

# Draft Care and Support Bill

## Devon County Council's response

Draft Care and Support Bill Team  
Department of Health  
6th Floor  
Richmond House  
79 Whitehall  
London  
SW1A 2NS

careandsupportbill@dh.gsi.gov.uk

### The Devon Context

*Devon is the third largest county in England, covering 2,534 square miles. The county has around 750,000 residents, with a much higher proportion of older people than the national average. It is also one of the most sparsely populated counties, with few large settlements and a dispersed rural population.*

*Devon has an older population profile than England, with particular peaks in people aged 60 to 64 years of age, reflecting significant in-migration in these age groups, and those aged 85 years and over, reflecting an ageing population and longer life expectancy. It will be 2027 before the proportion of older age groups in England resembles the current picture in Devon, 2035 before England resembles the local authority area (East Devon) with the oldest population and 2076 before England resembles the town (Sidmouth) with the oldest population. Whilst modest population growth is expected in those aged under 60, population growth is set to be greatest in older age groups, ranging from a 28% increase in those aged 60 to 69 over the next 25 years to a 233% increase in those aged 90 and above.*

*Whilst the benefits of an active, older population are clear it is equally true that demographic change places enormous strains on social care, health and housing.*

### 1. Introduction

Adult social care in Devon is facing unprecedented demands upon its resources. In addition to the ageing demographic profile our experience is of increasing numbers of people with disability in the general population and increasing levels of complexity. Carers services are well

developed but it remains challenging to reach carers across the county and to respond to the often rural context in which they and their cared for person live.

Services are changing to meet both the resource and demand pressures as well as the aspirations and demands that citizens now expect from adult social care. The Council is embracing these challenges and takes seriously its community leadership role, its emerging role as the custodian of public health accountabilities and the opportunity for health and social care integration. Through its leadership of the Health and Wellbeing Board renewed focus is being brought to those priority areas that need concerted partnership focus (and to finding new ways of working that will deliver change most effectively) and the Council actively works with its communities to encourage and support action at a local level. This includes a Neighbourhood Community Budget pathfinder, which is developing a strong focus on the health and well-being of its residents.

Devon County Council welcomes the emphasis on citizens, carers, prevention, personalisation and integration in the “Caring for our future: reforming care and support” White Paper and in the draft Care and Support Bill.

The Council supports the Government’s plans for putting entitlement and individual choice and control at the heart of the delivery of social care and its intention to rebalance resources towards prevention, self help and community action. It is pleased to see the emphasis on quality, security of provision and a more skilled workforce. It looks forward to the benefits of a streamlined and simplified system for adult social care and support.

The Council has prepared this response to the draft Care and Support Bill in discussion with social care users and providers in Devon. It has also drawn on views expressed by members of the People Scrutiny Committee.

It is clear from those conversations that there remains a great deal of uncertainty about the potential impact of the new duties set out for local authorities in relation to prevention, carers and markets. The Council supports the stated intent of central government to enter into detailed discussion with stakeholders across the country and would wish to be an active participant in those debates. The involvement of service users and providers will be vital in helping to understand the nature and impact of national thresholds of eligibility, portability of care, financial regulations and a range of measures around workforce reform and quality standards including role of NICE. Health and social care partners in the county have well developed mechanisms for involving these groups and they are keen to make an active contribution as the detail behind the White Paper and Bill is worked through in the coming months and years.

Having expressed support for the general direction of travel, the Council has to express its disappointment that the draft Bill does not take the Dilnot Commission's recommendations further forward and perpetuates the lack of clarity about the long term funding of social care. We understand the need to determine the funding solution through the next comprehensive spending review but the continued uncertainty makes it even more difficult for local authorities and their partners to plan ahead and to meet demand. We welcome the extension of the resources to be transferred from the NHS to local authorities and the new capital fund for housing. But these are small amounts and will not address the long term, inherent systemic under-funding of social care.

