

Summary

The draft Bill represents a major reform of the legal framework governing the provision of adult care and support in England. It goes further than just a consolidation by establishing in law, for the first time, that well-being is the guiding principle of decision-making in care and support. It significantly extends the rights of adult carers, and it places greater emphasis on prevention.

Less than a month before this report was agreed, the Government announced that the main recommendations of the Dilnot Commission's report *Fairer Care Funding* would be implemented through amendments and additions to this draft Bill. They will come too late for us to be able to consider them. The likely implications of this announcement are discussed in Chapter 2 of this report.

The draft Bill has been widely welcomed. That does not mean that it cannot be improved. There are gaps, risks of unintended consequences and further opportunities to realise the Government's White Paper vision.

Key among these is the need for the Government to work with interested parties to launch a campaign that raises awareness of what the national care and support offer is, how people can plan and prepare for their care needs, and what their rights to care and support are. The scope and limitations of care and support are very poorly understood, and it is clear that without such a national campaign the benefits of reform and of any capped cost system will be significantly diminished. We are concerned that the Government have not yet fully assessed the scale of the change the Bill will bring about.

The eligibility criteria will determine who obtains state funded care and support. Currently, every local authority operates its own interpretation of Government guidance on assessing what constitute eligible needs. To implement Dilnot, the Government intend for the first time to set a national minimum eligibility threshold. We heard evidence that for disabled working-age adults the restrictions placed on eligibility can make a huge difference to their quality of life and their independence. We recommend that, just as local authorities are bound by the Bill's well-being principle when they make decisions, the Secretary of State should be bound to take this guiding principle into account when designing and setting a national eligibility threshold.

Care and support are not free; there has always been means testing and charging. It is therefore not surprising that the boundary marking the divide between free NHS services and means-tested care and support is contested. The draft Bill offers new language to describe this boundary. We believe the altered wording shifts the boundary, and may result in more people in residential care falling into the means tested system. This is a serious drafting issue that must be put right.

The introduction of a capped cost system will lead to a large influx of people with needs into the local authority assessment system. This will provide an opportunity for offering information, advice and assistance that can prevent and postpone the onset of greater care needs. The advice made available to those navigating their way through the system should include advice on housing options and on personal finances.

Evidence heard by the Committee has highlighted the crucial role that housing can play in relation to an individual's well-being, leading to effective and successful hospital discharge arrangements, and safeguarding from abuse and neglect. We make recommendations to improve both the impact and the reach of the reform by recognising housing as a key partner of adult care and support.

A consistent message from our witnesses was that the key to successful integration is the relationships between different organisations, and their cultures. However, the rules should be made less onerous to make it easier for local authorities and the NHS to pool budgets and to commission together. We also believe that the draft Bill should be amended to allow the Secretary of State to mandate joint budgets and joint commissioning in certain circumstances.

The draft Bill marks a welcome extension of the rights of adult carers. However, the consequence is that young carers are left with their rights defined in "rump legislation" that sets a higher threshold for recognition and support. This is a serious omission which the Government must address.

While the draft Bill gives local authorities a new role in "market shaping" it does not directly address how services are commissioned. The Government in their White Paper criticise contracting care by the minute as an unacceptable commissioning practice. They should issue guidance to local authorities that explicitly rules out such practices.

The draft Bill for the first time places the safeguarding of adults on a statutory basis; however we believe there is a need to go further. The responsibilities of local authorities to prevent the abuse and neglect of those at risk must be made explicit, while steps must be taken to ensure that any provider of care and support services—whether from the private or voluntary sector—is subject to the same legal obligations as the local authority itself, including the Human Rights Act 1998. We also recommend that where abuses have taken place there must be corporate criminal responsibility, with organisations and key individuals held to account.

The draft Bill is predominantly about adult care and support, but also contains important provisions relating to the education and training of NHS workers, and health research. Mostly these have been welcomed by those giving evidence to our inquiry. We make a number of recommendations to improve the functions and objectives of Health Education England and of the Health Research Authority. In particular, we consider that the duties of HEE should be strengthened to facilitate integration of health and social care by ensuring more common training of care staff who switch between the two sectors. We also recommend making the promotion of research a key objective of the HRA, and we propose giving it the responsibility of protecting public safety by ensuring full disclosure of research data.

