



Association of Directors of Adult Social Services (ADASS) response to the consultation on the draft Care and Support Bill

Background

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 responsibilities for the commissioning and provision of housing, leisure, library, culture, arts, community services and increasingly, Children's Social Care within their Councils.

General Comments;

ADASS welcomes the draft bill as an important and significant step towards a fully reformed care and support system and whilst there is general appreciation and support of the premise to create a more simple joined-up modern legal adult social care framework, the absence of specific detail (which will be documented in the underlying regulations and guidance yet to be developed) precludes detailed comment at this early stage.

In terms of the financial impact of the proposals, ADASS welcomes further and urgent detailed discussion with the DH to understand this (particularly during the pre-legislative scrutiny phase where it is anticipated that the detail of the draft bill will be made available). ADASS considers that the current impact assessment is not reflective of the true costs and without such a transparent, rigorous and robust assessment the proposed reforms will not be fully achieved and run the risk of becoming counter productive through creating additional burden and cost within the wider care and support system.

The current limitations of market and activity intelligence (i.e. there is no firmly agreed number of self funders and carers who may enter the system), alongside limited recognition of current and reducing capacity within councils needs to be addressed to ensure the impact assessment is both rigorous and robust. This will require much further detailed work with regard to the impact of additional responsibilities, particularly that of additional (and welcomed) duties towards carers, alongside clear commitment from the Government to meet additional funding requirements.

Alongside concerns about the current impact assessment, ADASS is equally concerned that the proposals do not fully take into account the wider financial constraints impacting upon councils and their ability to deliver the reforms so eagerly awaited.

ADASS suggests that there is fundamental mismatch between the aspirations of the draft bill in terms of its focus upon personalisation and rights to entitlements to meet care and support needs, alongside the wider austerity programme, particularly welfare reform which seeks to make significant reductions in public spending.

It is clear that the ambition to create an integrated care and support system focused upon early intervention and prevention can only be realized if a whole system approach is taken. This should be shaped around shared outcomes and objectives (Joint Health and Wellbeing Strategies) based on identified local need (Joint Strategic Needs Assessments), with clear accountability to the local population (Health and Wellbeing Boards).

This broader approach must also be extended to include all contributors within the care and support system and ADASS seeks more explicit references to the roles and responsibilities and interactions of others to include national commissioners, regulators, NHS, GPs, providers, and most importantly the care and support workforce upon which the whole system depends.

The support and development of the workforce to meet and deliver the aspirations of a reformed system is fundamental and a responsibility that is held across the whole sector. ADASS welcomes further discussion as to how to incorporate these duties with the draft bill.

PLEASE NOTE: we are also attaching a response from the ADASS Carers Policy Network (see Appendix 1) providing more detailed comments in relationship to the proposed duties regarding carers

Consultation Questions and Responses

Question 1 Role of local authority; “Do the opening clauses sufficiently reflect the local authority’s broader role and responsibilities towards the local community?”

The opening clauses of the bill do reflect the role and responsibilities of the local authority toward the local community. However, the bill makes no reference to the resources required, or available to deliver these roles and responsibilities, and therefore creates a risk that the gap between expectation and reality may widen.

Further, the draft bill does not go far enough to put in place mechanism to ensure coordination of delivery and local accountability. ADASS has long maintained that local Health and Wellbeing Boards are pivotal in the delivery model in these respects and the draft bill must reflect these to bring about a wholly integrated, accountable system that meets identified local need and objectives.

Comments relating to specific clauses:

Providing information and advice

ADASS supports the emphasis upon the provision of accessible and relevant information and advice and recognises the important pivotal role that local authorities can play. However ADASS suggests that this clause should be extended to cover roles and responsibility of partners across the sector as well as clarify the interface with national initiatives, such as DirectGov.

The clause 2.2.d states that the local authority must provide information and advice on how to raise concerns about the safety of an adult who has needs for care and support.

ADASS considers that the current wording of the clause is too narrow. Citizens may have concerns regarding a vulnerable adult whereby they wish to notify the local authority, however depending on the concerns raised this would not always mean that the adult has need for care and support services.

Duty to co-operate

Whilst ADASS welcomes the duty to co-operate with partner agencies, the current wording of clauses 4 and 5 need to be clarified and strengthened. The general duty to co-operate needs to clearly define the specific roles and responsibilities for partner agencies to include issues such as safeguarding and duties on prevention and early intervention (as detailed in clause 7).

The draft bill makes no mention of non-statutory organisations as partner agencies. ADASS therefore suggests that these organisations are also added to the list of relevant to partners in clause 4.5.

