

LGA and SOLACE response to the draft care and support bill October 2012

This response to the draft care and support bill is submitted jointly between the Local Government Association (LGA) and SOLACE (Society of Local Authority Chief Executives and Senior Managers). A separate response from a safeguarding perspective, and on the consultation on new Safeguarding Powers, has been submitted separately and should be read in conjunction with the broader response set out below.

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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SOLACE is the representative body for senior strategic managers working in the public sector in the UK. We are committed to promoting public sector excellence. We provide our members with opportunities for personal and professional development and seek to influence debate around the future of public services to ensure that policy and legislation are informed by the experience and expertise of our members. Whilst the vast majority of SOLACE members work in local

government we also have members in senior positions in health authorities, police and fire authorities and central government.

Overall response

1. We broadly welcome the proposals set out in the draft care and support bill (DCSB). For a number of years local government has been at the forefront of making the case for change in the way that support and care is commissioned and delivered, in particular to enable approaches framed around healthy and enabled communities, prevention, and the ways in which people choose to live their lives. It is well understood that making this shift is essential for a number of reasons: to meet the demands of demographic change (in terms of an increase in the numbers of both younger disabled people and older people); to meet the rising expectations of increasingly diverse communities; and to enable cost effective, sustainable care and support when people need it and however funded.

2. Local government supported the Law Commission's inquiry on social care and its recommendations to reform adult social care law. We are pleased, therefore, to support the principle of a single legal framework and welcome the fact that government has brought forward a draft bill for consultation and scrutiny. In addition to the benefits that simplification of the legal framework will bring – for people, organisations and professionals – we particularly welcome:
 - a. The principles set out on the face of the bill.
 - b. A single, streamlined statute that gives greater clarity to legal entitlements to care and support
 - c. 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.
 - d. The recognition of, and intention to provide for, the needs of carers and young carers.
 - e. 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 co-operate.
 - f. Recognition of the essential role of housing in delivering the care and support that people want.
 - g. Proposals to ensure continuity of support for young people in need and in transition to adulthood.

- h. Placing Local Safeguarding Boards on a statutory footing and, in general terms, the proposals relating to safeguarding adults whose circumstances make them vulnerable¹.
 - i. The emphasis placed on the role of social work and social workers in supporting people to live independently.
 - j. The flexibility to delegate a range of functions where this appears to be locally appropriate.
3. We are committed to supporting a care and support bill passing into law in order to achieve these reforms. We would welcome opportunities to work with government both on matters of detail and broad areas of concern – a number of which are significant and are set out below.

Issues and concerns

4. Notwithstanding our overall support for the bill, the intended direction of travel as set out in the care and support white paper and the proposed modern legal framework, we have a number of concerns. These fall into three broad categories:
- a. Matters of overall approach, including resources and funding.
 - b. Issues of scope.
 - c. Matters of detail.
5. A summary of these issues is provided below, though it should be noted that, given the nature of the bill, several of these issues are interrelated.

Issues and concerns – overall approach

6. A fundamental difficulty with the proposals is that both the white paper and the draft bill have detached policy direction and decisions from financial direction and decisions. The overall context in which the draft bill is being considered – the government's austerity programme and the need for further savings – does not fit well with the aspirations of the bill (described in the proposed new duties on councils) to: invest in a new range of infrastructure for adult social care; secure entitlements and continuity for citizens; and extend support and provision to carers – all of which we fully support. Without a clear commitment from government on funding for social care reform the admirable aspirations of the Bill will simply not be realised.

¹ As indicated above, in responding to the separate consultation on Safeguarding Powers a detailed response has also been submitted relating to the safeguarding proposals in the bill.