Finally, in much of the written and oral evidence we have received during the course of our inquiry we heard a consistent message about the inadequacy of funding for adult care and support. As a result care and support have increasingly been rationed and restricted to those with the highest levels of need. This is ultimately self-defeating—shunting costs and reinforcing the dominance of crisis and acute care over approaches that prevent and postpone the need for formal care and support

7 Other care and support matters

Young carers and parent carers

245. The draft Bill does not make direct provision for young carers, other than in relation to transition planning. Contact a Family raised concerns about the approach being taken, telling us that “the retention of three amended Carers Acts means that although parent carers’ theoretical rights will be protected this is only by virtue of obscure and muddled rump legislation.” Similar criticisms apply to the legislation covering young carers. Other evidence argued that the requirement to provide a substantial amount of care on a regular basis, removed for adult carers of adults, should also be removed for young carers and parent carers.¹⁸⁷

246. Explaining their reasons for this, the Department of Health told us that “Provisions are not the same, and never will be the same, because, when you are talking about young carers, you are talking about a child, so it is not just about identifying a young carer and saying, ‘Okay, what does that person need to support them in their caring role?’ Actually, there is a question of, ‘Is that an appropriate caring role and is this in fact a child in need who needs support in different ways?’”¹⁸⁸

247. We agree with the Department on the importance of preventing children from undertaking inappropriate caring responsibilities. In paragraph 182 we recommended an amendment to clause 12 which would help to achieve this. However **we share the concern of a number of our witnesses that an unintended consequence of the draft Bill applying only to adults will be to leave young carers with lesser rights than adults.**

248. Dr Moira Fraser made the point to us that “We have to have two pieces of legislation that talk to each other.” While many of our witnesses told us that young carers should be treated differently, echoing the view of the Department, they did not want to see young carers relegated to a lesser status. Dr Fraser summed it up when she said: “What we need to be doing is this: the adult legislation needs to ensure that children who are in a household with a person who is being assessed for care and support are recognised as being part of that household and may have a caring role so that a referral can be made, so they can have an assessment. Hopefully, under adult services, the adult services can look at the needs of the adult and meet those needs so that the child does not need to take on a caring role.”¹⁸⁹

249. Frances Patterson QC made plain the unintended consequence: “When there is an assessment it is still done under the old regime so there is still a requirement to show that a young carer is delivering substantial and regular care. The threshold is different; it is not the low threshold we have recommended in the adult social care statute. That is where we think there is an area for improvement.” She also told us that “we made various recommendations in relation to young carers. Those have been taken forward in part but not in whole, and our view is that they are much better taken as a whole.”¹⁹⁰

250. Critically for the Law Commission, “The bit missing is the provision of services. The Bill, as currently drafted, makes provision for assessment in relation to young carers but our recommendation is that there should be assessment and there should be the provision of services in certain circumstances. To enable that to be delivered we were recommending that the Carers (Recognition and Services) Act 1995 and the Carers and Disabled Children Act 2000 were both amended to bring them into line with our recommendations in relation to the adult social care statute as it then was. Either they would then be brought

together so there would be a freestanding young carers' statute or they would be transported into what has become the Care and Support Bill.”¹⁹¹

251. The Department of Health accepted that it is important to ensure that the provisions work together well.¹⁹² However, we believe a confused picture has emerged of the provision available to young carers, and how it relates to adult social care. If young carers are to be properly supported children's services need to have the responsibility to assess the needs of the child and, where it becomes apparent that there are needs the adult has, refer back to adult services so that the adult's needs can be met. It needs to work in both directions. In supplementary evidence¹⁹³ the Department assured us that it “is in discussions with the Department for Education about how best to address the concerns that have been expressed, including the implications for existing and planned children's legislation.”

252. In response to points raised by Committee members on the need for amendments to the draft Bill the Minister of State, Norman Lamb MP, said: “I would just say we have to be prepared to look at this. We have noted your concerns and we will have further discussions both within the Department but also across the divide between us and Education.”¹⁹⁴

253. We welcome the Minister's commitment to discussions on young carers, and expect the Departments of Health and Education to work together to ensure that young carers do not fall between the cracks or face a higher threshold for receiving any support. The most straightforward solution would be for the draft Bill to be amended in line with the Law Commission preference to bring updated legislation for young carers into the draft Care and Support Bill.

254. Guidance on the application of the assessment and transition clauses should provide local authorities with clear information on the support available to carers and young carers. This guidance should aim to ensure that there is easy access to provision for carers, regardless of which legislation the provision is made under.

255. The Law Commission originally proposed that local authorities should have the power to provide services to 16 and 17 year olds. This would include young carers.¹⁹⁵ The Government rejected this, taking the view that this was better dealt with in legislation specifically dealing with children and young people for the reasons given above. In oral evidence, the Law Commission stood by its view that such provision was appropriate.¹⁹⁶

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There is a real need to prevent inappropriate caring by young people. However, the Committee agrees that local authorities should have the flexibility to provide services under the draft Care and Support Bill in appropriate cases.

256. We agree with the Law Commission's view that local authorities should have the power to make provision for children aged 16 and 17, including young carers, where an assessment under clauses 39 to 44 identifies need. We further recommend that this should be done in a way that recognises that the aims of support to young carers will often be different from those for adult carers.