

CARE & SUPPORT ALLIANCE

Care Bill – Lords Second Reading briefing

The Care and Support Alliance (CSA)

The CSA is a consortium of over 70 organisations who support and represent older and disabled people, those with long-term conditions and their families. We believe that the social care system is in crisis, leaving older and disabled people and their families without essential care and support.

Summary

The CSA welcome the Care Bill. The current legislative framework is outdated and failing the very people it should be supporting, the Care Bill has the potential to bring about major improvements; taking us closer to ending the care crisis.

However, the care system is vastly underfunded and the Bill will need to be accompanied by a sustainable funding commitments in the June 2013 Comprehensive Spending Review in order to succeed.

Key priorities for the CSA

The CSA has identified three key areas of the Care Bill which need significant improvement - eligibility, advocacy and prevention. We ask that Members of the House of Lords raise these issues in the Second Reading Debate.¹

1. Eligibility

The Care Bill has the potential to make major improvements to how social care is delivered, but these changes will amount to very little if vast numbers of people are found ineligible for social care services. With an increasing demand on services and the reductions to their budgets, local authorities are tightening eligibility criteria and the majority of local authorities now limit their services to people whose needs are assessed as 'substantial' and 'critical.'

This means many people are left without any care and support for basic needs, such as help with getting out of bed in the morning, making a home-cooked meal, communicating with friends and family or getting out of the house. Social care for working-age adults is underfunded by at least £1.2bn and thousands of people are

¹ The CSA has a position on all aspects of the Bill, detailed briefings can be provided upon request.

already excluded from services due to tightening eligibility criteria.² In addition of 2 million older people in England with care-related needs nearly 800,000 receive no support from public or private sector agencies.³

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Clause 13 gives the Government the ability to set a national eligibility threshold in regulations. The decision of which level this will be set at is expected in June's Comprehensive Spending Review. Setting the threshold at 'substantial' rather than 'moderate' will result in over 100,000 people being denied the support that they need.⁴

We urge the Government to ensure that the threshold is no higher than the equivalent of the current 'moderate' band. To set the threshold higher will undermine the Government's own ambition to promote well-being.

Furthermore under the capped care cost clauses of the Care Bill, the meter towards the cap will not start ticking until they are assessed as having 'substantial' needs. Therefore any care costs that they pay when assessed as 'moderate' are not counted towards their cap.

2. Advocacy

The CSA is disappointed that the Care Bill does not provide an explicit legal right to advocacy, despite acknowledging in the explanatory note that the system "can be complex and difficult to understand" and that "advocacy might be necessary in some circumstances" (paragraphs 35 and 39). Some people will require an advocate in order to be meaningfully involved in their needs assessment, care planning and reviews, or during safeguarding processes. For this group of people, information and advice is not sufficient to ensure meaningful participation.

Advocates play a critical role in the system. They help guide people through the process, support them to articulate their needs and make the process less intimidating and more efficient.

Without a legal right for advocacy, people will be denied choice and control over their lives and may receive inappropriate packages of support. Where an individual is unable to articulate need, it is impossible for local authorities to put in place a package of care which will work for the individual.

² 'The other care crisis' January 2013

http://www.scope.org.uk/sites/default/files/The_Other_Care_Crisis.pdf

³ Forder and Fernandez (2011) The cost of social care for older people: the importance of unit cost growth. PSSRU report for Age UK

⁴ See 2.

The CSA recognises that there are some associated costs to including a legal right to an advocate will require additional funding. However the CSA does not agree with some of the high estimates quoted by the Government, since they do not account for the provision of advocates in other legislation – including IMCAs nor does it reflect the cost benefits for investing in involving an individual in their care assessment.

3. Prevention

It is crucial local authorities provide services that prevent people developing care and support needs. Clause 2 of the Bill goes some way to addressing these preventative services, and we welcome the changes that the Government has made to the clauses in the draft Bill. However, to achieve its ambitions of a genuinely preventative system the Bill will need to be amended further.