7. Another important part of the backdrop to the DCSB is the government's wider welfare reform programme. Some coverage of this agenda unhelpfully classifies individuals or groups as either "deserving or undeserving", with vulnerable people portrayed as a burden on society. This goes against the ethos of the DCSB, which promotes a system built around people's needs and what they want to achieve in their lives, and seeks to empower people to meet their own needs and the needs of others in their communities.
8. The white paper, underpinned by the reformed legal framework as set out in the DCSB, articulates a vision of a "successful" care and support system defined by a wider context that encourages the creation of more supportive, cohesive communities. If this is to be achieved the level of public debate about the DCSB and what it seeks to achieve needs to be raised significantly, together with a sustained initiative to address the stigma and discrimination sometimes associated with older people and younger disabled people.
9. Greater clarity is required to understand how such a national-level vision fits with the draft bill's population level duties that councils will be expected to discharge. Population challenges are not resolved by shifting responsibility for them to a local level. We would welcome further discussions about the respective roles and responsibilities of national and local government in this regard.
10. The policy intent and financial planning in relation to the white paper and draft bill need to be much better aligned. In our view key issues that need to be resolved include:
 - a. A sustainable funding settlement for adult social care.
 - i. Against a backdrop of a 28% reduction to local government budgets 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 councils are able to offer support.
 - b. Clarity about how the government intends to fund reform and ensure a sustainable care system going forward.
 - i. In particular clarity is needed in relation to proposed additional duties in respect of: information and advice; prevention; market

development and oversight; extended responsibilities for assessment; and responsibilities to carers.

- c. An understanding and recognition of (and clarity for the public about) the financial impact of the wider reform agenda on local government.
 - i. For example in relation to taking funding out of universal benefits, reform of housing benefit, and reform of disability benefits. Lack of clarity in these and other areas restrict the ability for effective forward planning and may have adverse impacts on local funding for adult social care. Funding decisions must therefore be based on robust evidence about which initiatives work and which do not.
- d. Decisions on how the government intends to deal with the recommendations of the Dilnot Commission in order for people to have clarity about their own liabilities for contributing to the costs of care.
 - i. Although we recognise that there is an ability through proposed regulations to accommodate decisions in relation to Dilnot at some future date, it is not satisfactory for people or councils to have continuing uncertainty on this crucial agenda. Such a delay exacerbates the difficulties of future planning and budget setting as outlined above.
- e. Resources for prevention and early intervention.
 - i. In order 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.

Issues and concerns – issues of scope

11. Although we broadly welcome the intent behind the population level duties that the DCSB proposes for local authorities, we have a number of concerns relating to scope, in particular the interface with the responsibilities of government, the NHS and regulatory bodies.

- a. Providing information and advice (Clause 2).

- i. Assuming issues of resourcing can be resolved (beyond the specific funding announced in the white paper), we agree that this is an important local function and one councils are well placed to deliver and maintain. However, it is clear that this cannot be a “standalone” function, and rather must fit appropriately with both national initiatives (such as DirectGov and the current work in relation to the Information Strategy) and other local responsibilities such as those of the local NHS.
 - ii. The LGA and ADASS are engaged in work with the Department of Health in relation to the Information Strategy and with a broader range of partners in relation to information and advice.
 - iii. If delivery of such a service is to be a statutory responsibility of councils we will require further clarity about the roles and responsibilities of other information and advice providers and how all organisations’ governance arrangements interact.
- b. Promoting diversity and quality in provision of services (Clause 3).
- i. Although the overall principle of councils 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 the DCSB.
 - 1. As currently framed the duty on local authorities is not only about promoting diversity in local markets but is also quasi-regulatory, relating to the quality and sustainability of providers but with no reference to the responsibilities either of the Care Quality Commission or Monitor. We are concerned about the practical implications of this – both in terms of respective roles and responsibilities² and the resource demands of discharging these responsibilities effectively.
 - 2. It is difficult to see how local authorities can take sole responsibility for the quality of local provision. It will therefore be essential to understand the intended responsibilities of regulatory bodies, local partners and commissioners (for example clinical commissioning groups (CCGs) and the National Commissioning Board) –

² In particular 3 (2) c

particularly where these bodies cross geographical or service boundaries; for example large care home providers, providers delivering both health and social care services and “un-commissioned” / unused local services.

