



The Law Society

**Joint Committee on the Draft Care and Support Bill  
Call for Evidence**

**Law Society Submission 2013**



# **Call for Evidence: the draft Care and Support Bill**

## **Submission by the Law Society of England and Wales**

### **Introduction**

1. The Law Society is the representative body for more than 166,000 members in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.
2. This response has been prepared by the Law Society's Mental Health and Disability Committee. The Committee is made up of senior and specialist lawyers who practise in the fields of disability discrimination, mental health, mental capacity and community care both for claimants and respondents and members from other professions.
3. The Society welcomes the vast majority of provisions contained in the draft Care and Support Bill. The Bill is a significant step towards simplifying what is currently complex and inaccessible legislation.
4. The clear priority of legislative reform must be better outcomes for vulnerable individuals. For this to be achieved the Bill must provide greater clarity, about accountability and responsibility for providing care and support. Legislation alone will not provide effective care, support and safeguarding regimes. A change in culture, to focus on the needs of the patient as an individual is essential.

### **General**

#### **Question 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?**

5. The Law Society welcomes the creation of a single statute to unify the patchwork of law and guidance that currently applies to social care provision. The Society has identified the following omissions.

### **Reference to the UNCRPD**

6. Clause 1 outlines a holistic approach to promoting the wellbeing of individuals who need care and support. The UN Convention on Rights of Persons with Disabilities committed the Government to modifying and adopting legislation to incorporate the provisions into domestic law. The Care and Support Bill provides an opportunity to do this.

### **Automatic right to information and advocacy**

7. The provisions outlining access to information are insufficient. It has been estimated that up to 70% of adults using care services lack capacity to access information necessary to choose care services<sup>1</sup>. Advocacy is a key source of assistance and support to people who lack capacity. The Mental Capacity Act 2005 and the Mental Health Act 1983 provide explicit rights to advocacy. The absence of any reference to

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<sup>1</sup> The Law Commission report, Adult Social Care ( Law Comm Report No 326 May 10 2011) Part 12 page 185)

independent advocacy in the Bill is conspicuous. Clearer provisions about entitlement to advocacy should be incorporated into the Bill.

## **Responsibilities of local authorities**

### **Question 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?**

8. The draft Bill provides that there will be national eligibility criteria and thresholds including a single duty to assess. We welcome this, however, without information on the level that the threshold will be set at it is not possible to accurately estimate the financial impact of the Bill. If the threshold is set too low vulnerable people will not obtain support. If the threshold is set too high local authorities may not be able to discharge their statutory duties due to resourcing difficulties.
9. The Society recommends that the government set thresholds for care and support at the equivalent of 'The Fair Access to Care and Services' definition of 'Moderate'. There are strong economic reasons for setting the threshold at this level. Providing social care to people with fluctuating or moderate needs will support their participation in work and ability to live independently while reducing their need to resort to expensive social care.

### **Question 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. Provision of information alone is no substitute for a proper system of advice and advocacy. There are huge benefits in providing comprehensive, accessible guidance which enables service users and professionals to navigate their way through the system. It is not sufficient to merely make information available: local authorities should be required to ensure that information is available in a range of formats and accessible to all. Information should include face to face advice for those who need it.
11. The Society believes that clause 2(1) should be amended to read 'must establish, maintain and *facilitate access to* a service for providing people with *independent* information and advice'. It is essential that this advice is independent in order to avoid conflicts of interest.

### **Question 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?**

12. The Society supports early intervention and the provision of services to prevent or reduce an individual's need for care in the future. The asset based approach goes some way to achieving this. We suggest that other measures should be included to ensure that prevention is effective.
13. According Clause 7 local authorities must provide services, facilities or resources that 'will contribute towards preventing or delaying the development of needs for care and support by adults in its area' or those that 'reduce the needs for care and support of adults in its area who have such needs'.