The draft Bill aims to bring the existing disjointed and disparate legislation together to provide a coherent basis for adult social care and this is welcome.

The emphasis on securing effective social care markets and workforce reform in the White Paper and draft Bill are crucial but these, and other, areas will need greater clarity before we can be sure of what the implications are for the way we work in future.

By way of illustration, there are a number of forces at work in the market and changing patterns of commissioning which will need to be balanced if they are not to conflict with one another. The personalisation agenda, including a redistribution of purchasing power away from councils to individuals through personal budgets (and especially direct payments) is key to achieving choice and control. Central to this is the importance of achieving a sufficient, diverse and responsive market which balances competition and collaboration. The Bill's emphasis on free and open markets may, if great care is not exercised, be at odds with the duty on local authorities to manage risk, ensure quality of provision and ensure effective and sufficient markets. Risks to supply can be mitigated and the quality of provision managed through effective monitoring of services and our joint work by Local Healthwatch and the CQC. Effective and sufficient markets can only be delivered through better market intelligence, including intelligence about self-funded social care.

The greater the distribution of purchasing and the greater the diversity in the market, the harder it is for quality and sufficiency to be assured. This is not to argue that Councils should control markets but the Council suggests that further debate is needed about the implications of the new duty in that context.

We will continue to contribute to the work of the Local Government Association and County Councils Network and professional bodies such as ADASS in helping to shape this important piece of legislation as it develops. We will also be supporting and helping all of Devon's parliamentarians in examining the implications of the proposals for the county's people and communities.

Devon County Council is keen to be fully involved at all levels to build on the White Paper and Bill so that it can secure effective outcomes for the people of Devon.

## **2. Detailed comments on the draft Care and Support Bill:**

### **2.1. Embedding the principles of well-being (clause 1)**

*Department of Health topic question: "Does the new well-being principle, and the approach to needs and outcomes through care and support planning, create the right focus on the person in the law?"*

We support the definition of "well-being" in clause 1: it is comprehensive and inclusive. We would, though, question exactly *who* will determine any restrictions on rights or freedoms of action to "the minimum necessary"?

### **2.2. General responsibilities of local authorities (clauses 2 to 7)**

*Department of Health topic question: "Do the opening clauses sufficiently reflect the local authority's broader role and responsibilities towards the local community?"*

We welcome the draft Bill's recognition in clauses 2 to 7 of principal councils' wider roles in and responsibilities for the local communities that they serve. There are some important questions that will need to be addressed in developing and understanding those roles and responsibilities:

- In relation to the provision of information and advice, what will be regarded as being "sufficient" to enable adults to plan for their care and support needs to be met?
- What will local authorities be expected to do in order to "promote the efficient and effective operation in its area of a market in services for meeting care and support needs"?
- What balance is anticipated between a free and open market where risks rest predominantly with the individual purchaser, and a market that is managed and guided through intervention by the local authority? The latter is more likely to assure the "sustainability of the market" and foster continuous improvement in the quality of services. However, such market shaping could run counter to the direction of travel towards competition and choice.

- What accountability will a local authority have in exercising the duty to promote diversity and quality: will it be to those who have care and support needs or those who provide services to meet such needs?
- Should the duty to co-operate (clause 4) include Health and Wellbeing Boards as a “relevant partner”?

Clause 2 requires a local authority to establish and maintain a service for providing people with “sufficient” information and advice. This will require the adoption of a ‘no door is the wrong door’ approach across the health and wellbeing community as a whole rather than just the statutory health and social care services. It will require the development of online consumer directories, effective mediated access, signposting by a range of call-handling and related staff across a wide range of agencies spanning the public, third and private sectors. “Digital by default” will not provide everyone with the information and advice they need. The voluntary and community sector have an important role in local communities. The Council notes the commitment by central government to invest in a new information resource across the sector and would wish to better understand how this might “mesh” with local information resources. Our service user involvement network could make an important contribution to shaping a person-focused approach.

