider welfare reform.
 - Decisions on the Dilnot Commission recommendations.
 - Resources for prevention and early intervention.
 - Further comment on these matters is given in response to Question 9 below.
- **Scope:** Although we broadly welcome the intent behind the population-level duties proposed for local authorities, greater clarity is needed in respect of the following:
 - **Interfaces between local and central government and with the NHS and regulatory bodies.** The ways in which some of these interfaces are described (for example, in respect of information and advice services, operation and integration with local NHS services, and delivering on prevention initiatives) is as standalone functions and responsibilities, rather than ensuring appropriate coordination with national systems and supporting and or providing leadership to enable cohesive local systems and functions.
 - **Promoting diversity and quality of provision.** As currently framed, the proposed duties on local authorities appear to include quasi regulatory functions with no reference to the Care Quality Commission (CQC) or Monitor.
 - Further comment on these matters is given in response to Question 3 and Question 11 below.
- **Detail:** A large number of provisions in the DCSB reference regulations that have not yet been written and which will have significant impact in relation to eligibility/entitlements for people, as well as in relation to concerns outlined above. Further comment is given in response to

relevant sections below. Additionally, and in terms of omissions from the DCSB, we are concerned that a Bill so strongly focused on personal entitlements does not provide for any means of redress other than through judicial review.

- **Safeguarding.** This is intermittently integral to the DCSB and, where it is, that is very welcome and positive. We make some comments and suggestions to extend this, such as the integration of safeguarding alongside personalisation to assist consistent practice when the legislation is implemented.

2. Has the Government made it clear what it aims to achieve in the draft Bill's provisions on care and support? In particular, will it be effective in clarifying the law on social care?

- 2.1. Yes, in general terms the White Paper and the DCSB set out both a vision of a 'successful' care and support system and how this might be delivered through a combination of population-level duties on local authorities, duties on statutory organisations to cooperate and clearer entitlements and continuity for citizens.
- 2.2. Modernisation and consolidation of the current legal framework should also (subject to the detail that will be in regulations) be effective in clarifying the law both for professionals and for citizens.
- 2.3. We are concerned, however, as outlined above, both that funding arrangements remain far from clear and that, notwithstanding engagement exercises, the level of public debate and awareness of its provisions and intent remains low.
- 2.4. We are also concerned that some of the rhetoric associated with the wider welfare reform agenda unhelpfully classifies disabled individuals and or groups as 'deserving or undeserving'. This challenges the ethos of the DCSB, which promotes a system build around people's needs and what they want to achieve in their lives.
- 2.5. The wellbeing principle is welcomed, and particularly that it explicitly includes protection from abuse and neglect as well as a number of other factors and that no one is excluded 1 (2).
- 2.6. The particulars of 1 (3) – that the local authority must have regard to are – are welcomed, including:

- That people are best placed to make their own judgements about their wellbeing.
- The need to protect individuals from abuse and neglect.
- Minimum necessary restrictions of the individual's rights and freedoms.
- The balance between an individual's wellbeing and that of friends or relatives who may care for them.
- We would welcome clarity on these areas in the accompanying guidance.

2.7. The integration of a number of pieces of adult social care law is helpful. While understanding the wish not to replicate other legislations, however, there remain cross-overs with care standards and other legislation – such as that which may be utilised in relation to safeguarding – that it would be helpful for guidance to address.

2.8. It is suggested that the term 'Adult/s' should be replaced by the term 'people', specifying the distinction that this is not children at the beginning of the DCSB.

3. The Government states in its White Paper that “the quality of care is first and foremost the responsibility of the provider”. Does the draft Bill support this policy intention, and does it pay due attention to the responsibilities of commissioners and regulators for quality of care?

3.1. The Bill makes no reference to the responsibilities of providers or regulatory bodies, or of the interface with the Care Standards Act. Although the overall principle of local authorities having a role in the operation of local markets – in particular to promote quality and improvement – is welcome, we are concerned about how this is framed. In our view, it is essential to understand the intended responsibilities of local commissioners (including Clinical Commissioning Groups (CCGs) and the NHS Commissioning Board (NCB)) and regulators, in particular where these cross-geographic or service boundaries (as, for example, with large providers delivering both health and social care services, 'uncommissioned' services, and or unused local services and so on.)

3.2. Without clarity about scope and interface with other bodies, we are concerned that this is another uncoded burden upon local authorities.