Additionally ADASS believes in the interests of working collaboratively there needs to be a clear legal framework for information sharing, especially in relation to adult safeguarding and meeting individual care and support needs (see clause 2).

Preventing need for care and support

ADASS fully supports and endorses the approach of early intervention services to reduce dependency for long term support but considers the duties outlined in clause 7 and in particular 7.2.b appears to be too onerous and unworkable.

There is an urgent need for greater clarity as to how the whole system will work, including the clarity of the role and responsibilities held within the NHS. ADASS notes that the Health and Social Care Act gives Clinical Commissioning Groups a degree of flexibility as to what they must do, whereas the draft bill is more specific as to the duties upon local authorities (although not other partners). This tension, if not resolved, is very likely to cause disruption to service continuity and effectiveness.

Promoting quality and diversity within the market.

Whilst the intention is laudable, ADASS is of the view that the proposed duty upon local authorities is wholly unrealistic. There are large numbers of providers which have no relationship / contact with local authorities and combined with increased personalisation (individual commissioning of services) and limited leverage through the regulation framework (registered providers only have to meet essential quality standards), the ability of local authorities alone to influence diversity and quality of services is restricted.

ADASS welcomes further detailed discussion with stakeholders to include enhancing and clarifying the role of the regulators (CQC and Monitor) as well as building upon existing relationships with providers, particularly through the Market Development Forum (Think Local Act Personal) to stimulate further responsibility by providers to address transparency of quality and market diversity.

Question 2 Individual rights to care and support; “Does the draft Bill clarify individual rights to care and support in a way that is helpful?”

ADASS accepts clause 17 and 19. However clause 11 relating to refusal of assessment and clause 34 on safeguarding adults at risk of abuse or neglect needs to be strengthened to clarify responsibilities in cases of suspected self neglect.

ADASS notes that clause 25 regarding how personal budgets are set needs further exploration with regard to comparable welfare benefits and how these combine to support the wellbeing of the individual.

Question 3 – Grouping Carers; “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?”

ADASS is in full agreement that carers should be included in all the main provisions of the bill rather than as a separate group.

For more detailed comments regarding carers please see appendix 1.

Question 4 The wellbeing principle and care and support planning; “Does the new wellbeing principle and the approach to needs and outcomes through care and support planning, create the right focus on the person in the law?”

ADASS agrees that the wellbeing principle does put the individual at the centre of care and support planning.

However ADASS believes the wellbeing principle needs to be strengthened to reinforce that delay in assessing or meeting need could hinder an individual's wellbeing.

In addition ADASS believes that the wording of the bill that says the local authority must prepare a support plan and wherever possible consult the person for whom the plan is being constructed, is back to front. Individuals should be supported to construct a support plan that reflects their choices about care. Local authorities have a role in ensuring then support plan can meet eligible needs with the budget available but the plans should be "owned" but the person they concern.

ADASS also has some concerns about the wording in clause 27 about meeting people's preferences for accommodation. The current wording talks about people having to pay any costs arising from their choice that are over the level of their personal budget. This will not work for a number of reasons. Firstly, indicative budgets that are derived from a RAS would not be sufficient to fund the accommodation part of the costs in registered care and secondly the personal budget is normally finalised based on the actual costs of the support plan agreed by reference to the indicative budget. Further thought needs to be given to the precise wording in this clause.

To ensure that these principles are maintained there should also be a duty placed on other agencies to assess and meet need in line with the "wellbeing" (social care model) principles, particularly where a council opts to delegate their functions to a third party.

ADASS welcomes the provisions in clause 12 for a "whole family assessment" but would suggest this is strengthened within the draft bill to emphasize a focus on preventing or reducing inappropriate or excessive caring by children / young people rather than simply assessing what these young carers need to be sustained or supported in their caring role.

Question 5 Portability of care ; “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?”

The wording of clause 31.1.c currently states that the receiving authority needs to be satisfied that an adult's intention to move is genuine. The wording suggests that the receiving local authority would be able to ask an individual about their intentions relating to moving into their geographical area. This would appear to be undermining the wellbeing principle that the adult is best placed to make decisions and judge their wellbeing. The concept of "genuine intention" is also ambiguous and may cause the potential for increased litigation in this area.

The issue of ordinary residency requires further clarity to ensure a fair and transparent system that supports choice and independence whilst not penalizing individuals or councils. For example clause 32 extends the types of accommodation that is subject to ordinary residency but it is not clear how this may apply to extra care schemes where the resident chooses to make their arrangement by Direct Payment.

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Also attached Appendix 1; response from the ADASS Carers Policy Network