In particular there must be a mechanism by which local authorities are held to account for their duties on preventing needs arising. Currently the Bill frames prevention as a general responsibility of local authorities. This needs to be strengthened so that individuals can seek redress should the local authority fail to put in place preventative services.

The Care Bill must also go further to reflect the importance of identifying adults at risk of developing care and support needs, as recommended by the Joint Committee which carried out the pre legislative scrutiny of the draft bill.

Finally the recognition of housing options as a preventative service must be incorporated on the face of the Bill. Small modifications to a home can prevent an avoidable accident, and specialist housing – when offered at the right time – can reduce the likelihood of repeated stays in hospital.

Funding

The CSA strongly supports the intentions behind the Care Bill, but in order to make this vision a reality the Government must make resources available to do so.

A recent report from the Association of Directors of Adult Social Services (ADASS) outlined the substantial squeeze on care services for older people, disabled people and their carers. The report shows that since the austerity measures in the 2010 Spending Review, some £2.68bn has been taken out of social care services with plans for a further £800m to be saved in the current financial year.

If more resources are made available through the Spending Review by 2015/16 - the period which the review covers - the plans for putting the Bill into effect could be underway.

Contact

For more information, including tailored briefings or face-to-face meetings, on any of the above please contact Rossanna Trudgian, Co-Chair CSA Campaigns and Parliamentary Group; Rossanna.Trudgian@mencap.org.uk or 020 7696 6974.

For more information on the Care and Support Alliance and for a list of our members visit www.careandsupportalliance.wordpress.com

Appendix 1- Further areas of concern

In addition to the three priority areas identified and the CSA has positions on a number of other areas and these are summarised below.

Assessment and eligibility framework

The Care Bill introduces a number of welcome changes to the process of assessments, including a duty on local authorities to 'involve' the individual in their assessment and the focus of well-being in the assessment. The CSA also welcomes the requirement to carry out the assessment in an appropriate manner. However we are concerned that the failure to provide a legal right to an advocate will make it impossible for certain groups of people to be meaningfully involved in the assessment. Some other minor amendments will be sought on specialist assessments.

The CSA urges the Care Bill to have an unequivocal duty to ensure eligible needs are met - current wording says 'consider whether' instead of 'must meet' needs. Furthermore, when setting the Regulations to underpin the proposed national system of eligibility the Government should take account of the well-being principle.

Carers

The Care Bill includes important new rights for carers which mean that they should be automatically assessed for support by local authorities. This should make it easier for carers to receive vital support. It also places duties on local authorities to provide support to carers, for the first time making it clear when carers are entitled to support. There have been some key changes to the newly published Bill including clarification that carers are included in the duty to promote well-being and the duty to provide information and advice.

The duty on local authorities to promote a choice of diverse and high quality care services has been strengthened and now importantly refers to the need for local authorities to have regard to the importance of enabling carers and disabled people to work. The Bill also explicitly refers to the need for there to be 'sufficient services' to

meet current and future needs. This is vital to ensure local authorities are planning the right services to meet demographic shifts in our society.

Further changes are needed to prevent carers from being wrongly charged for services that are delivered to the disabled person. The Bill has been partly amended to make clear that this should not happen but without a clear definition in the Bill of what is a service for the carer and what is a service for the disabled person, confusion is likely to occur.

Although the rights of adult carers providing care to other adults are enhanced in this Bill, changes are needed in the Bill to prevent young people from taking on inappropriate caring and the Department for Education and Department of Health must work together to ensure that parents of disabled children and young carers don't miss out on these new rights.

Continuing Health Care

The Bill makes great progress towards dealing with existing problems around the division of services and the disputes that are as a result.

Direct payments

The CSA remains concerned that the clauses in the Care Bill fail to extend direct payments to those with complex needs, as the wording gives local authorities significant discretion in deciding who is eligible. The CSA also believes that the Bill fails to address the support needed for individuals to access their direct payment, nor does it stipulate that the direct payment has to cover the costs of administration of the payment.