3.3. Failure of service quality forms a significant proportion of the work of safeguarding teams. However, there are many providers in any area with whom the local authority has no contact, and no control over. In some areas there are more privately arranged services than those contracted by the local authority. While a local authority can stimulate and encourage a market of quality services and supports, it is unreasonable for local authorities to be held responsible in these circumstances, or for the quality of NHS provided or commissioned services. We would therefore suggest a change of wording.

3.4. As noted in 3.1, reference to the role and responsibilities of the regulators is absent in the DCSB. While we can see an argument for not duplicating other legislation, we are concerned that if they are not mentioned then it appears from the wording that the local authority is solely responsible, with the duty to ensure that people have a range of high-quality services to choose from. We believe that CQC should have a role in ensuring that providers are fit to provide a service in the same way that professional regulators have fitness to practice functions. Otherwise, local authorities will require powers and associated budgets to regulate and inspect, to achieve these aims.

4. Are there other ways of framing the draft Bill's underlying principle, that local authorities must promote an individual's wellbeing? Are there other principles that might be substituted for it?

4.1. We are content with the principles as described on the face of the DCSB.

5. Does the draft Bill make sufficient provision to achieve the Government's stated goal of greater integration within the NHS and with care and support and housing?

5.1. The principle of achieving better integration between health and care and support services is welcome and it is important that the duty in this regard reflects the similar duty on CCGs in the NHS act 2006 / NHS&CCA 2012. It is for local systems and communities to take this forward through the development and discharge of local joint strategic needs assessments and joint health and wellbeing strategies.

5.2. However, as currently drafted, the DCSB articulates a system built around people's lives, with clear entitlements to care and support for a broad range of needs. How this sits with responsibilities described in the Health and Social Care Act (particularly for CCGs) appears unclear. We are concerned that the DCSB and the Health and Social Care Act are not pulling in the same direction – particularly at a time when local systems are under significant

financial pressure – and that there is therefore the potential for a gap to develop between what local authorities are required to do and what CCGs must do “to the extent they consider it necessary”. We note, for example, that the ‘prohibitions’ in Clause 21 are different to the existing prohibitions in the National Assistance Act, 1948. We are keen to clarify the intentions and implications of this, for example in relation to NHS continuing healthcare. LGA, ADASS and NHS colleagues are in continued discussion with the Department of Health in this regard.

6. What benefits or problems may arise as a result of the draft Bill’s scope being restricted to adult care and support?

6.1. The DCSB makes provision for transition from children’s services to adult services and for the provision of support to carers. However, the position relating to young carers and parent carers is unclear. It will be important to ensure that further drafting and the regulatory framework makes equitable provision for young carers and parent carers of disabled children.

6.2. The NHS and the police and criminal justice system are critical to safeguarding. While local authorities have the lead, and while the duty to cooperate is incorporated in the DCSB, we hope that guidance will ensure that this is absolutely a shared duty.

7. If it is found necessary to stage the implementation of the care and support provisions of the draft Bill, in what order should they be implemented?

7.1. Issues relating to funding need to be resolved. These include addressing the current funding gap, providing funding for reform (particularly the population level duties on local authorities and the focus on prevention), and the government’s response to the Dilnot Commission (particularly clarifying the contributions that citizens will be required to make).

7.2. If implementation is to be staged this will mean that the eligibility framework and entitlements will need to be clear and funded upfront.

8. Are the provisions of the draft Bill in relation to the views of service users, carers and prospective users of services sufficient? Would you suggest any improvements to these provisions?

8.1. The provisions and principles set out in Clause 1, the outcomes to be achieved outlined in 1 (2) and the matters to which the local authority should

have regard in 1(3) set out a framework which puts citizens, their wellbeing and their circumstances at the centre of assessment and delivery of social care and support.

8.2. Critical to whether the provisions of the DCSB deliver the expectations this sets out will be the funding arrangements, eligibility threshold and details relating to assessment and other matters that will be set out in regulations.

9. What is your view of the financial and other implications for local authorities of the new care and support responsibilities set out in the draft Bill?

9.1. It is difficult to be specific about the financial implications of the new and additional care and support responsibilities set out in the DCSB without knowing the full details still to be set out in underlying regulations. Moreover, we must frame the Bill, and the wider reform agenda, by recognising that the whole system is greater than the sum of its parts. Therefore, the aspirations of the DCSB must be built upon solid foundations – namely a pre-existing good care and support system. Ensuring this starting position will require proper funding.