14. Providing only those services that are targeted at reducing existing needs is not sufficient to reduce the likelihood of individuals needing to access services in the future. Both types of services should be required. Clause 7 should be redrafted to state that local authorities must 'provide services, facilities or resources that will contribute towards preventing or delaying the development of needs for care and support by adults in its area' *and* those that 'reduce the needs for care and support of adults in its area who have such needs'.
15. Clause 7 should clearly state that all assessments should be free of the local authority's resource considerations. Provision of services will be dependant on resources, however, it is important that an assessment of need is just that. Otherwise the local authority will be unable to plan for the future provision or commissioning of services. It is only by having an objective picture of the needs of a population and information about needs which are unmet that statutory bodies can properly plan for future provision.

## **Assessment and Eligibility for Social Care**

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

16. The Society does not support self assessment. It is essential that individuals have access to thorough assessments. Removing the role of the assessor will jeopardise the results of assessments for those who lack the capacity to assess themselves. It has been estimated that 70% of adults using care services lack capacity to assess information relating to those services. For this group self assessment will be impractical.
17. It is important that the individual carrying out the assessment has sufficient, relevant knowledge and experience. Individuals with highly complex needs are often assessed by social workers. The Society is concerned that the level of specialist knowledge social workers possess is insufficient. The society recommends that the regulations under clause s12(1)(c) 'specify circumstances in which a person with expertise in a specified matter must carry out the assessment on behalf of the local authority'
18. The Society supports the 'outcome focused' nature of the assessment outlined in the Bill. Needs and Outcomes are intrinsically linked and should be the prime focus of the assessment. However, the Society is concerned that the assessment process fails to adequately cater for people with fluctuating needs and symptoms.

### **Question 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?**

19. The definition of carers should be expanded as, the draft Bill defines carers only as adult carers and does not include young carers under 18. The Society considers that this is a significant omission which needs to be rectified to provide for an equivalent carer assessment structure and process regardless of the age of the carer concerned. This will increase the numbers of people identified as carers.
20. The Society supports greater emphasis being placed on carers' assessments and the equalisation of rights between carers and those with disabilities. The Bill should clearly state that carers have a right to a separate needs assessment and local

authorities should be responsible for raising carers awareness of this. The Society is concerned that in practice pressure could be placed on the carer to agree to a joint assessment when separate assessments may reveal differences of needs between them and those who they are caring for.

## **Adult safeguarding**

**Question 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?**

21. We support enhanced powers allowing local authorities to carry out enquiries into suspected cases of abuse or neglect. However we believe that there are a number of gaps in the proposals:
22. The government has proposed allowing safeguarding professionals the right of entry to premises without the permission of third parties whilst repealing active intervention powers. Were the right of entry to be introduced there would be no power to act on the findings or to intervene to remove the individual from the home.
23. The Society believes that the proposed Safeguarding Adults Boards will be an effective way of developing strategies for the protection of adults and monitoring the progress of specific communities. However, there is a lack of detail regarding the requirements that will be placed on adult safeguarding boards if these are placed on a statutory footing. It is unclear whether they will set their own remit or whether this will be set nationally. There is also no detail provided on how the safeguarding boards will be funded.

## **Transition from children's care and support services**

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

24. The draft Bill lacks a specific duty to cooperate between Adult Care Services and Young Person Services with regard to sharing information in order to facilitate assessments.. There is also no specific duty to cooperate in the provision of assessments.
25. There is a clear need for the improvement of transitional arrangements for 16 and 17 year olds. Many of the problems that arise upon the age of transition appear to stem from a lack of multi-agency co-operation.

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

26. Hospital discharge is an area of significant concern. Schedule 2 states that delayed discharge does not apply to nursing mothers, mental health care or palliative care or rehabilitation. The Society is concerned that individuals within these categories may fall through the gaps in provision of support. Consideration needs to be given to the allocation of responsibility for all vulnerable patients who are discharged.
27. Schedule 2, which aims to promote integration around hospital discharge, only applies to those in 'acute care'. This excludes people receiving psychiatric treatment or rehabilitation services. The Society believes that this is an unnecessary omission.