Clause 3 requires a local authority to promote diversity and quality in the provision of services. Social care providers identify an inherent tension between market intervention and the promotion of choice via direct payments. Local authorities will need to develop and improve their own mechanisms for empowering consumers, improving the independent lay inspection role and enhancing relationships with providers to improve market intelligence by understanding self-funded as well as local authority supported spending.

Clause 6 seeks to promote the integration of care and support with health services and we welcome this continued move towards integration. It should be noted that structural reforms arising from the Health and Social Care Bill bring significant additional challenges to the commissioning landscape in Devon with the inherent risk of fragmentation of commissioning accountabilities . In this context the Bill should recognise the influence of the NHS reforms on integration across health, public health and social care:

- The duty of health and wellbeing boards to encourage integrated working between commissioners of health and social care services.
- The responsibilities of clinical commissioning groups for services such as community health services, services for people with learning disabilities, mental health services and rehabilitation services.

- The responsibilities of the NHS Commissioning Board for services such as primary medical services through general practitioners, community pharmacy services, NHS sight tests and optical vouchers and dental services.
- The complications arising from the lack of co-terminosity between the boundaries of clinical commissioning groups; health and wellbeing boards and local healthwatch.

Clause 7 of the draft Bill gives local authorities a specific duty to prevent and reduce care and support needs. There is almost universal agreement that health and social care services should focus on prevention. There is however no such consensus about how to rebalance investment in the face of the relentless growth in demand for those services, especially in relation to people with complex and enduring support needs. Much greater clarity is needed about the expectations that government has of local authorities in relation to this duty and there is an inevitable link back to the question of resources.

The Localism Act 2011 gives local authorities a “general power of competence” which was brought into force in February 2012. It gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited. There may be a case for considering whether clause 7 of the draft Bill should be expressed in similar terms.

## **2.2. Starting the care and support journey: assessment and eligibility (clauses 8-16)**

*Department of Health topic question: “The law for carers has always been separate to that for the people they care for. Is it helpful to include carers in all the main provisions of the draft Bill, alongside the people they care for, rather than place them in a separate group? (clauses 9-33)”*

Whilst the very clear focus on carers is welcome: the framework should provide fairer entitlement/access across the country. The draft Bill describes an entitlement to ‘public support’ for the first time and a new ‘minimum eligibility threshold’. It suggests that in most cases carers will not be charged for services. The lack of clarity about what the entitlements of carers will be and what impact this will have in terms of carers assessments, service design and costs is an issue that needs further consideration.

The duty to assess the needs of the carer will be equal to the duty to assess the needs of the individual needing care and support. This balance is welcomed and should make it much easier to encourage carers to secure their own support. As with other parts of the Bill the question of resource impact does need to be addressed. However, the power set out in clause 15(2) would be costly to administer and counter productive to the policy aspiration around supporting carers.

It is crucial that clarity is achieved as quickly as possible about the interest charges and financial limits for deferred payment agreements, covered in clause 16, so that the financial impacts of these provisions can be understood. Some local authorities will gain extra income and others will lose. Government will need to be clear about its approach in this regard.

We welcome the principle of permitting deferred payments for non-residential care but will need detail to understand the impacts.

### **2.3. Clear entitlements to care and support (clauses 17-22)**

*Department of Health topic question: "Does the draft Bill clarify individual rights to care and support in a way that is helpful? (clauses 17 and 19)"*

Clause 17 requires the local authority to respond to anyone who asks for its help and who is assessed as eligible, even if they have resources of such a level as to mean that the local authority does not have a financial responsibility. Whilst we offer advice, information and support to any resident who requires our help we will need to carefully assess the impacts of sections 17 to 22 in terms of the numbers and type of people the provisions could apply to and whether this will create an additional demand upon our resources.