9.2. As previously indicated, there is a fundamental difficulty with the proposals in that both the white paper and the draft Bill have detached policy direction and decisions from financial direction and decisions. These need to be realigned and in our view need to include:

- **A sustainable funding settlement for adult social care:** Against a backdrop of a 28 per cent reduction to local government budgets and a further reduction by 1.7 per cent, current levels of funding for adult social care are not sufficient. The ADASS Budget Survey shows that £1.89 billion has been taken out of care and support budgets over the last two years and the impact of this has, in part, led to reviews of eligibility criteria and the thresholds at which local authorities are able to offer support.
- **Funding reform:** There needs to be clarity about how the Government intends to fund reforms outlined in the White Paper and the DCSB to ensure a sustainable care system going forward. Additional duties are set out in relation to information and advice, market shaping and oversight together with extended responsibilities for assessment – particularly in respect of carers. These reforms are not cost neutral and clarity about how they will be funded is urgently required. The focus on prevention, though very welcome, will mean nothing without sufficient money to resource it.

- **Financial impact of wider welfare reform:** There needs to be greater understanding and recognition of (and clarity for the public about) the financial impact of the wider welfare reform agenda on local government and local funding for adult social care. Lack of clarity about the impact of this agenda restricts effective forward planning.
- **Decisions on Dilnot:** The Commission's recommendations are needed in order for people to have clarity about their own liabilities for contributing to the costs of care. It is not satisfactory for people or local authorities to have continuing uncertainty on this crucial agenda which also further exacerbates the difficulties of future planning and budget setting as outlined above.
- **Resources for prevention and early intervention.** To achieve the intended shift towards care and support services that are based on early intervention and prevention there needs to be both national and local leadership that commits to shift funding from acute NHS settings to community based support. Prevention and early intervention must be a central feature of a future system but without adequate resource the aspirations of the White Paper and DCSB will not be realised.

10. What are the risks and benefits of the duty on local authorities to provide advice on adult care and support? Are they the same for the duty to provide information?

10.1. We agree that good, local information and advice is an essential component to supporting people to understand the care and support system, and to determine ways that their needs and preferences might be met. For some people, good information will be sufficient to their needs, though it is clear that others will need greater levels of support/advice. A tiered approach is therefore most likely to deliver an effective and comprehensive service that enables people to make good choices at the right time. The LGA and ADASS, together with a range of other organisations, are contributing to the Think Local Act Personal workstream on information and advice and the implications of proposals in the White Paper and the DCSB.

10.2. The provision of information and advice is welcomed, specifically that the DCSB includes providers of care and support and how to raise concerns about the safety of people needing care and support. Section (3) of this might be strengthened by not only stating that it should be sufficient to enable people to make plans for meeting their needs for care and support, but also how to keep themselves safe and seek help if necessary.

10.3. While considerable efforts have been made in relation to information for the public, the public generally requires information to answer key questions such as: “is this service safe?”; “can I afford this service?”; and “is the service I want available?” To provide this information fully, most local authorities will require considerable investment in systems, technology and people. At present, no such information bank exists nationally so support and resources are needed in this area. Those websites that do exist (including NHS Choices, DirectGov, First Stop and SCIE’s Find Me Good Care) are all building separate information sources without being able to yet answer these key questions.

10.4. The provision of advice is essential if people are to make wise choices about their care and finances. The provision of financial advice is problematic. While the new requirement that financial advisors should be fee- rather than commission-based makes the arrangement more transparent, and while there is a form of an accreditation system through the Society of Later Life Advisors, this is not easy for local authorities to facilitate. The public are also generally wary since the mis-selling of pensions, endowments and the demise of the Nursing Homes Fees Agency.

11. How can local authorities ensure that the local care market provides enough care services to meet local needs? How can they encourage a diverse range of high-quality providers?

11.1. As previously indicated, we are keen to get greater clarity about the proposed duties on local authorities in respect of promoting diversity and quality in provision of services. Although we agree that local authorities have an important role and function in contributing to the shape and direction of local markets and services, it is clear that this cannot be discharged as a ‘standalone’ function of local authorities. Other commissioners, in particular CCGs and the NHS Commissioning Board, have a significant role to play, as do a range of other stakeholders – not least citizens with experience of using support and care services. Another particular issue that needs to be addressed – and where we agree that local partners can support development – is in relation to market entry, especially by small and micro providers and in relation to increasing diversity of provision to reflect community needs.