3. As Clause 3 stands, therefore, we would want further clarity as to intent, scope and additional burden on authorities.

c. Promoting integration of care and support with health services (Clause 6).

i. The principle of delivering better integration between care, support, and health services is welcome. However, we have general concerns about the interface with the responsibilities of the NHS Commissioning Board and CCGs as currently described. Again we would therefore welcome further discussion about the practicalities of this part of the bill.

d. Preventing needs for care and support (Clause 7).

i. In addition to concerns about how prevention initiatives will be funded, we are also concerned about the scope of the new duties as *standalone* responsibilities from those of the local NHS. Delivering effective and comprehensive prevention initiatives is a joint responsibility that should be discharged in a coordinated fashion to ensure effective engagement with other local commissioners, and appropriate integration of delivery. It is also important for enabling the essential transfers of funding described above.

ii. We are further concerned about the practical implications of Clause 7(2)b – “identifying people with needs for care and support not being met by the authority or otherwise”. This potentially covers most of the population and we will therefore want further discussion to understand and agree the practical implications of this section of the DCSB.

e. Interfacing with the NHS and NHS organisations where it is not clear what are joint /separate responsibilities of the NHS and/or of councils.

- i. In particular we are keen to understand the intentions behind the DCSB. As currently drafted the draft bill 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 draft bill and act are not pulling in the same direction and that there is therefore the potential for a gap between what local authorities are required to do and what CCGs must do "to the extent they consider it necessary".
- ii. Although this includes a range of interfaces as described above, it is most clear in relation to the Exclusion set out in S21 and in Schedule 2 relating to delayed discharges. This is an issue that is subject to continuing discussion with the department and one it would be helpful to resolve.

Issues and concerns – matters of detail

12. Detailed responses from a safeguarding perspective have been made in relation to a number of clauses in our separate response to the safeguarding consultation. They are not repeated here.
13. It is not realistic (or indeed possible) to comment in detail on a number of clauses in the DCSB given that the detail is still to follow in regulations and guidance. There appear to be somewhere between 15-22 sets of regulations or guidance referred to in the bill; this means that regulations not yet available will cover between 25%-44% of the draft bill's current 53 clauses. We are keen to work with government to develop these regulations and guidance and the requisite impact assessments as the bill progresses.
14. Some general comments on other clauses of the bill are as follows:
 - a. As indicated above, it is not at all clear why interfaces with regulatory bodies are not identified, be they in relation to issues of scope as above, in relation to duties to co-operate, or in relation to Safeguarding Adults Boards.
 - b. We are concerned that having achieved an entitlement under the proposed eligibility framework individuals will need to understand how their preferences are secured and maintained, and how their entitlements to support and care "fit" with other entitlements (for

example from the NHS and/or DWP). It would be helpful to have further discussion about how the Department envisages the “whole system” working (not least as there will be a duty to describe it under Clause 2).

15. Key issues on which we are keen to get clarity at an early stage are:

- a. Clauses relating to assessment, eligibility and duties to meet needs for care and support. In particular we are keen to understand the intentions in relation to eligibility criteria and the regulatory framework upon which this will rest, and how this might fit with potential implementation of the Dilnot recommendations.
- b. The working of Clause 16 in relation to deferred payments; again in relation to the Dilnot proposals but also in terms of balancing rights and entitlements. Currently this reads as being primarily about probity in the use of public funds.
- c. The interface with health, in particular as described in relation to exclusions under Clause 21.
- d. Proposals regarding personal budgets and direct payments (as described in Clause 25 (2)) and “...other amounts of public money that are available in the adults case for spending on matters relating to housing, health care or welfare”.
- e. How a bill so strongly focussed on personal entitlements does not provide for any means of redress for people who may be dissatisfied, other than through Judicial Review.