Integrated Housing

CSA welcomes the inclusion of housing in the well-being principle. However there is a need for further clarity of the role of local authorities to ensure information on housing options. Most importantly the Bill must be amended to promote specialist housing and related adaptation/support services as a part of the solution when considering an individual's care and support needs.

Information and Advice

The Care Bill goes some way to increase access to information and advice services, including for individuals who are not eligible for service or those who are self funders. However the failing to include a right to an advocate means that a significant group of people will miss out from these benefits.

Market shaping

Whilst improvements have been made since the draft bill, the CSA is concerned about the narrow approach taken service sustainability to prevent a future Southern Cross. Also the clauses on availability of 'appropriate' services are not strong enough to strong those with complex needs being forced to opt for residential care homes as the only

option available. Furthermore the clauses do not address the lack of availability for short break services.

Meeting needs

This is a significant section of the Bill, with numerous positive changes since the Draft Care and Support Bill. The CSA however remains concerned about the local authority power to review 'generally' as this could potentially lead to a fear of constant and unnecessary reviews. Also as it stands there is no requirement for a provision in care plans for those with fluctuating needs and those in an emergency.

Portability and ordinary residence

The Care Bill makes major strides to improve the legal framework for portability and ordinary residence, including strong wording that reflects that until the new package is in place, there should be equivalence of care packages. The Care Bill could have gone further to set out a strong and clear dispute process.

Registers

The CSA welcome the maintained duty on local authorities to establish and maintain 'a register of sight-impaired or severely sight-impaired adults. Whilst we understand the reasoning for not widening this duty for all groups of disabled people, we remain concerned about the quality of data collection and recording. We seek assurances that regulations and statutory guidance will address this issue.

Safeguarding

There has been widespread concern that the mechanisms and procedures in place for safeguarding adults at risk of abuse or neglect are inadequate. This section of the Care Bill goes along way to improve the legal framework, in particular putting Adult Safeguarding Boards on a statutory footing.

The CSA has identified some areas that need to be strengthened, in particular around the process of investigation and the timescales in which this should operate and a legal loophole on access to protection under the Human Rights Act. The CSA is also aware that the quality of the regulations and guidance will be what shapes the daily experience for individuals.

Section 117 Mental Health Act

The draft Care and Support Bill introduced a new statutory definition of "after-care services" - services provided to people discharged from hospital after being sectioned under Mental Health Act. The CSA raised concerns about that definition since it appeared to revert to the medical model of mental health, making it harder for people to receive social services as part of their after-care package. The Department has now made a number of changes to the definition, which now appears as clause 68, and the CSA is currently considering the impact of these changes.

Transition

In the current system many individuals are failed during the process of transition, and CSA welcomes the clauses on transition for children to adult care and support, particularly clause 63 on continuity of services. However, these clauses only apply if the child or their parent or carer has requested an assessment before the age of 18 so that some children may not be covered.

Well-being

The Care and Support Alliance welcomes the changes made to the definition of well-being in the Bill, and the overall concept of underpinning the Bill with a duty to promote well-being. The Joint Scrutiny Committee recommended that the Secretary of State should have regard to the need to promote well-being when issuing regulations and guidance. The Care and Support Alliance strongly welcomed that recommendation.

Government have rejected this on the grounds that care and support is a locally managed service for which local authorities are responsible. New legal duties on the Secretary of State may confuse these local accountabilities. The CSA disagrees with this position. The Bill places a responsibility on local authorities to promote well-being in the way they implement the provisions of the Bill locally. However, if the Secretary of State were to issue regulations without having regard to the promotion of well-being there is a risk that regulations or guidance will conflict with the well-being principle. This would put local authorities in an impossible position.

For instance, if the eligibility criteria, issued in regulations by the Secretary of State, do not take full account of all aspects of well-being in Clause 1, then local authorities may find that people who need support to promote well-being as defined in Clause 1 fall outside the eligibility criteria. Whilst a local authority can, if it chooses, provide support to someone who does not meet the eligibility criteria, funding to local authorities for social care will be based on Government's estimate of the cost of meeting eligible needs. We feel there is a risk that this will create unacceptable burdens on local authorities.

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