11.2. Local government – via ADASS – is taking forward a workstream on market development, commissioning and procurement to support development in this regard.

11.3. We are concerned that, as described, the role of the local authority appears to include quasi regulatory functions with no reference to the CQC or Monitor. The intention behind this requires further clarity.

11.4. The impact assessment on quality, care providers and the workforce (IA No 7063) details the need for sufficient numbers of a well-motivated and skilled workforce. Furthermore, policy proposals set out in the white paper aim to improve system leadership and develop a quality framework. These are clearly important components of effective market development.

11.5. There is a direct relationship between adequacy of funding and the ability of providers to recruit and retain the quality and quantity of front-line workers that are critical to the success of a good care and support system. This relationship needs to respond to the challenges of providers supporting the National Minimum Wage.

12. Are the draft Bill’s provisions adequate to ensure that service users are protected in the event of serious market failure among providers?

12.1. Local authorities have for a long time taken responsibilities in this regard and, as in the case of Southern Cross, ADASS took a lead role with other stakeholders in responding effectively to serious market failures. The DCSB as it stands does not make provision in this regard beyond the “Importance of ensuring sustainability of the market”. We note that a separate consultation has been issues in this regard and will respond to this in due course.

13. The White Paper talks about “approaches that promote support within communities” and calls for the adoption of “asset-based” approaches. Is the draft Bill successful in embedding this approach, or should other preventative approaches be adopted?

13.1. It is difficult to comment on this aspect as, in our view, the balance between a service framed around crisis responses as opposed to prevention and timely support (that has regard to a person’s skills, family and community resources) goes to the heart of our concern that the policy direction and decisions set out in the white paper and the DCSB are detached from the financial and other resource implications of the DCSB. It is clear that the DCSB has some **potential** to support these aspirations – through the principles set out on the face of the DCSB – but equally, the way the DCSB is framed (and in particular how regulations may be put in place) may determine the care and support system as a **crisis only** service framed entirely around eligible needs

(particularly if this is set nationally at “Substantial”). Again, decisions relating to the funding settlement and response to the Dilnot commission recommendations are required in this regard.

14. What are the risks and benefits associated with self-assessment for care and support as proposed in the draft Bill?

- 14.1. As currently framed, proposals relating to self-assessment are not entirely clear and will be subject to regulations which must make provision in this regard.
- 14.2. However, self-assessment is an important component both as a means to enabling self-determination and timely access – in particular to prevention service and support. As such this is an essential ingredient to the development of personalised support and care.
- 14.3. Promoting self-assessment will require a good information and advice service and support. As indicated in response to Question 10 above, it will be important to ensure tiered approaches that ensure that people with complex needs and/or limited capacity are properly and professionally supported through assessment processes consistent with the principles to which the local authority must have regard under clause 1 of the DCSB.
- 14.4. The risks associated with these provisions of the DCSB are that eligibility will be so tightly drawn as to describe a crisis response service.
- 14.5. This section of the DCSB omits reference to safeguarding, risks and protection (often the primary need for health and social care intervention) and would benefit from their inclusion. If safeguarding is not integrated in this section there are risks that risk assessment, leading to risk management and risk mitigation, will not be addressed through all stages of the assessment process and subsequently. It links to both our comments on the safeguarding section of the bill and the consultation on new powers which we are responding to separately.
- 14.6. It is noted that while self-assessment is clearly important for some people, for others assessment is a service in its own right, supporting them to think through and weigh up the risks and benefits of different options.

15. What are the best ways to increase the numbers of people identified as carers? What are the risks and benefits of placing a duty on public bodies to identify carers?

15.1 It is noted that any duty upon local authorities to identify carers must be fully reflected in the corresponding Impact Assessment and further clarity is required as to how this duty will be coordinated across “public bodies”.

16. Do you consider that variable local charging regimes for services are compatible with national eligibility criteria, and any future funding changes involving capping individual financial liability?

16.1. As previously noted, further clarity is needed about the regulatory framework both with regard to eligibility and assessment. Both of these need to be framed in the context of the funding settlement for social care, funding for reform and, crucially for people who use and rely on services, the contributions they will be expected to make. These arrangements need to be clear, understandable, fair and consistent. It is difficult to see that variable charging **regimes** are compatible with national criteria particularly when combined with the Dilnot proposed capping of personal liability, though there may be circumstances in which different rates are appropriate (for example, to reflect costs in different parts of the country).