### **2.4. Care planning and personal budgets (clauses 22-30)**

Clause 24 describes what care and support plans must cover and sub-clause 24(6) gives local authorities the option to *authorise* either self-assessment or independent support and brokerage to prepare a plan jointly with the Authority. Whilst this is generally to be welcomed and is in the spirit of the way we work now, it does raise questions about the balance between the future role of the local authority in terms of assessments and brokerage and the potential for other organisations to fulfil that role. This is an important issue and one that will need careful consideration.

Clause 27 provides for regulations in relation to the provision of accommodation of a specific type. We are not clear whether this *requires* the local authority to meet the individual's preference or whether sub-clause 27(1)(c), which refers to "specific conditions" being met, will give the authority options in the way in which it responds to need. The Council trusts that the present position so far as individual's preferences are concerned will be retained in any regulations so that the local authority can always have regard to usual cost parameters when deciding whether it is appropriate to meet someone's expressed preference for a particular establishment

The focus on outcomes and personalisation in these clauses reflects our direction of travel and we support the intent of the Bill. The Council has already made a lot of progress in relation to operational integration with the NHS and this will continue to evolve.

These clauses will require local authorities to get a better understanding of how outcome-based commissioning at the very local and individual case levels should shape service commissioning and contractual relationships with providers. We are working on this now and would welcome participation in thinking to see how this can be progressed further.

Self-assessment is an area that we will give more consideration to as we recognise that the impacts could be far reaching. In exploring ways of developing independent brokerage we will need to be clear about how that is best arranged and funded to ensure that it offers greater impact and efficiency.

## **2.5. Moving between areas (clauses 31-33)**

*Department of Health topic question: "Do the "portability" provisions balance correctly the intention to empower the citizen to move between areas with the processes which are necessary to make the system fair and workable? (clauses 31-33)"*

There are important points of principles for Government to consider in taking these particular provisions forward. It is right in principle that it should be as easy as possible for someone to exercise their choice to move to another part of the country without fearing that they will lose their support. However, there is a question about whether individuals should be able to carry all of their entitlements with them wherever they live. As an area with considerable inward migration of people in need we do think that careful consideration will need to be given about the impact of this provision and the expectations of people will need to be managed if they move from an area where services are more readily available to one where this is more difficult. This may arise either from differential resourcing of care and support around the country or may be a factor of, for instance, moving from an urban to a rural setting.

A further question for consideration may be that, if an individual has a total income made up of personal resources and state support, should that be completely portable whichever care and support options they choose?

## **2.6. A new framework for adult safeguarding (clauses 34-38)**

We welcome the proposals to put Safeguarding Adults Boards on a statutory footing with local authorities having lead responsibility. This will create opportunities for learning across both children and adult services.

The Council notes the intention to abolish, in clause 37, the local authority's powers under s47 of the National Assistance Act to remove persons in need of care from their home. The criteria for using this power are such that it is rarely used and, where it might be, it is superseded by other more effective powers set out in other legislation such as the Mental Health Act. This therefore seems to be a sensible "tidying up" of the legislation.

The Council understands, however, that the DH is consulting on a proposed new adult safeguarding power where, if there were strong and legitimate concerns for an individual's wellbeing, and someone else in the property were preventing that person from speaking with the local authority, this power would allow social workers to make sure their wishes were being expressed without coercion. There are occasions when this could be helpful and it may be helpful to consider these matters together.

## **2.7 Transition for children to adult care and support (clauses 39-44)**

These clauses highlight the importance of the need for regular assessments of children's needs as they develop. Some young carers will need advocates to act on their behalf or support the assessment process. There could be a case for the imposition of time limits in relation to the continuity of services for the transition for children to adult care and support.

## **2.8 Registers of sight impaired adults, disabled adults (clause 49)**

Some of this data is currently captured but possibly not with the degree of robustness/integrity as required by the draft Bill. The Bill prescribes that the local authority **must** establish and maintain registers for the sight impaired and **may** maintain a register for a range of other disability groups. There are implications for existing documentation, processes and IT systems plus the potential need to demonstrate publicly how the local authority is using the collected information.

**Jennie Stephens, Strategic Director People, Devon County Council**

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