17. The White Paper says that assistance with care and support needs will be subject to a reasonable charge. Do the charging provisions in the draft Bill reflect this policy intention, and is the policy intention clear?

17.1. The arrangements for charging set out in Clause 14 appear clear, though again will be subject to regulations relating to detail.

17.2. The arrangements as drafted appear to differ from those currently in place in that it appears there will be discretion as to whether or not to apply a charge in respect of residential care services.

17.3. It is noted that there is a need to join up the DCSB with ongoing welfare reform – particularly with reference to the interface between what is reasonable to charge, and the benefits that individuals receive.

18. Are the arrangements for setting and enforcing national minimum standards for care and support clear? What part should the new social care

quality standards developed by NICE play in supporting local authorities in discharging their new market shaping duties?

18.1. As previously noted, issues relating to regulation of providers – other than through the proposed duties in respect of local markets – are not covered in the DCSB. Quality standards will need to be incorporated into those duties and commissioning/procurement practice.

18.2. CQC have established standards for care provision. The LGA have established Safeguarding Standards, which have been endorsed by ADASS, NHS Confed and SCIE (Social Care Institute for Excellence). While clear standards are welcome and support the public and local authorities, a degree of caution is necessary in order not to duplicate or confuse

19. Do the care and support plan provisions allow adequately for input from service users and carers?

19.1. Yes. Provisions for care and support planning require consultation with the adult (and or carer) concerned and must have regard to the outcomes the person wants to achieve (clause 9(4) / 10(4)).

19.2. If safeguarding is integrated into assessment, then this should lead to needs being identified to either support safeguarding the individual or their carer, or to protect the person and address the harm caused. These should be included in this section. It may be helpful to add examples of how people may be supported when they have experienced harm, for instance through counselling, peer support, access to some form of justice etc.

20. Does the draft Bill make adequate provision to help people achieve personalised care and support and to manage the payment process?

20.1. The DCSB frames both assessment and care planning processes around the outcomes that people wish to achieve. As currently framed – and unless regulations are introduced – the DCSB does not govern support to manage the payment process beyond the authority being satisfied that the person is capable of managing the payment. The more significant challenge is securing a diverse local market – in particular of small and or micro providers – capable of delivering the type and range of bespoke support and service that people choose.

21. The White Paper says that commissioning practices which put tight constraints on how care and support is provided – so-called ‘care by the minute’ – are unacceptable. Does the draft Bill have a part to play in addressing such practices, and if so how?

21.1. No. However, our view would be that such practice is generally incompatible with the principles set out on the face of the DCSB and the outcome focus to which the authority must have regard in relation to assessment and care planning.

21.2. The use of electronic monitoring of ‘care by the minute’ is not necessarily a bad thing, but misuse is. When used for good, such approaches support flexible responses to meeting individual assessed needs and improved outcomes, while also ensuring providers are paid for actual care and support delivered.

22. To what extent do the safeguarding provisions ensure that all those at risk are adequately protected, and should these provisions be extended in any way?

22.1. Putting safeguarding adults boards on a statutory footing, the duty to make enquiries and the ability to make (or cause to be made) enquiries together with duties to co-operate in specific cases are all helpful and welcome. It may be helpful to explicitly link enquiries to assessment and care planning processes in order to emphasise a focus on the outcomes that people wish to achieve, as well as whether harm or abuse has taken place and by who.

22.2. It is unrealistic to expect that all those at risk should be adequately protected, particularly in domestic relationships. However, ensuring that services safeguard people’s dignity and rights will contribute significantly.

22.3. We welcome Safeguarding Boards being put onto a statutory footing. We have commented on membership and a desire to see financial contributions to safeguarding activity also made by the police and NHS.

22.4. We believe that this section could be strengthened to link safeguarding enquiry to assessment (including risk assessment) and planning for care and support, as we have commented on in previous sections. Without this, the DCSB runs the risk of perpetuating too much focus simply on whether the harm or abuse took place and the action to take in relation to the alleged perpetrator, rather than focusing as well on what the desired outcomes, experiences and needs of the victim are. The care and support they may need could include post trauma support, access to healing activity, access to justice, peer support and so on, rather than additional services or monitoring.

- 22.5. The section on “it must make (or cause to be made)” could be helped by an explicit link to the duty to cooperate section at the beginning of the DCSB.
- 22.6. Our points about providers, community safety and CQC being partners, and about eligibility and thresholds are relevant here. We have some concerns about the power embedded in “or cause to be made”? Does this mean that councils can request, or that they can require people/organisations to do something? Does it only apply to “relevant partners”? It would be helpful to have some robust wording in guidance to support cooperation, otherwise, other operational priorities may be an excuse for inaction. Explicit cross-referencing to duties of care by the police and NHS would be helpful.
- 22.7. In relation to deciding “whether any action should be taken in the adult’s case (whether under this Part or otherwise) and, if so, what and by whom”, we suggest that “should” be replaced by either “must” or “we recommend that...”
- 22.8. We have also commented that the impact assessment should give far greater weight to workforce training and development, in relation to all aspects of the DCSB, but particularly safeguarding. Currently, local authorities fund and arrange considerable amounts of training for other organisations in all sectors. We would welcome further consideration of the implementation of the new legislation to ensure that it is consistent and effectively implemented.
- 22.9. Whether or not there are new powers, it is evident that while there has been considerable investment in training and development in relation to the Mental Capacity Act, there remains significant under use of other legal and welfare responses to safeguarding circumstances and a need for investment in staff up-skilling in order to use them.
- 22.10 We would like clarity on what support is available to those individuals being cared for, or their carers, who are the victims of abuse and subsequently whistle-blow.

23. Does the draft Bill strengthen corporate accountability for neglect and abuse? What would be the risks and benefits of creating a new offence of corporate neglect?

- 23.1. Arrangements relating to providers of service and the regulatory framework – including issues relating to corporate accountability – are not covered in the DCSB. The final report on Winterbourne View Hospital and the programme of action set out in the report and accompanying concordat includes a commitment to bring forward proposals to strengthen the accountability of

corporate boards. Any proposals to legislate in this regard should make clear both the duties and responsibilities of providers and of the regulatory bodies.

24. Will the draft Bill's provisions smooth transition from child to adult services, and should they be extended in any way?

24.1. Provisions to secure transition from children and young people (CYP) social care services to adult services are welcome and should secure both continuity of support and security for the young people concerned. As identified above, the arrangements for young carers/transition appear to be inconsistent with arrangements for adult carers and need to be regularised.

24.2. There is a need to ensure that the DCSB is properly aligned with the forthcoming Children and Families Bill, which will introduce Education, Health and Care (EHC) plans, potentially up to the age of 25. It is proposed that the EHC plan will cease when a young person is no longer in education or training.

24.3. The draft SEN and disability provisions of the Children and Families Bill place a number of new duties on councils, which will include a duty to keep education and adult care services under review for those aged 18-25 and consider whether this is 'sufficient' to meet local need. Councils will have to set out what services are available, including in relation to adult social care services, to meet the needs of young people locally.

24.4. Although it is not intended that the new SEND (Special Educational Needs and Disability) approach should give an entitlement to education up to the age of 25, there is already anecdotal evidence that parents are assuming that it will, and that college courses in day and residential settings may be created for this age group. This could result in a significant increase in the number of young people with complex needs staying on in education. We have welcomed the recommendation of the Education Select Committee that the entitlements should be clarified in the Children and Families Bill.

24.5. A consistent approach between the provisions in the two bills would also help. It is possible that a young person aged 18-25 could be eligible for both an EHC plan under the Children and Families Bill and a care and support plan under the DCSB. But it would make sense to bring these plans together to create a consistent approach from 18-25. The expectation should be that social care needs identified in an EHC Plan should be met through a care and support plan post-18.

24.6. The SEND reforms are being tested in 20 pathfinder areas, covering 31 councils and their health partners. Work is underway in the pathfinder areas to

raise aspirations and help prepare young people with disabilities and learning difficulties for adulthood, and we are keen to ensure that this is shared with other non-pathfinder councils.

25. Does the draft Bill promote greater integration between health, social care and housing around hospital discharge?

25.1. Not specifically, however, if the DCSB's aspirations of improved outcomes for individuals through better integrated commissioning are realised, then a natural consequence will be the improvement in timely and appropriate transfer from hospital.

25.2. As previously noted, issues relating to the consistency of Clause 21 exceptions in relation to health with the current arrangements (and how these might be improved) are the subject of continuing discussion with the Department of Health. This includes the omission in Schedule 2 of the DCSB of the need for the NHS body to consider NHS continuing healthcare prior to issuing an assessment notice to the local authority. This omission is unhelpful and needs to be regularised.