

SOLACE Response – Care Act Consultation

BACKGROUND

Solace is the representative body for over 1200 Chief Executives and senior strategic managers working in the public sector in the UK. We are committed to promoting public sector excellence. We provide our members with opportunities for personal and professional development, and seek to influence debate around the future of public services to ensure that policy and legislation are informed by the experience and expertise of our members. Whilst the vast majority of Solace members work in local government we also have members in senior positions in health authorities, police and fire authorities and central government.

INTRODUCTION

As the Chief Executives and senior officers of local government, Solace members have a critical interest in the Government's Care and Support Reforms. Regional Chief Executive leads on the LGA Health Transformation Task Group take a keen interest in the Act. We also welcomed the opportunity for two Chief Executives to attend the Care and Support Reform Programme Board and have appreciated involvement in the work of the joint programme team (for example in developing the recent stocktakes). The most recent 'Care Act stocktake' also reaffirms the importance Chief Executives and senior officers place on the reforms – with a good number of direct Chief Executives responses and with 97% of councils indicating their Chief Executive was 'very likely' or 'fairly likely' to be aware of the vision and key principles of the Act.¹

We therefore welcome the opportunity to further comment through this consultation. We see this as part of an ongoing process of dialogue and co-production between the Department of Health and the sector – a process we wish to acknowledge and welcome. Along with colleagues across the sector we continue to be fully behind the underpinning aspirations of the Act. However, it is important to note that it cannot be considered in isolation from the wider context local authorities are operating in – particularly the financial context.

Our response is written with the above in mind and seeks to complement the responses offered by other local government sector bodies and associations. Given the role of Solace as the representative body of senior corporate officers, we have chosen to focus our response on the broad, strategic questions raised by the consultation rather than offering a comprehensive and detailed response to every issue raised. However, this focus should not be interpreted as disagreement with any more detailed points made by colleagues at the LGA or ADASS, in other professional associations or from local authorities themselves.

¹ Care Act Stocktake, June 2014

Our response focuses on three key areas:

- The funding challenges presented by the reforms, including concerns across the sector that insufficient resourcing may undermine the aspirations of the Act
- The implications of the Act for integration, partnership working and cooperation across the health and care system (and beyond).
- The wider context within which the Act is being implemented and the need for it to be seen as a vital first step on the road to reform which delivers a health and care system which is sustainable in the long term.

FINANCE AND RESOURCING

The Care Act represents a step change in the adult social care landscape. Putting wellbeing at the heart of the system, promoting early intervention and prevention and setting out a new financial framework all present huge opportunity.

However, these ambitions will not be met if the financial implications of the Act are not clearly understood and fully resourced. The scale of the fiscal retrenchment made by local authorities in this parliament is well known and oft-repeated. Local authorities will have delivered funding reductions of 40% by 2015. As the recent ADASS Budget Survey noted, this has not been without impact on the funding of adult social care. Spending on care has actually been relatively protected by local authorities, accounting for a rising proportion of total council spending over the last four years (from 30% to 35%). Nevertheless, real terms spending on adult social care has fallen by 12% since 2010². Recent changes to the Better Care Fund have further exacerbated this situation, with many authorities facing lower than projected BCF funding to support adult social care. There is no excess slack in the system.

Given this context, it remains concerning that recent evidence suggests that local authorities remain unconvinced about financial modelling to date. The recent Care Act stocktake (completed by every upper-tier authority in the country) paints a concerning picture. While councils remain absolutely committed to implementing the reforms, the stocktake shows that they believe 'implementation costs' to be the biggest barrier to success.³ This echoes findings from research by the County Councils Network (CCN) earlier this year, which found that 87% of responding CCN members regarded funding shortfalls as a major concern.⁴

² ADASS Budget Survey 2014

³ Care Act Stocktake, June 2014

⁴ Counties & the Care Bill, County Councils Network, March 2014

Finally, this view is also shared by bodies outside of the sector. Both the National Audit Office⁵ and the Public Accounts Committee⁶ have raised their concerns about the pace of reforms and the financial modelling underpinning the.

Given this background, it is reassuring that the current Care Minister, Normal Lamb MP, has been clear about his intention that the reforms are fully funded. Nevertheless, we remain disappointed that the Government chose to reject proposals earlier this year which would have provided additional security and reassurance to the sector.⁷ We continue to support the need for an independent verifying process to impartially confirm the adequacy of funding required and to review this at an appropriate point in the future. This is particularly necessary as there are several elements of the Act where the financial impact may only become clear some time after implementation – or even once test cases have been through the courts.

We believe several areas in Part 1 may present specific funding issues:

National eligibility criteria

We have been involved in several discussions about iterations of the proposed national minimum eligibility thresholds and are aware of the Government's intention that they are equivalent to FACS 'substantial' level. In response to an earlier consultation on the Care Bill, we echoed the concerns raised by some of our members that some elements of the threshold might be closer to the current definition of 'moderate' need⁸. Given funding assumptions we would ask for reassurance that the new threshold will not increase the eligible population based on robust case-study modelling on the final, agreed regulations.

Deferred payments

Deferred payments are already operated by many local authorities and are valued by residents who choose to take them up. However, the new duty to offer such payments may heighten the financial risks on authorities' and will need to be considered in this context.

One particular area which has been highlighted to us relates to the interest rate used when arranging deferred payments. The regulations appear to be unclear about whether this rate will be set nationally (at an amount to be confirmed) or whether it will be set locally within the specified 3-5% range. The preference of Solace, would be for this rate to be set nationally – and to be tied to an independent 'base rate' (e.g. the Bank of England base rate) to future-proof the regulation. This would ensure consistency and minimise the risk of complication or challenge.

⁵ Adult social care in England: Overview, National Audit Office, March 14

⁶ Public Accounts Committee, Adult social care in England, July 2014

⁷ e.g. Amendment NC9 proposed during the Care Bill Report Stage

⁸ Caring for our future, Solace/LGA/ADASS response, pg 5

On the issue of Sharia-compliant loans, the Society does not have a firm view. However, we would urge the Government to ensure a consistent approach is taken in this area and the recent consultation regarding the creation of a Sharia-compliant alternative to the student loans system.⁹

Direct payments

It is the Society's general view that the regulations governing Direct Payments appear excessively detailed and, in places, impractical based on current practice. In particular, the Society does not support the decrease in the time period to conduct a review of direct payments to 6 months. In general the Society believes that local discretion is important in this process, and that a single mandated time period is unhelpful. Were the Government to continue with this proposal, the Society would also wish to be re-assured that the additional resource burden this would entail had been accurately estimated and fully funded.

INTEGRATION, PARTNERSHIP WORKING AND CO-OPERATION

The focus of the Act on integration as a critical underpinning component of achieving effective care is welcome. Solace has long made the case, in this area of public services and others, that integration and partnership working are critical to public service reform¹⁰. As demographics and the burden of disease and ill health shift, ensuring alignment and complementarity between health and care services will become increasingly essential.

Duties to cooperate

We welcome the clear statement in the guidance that the 'Duty to cooperate' applies to a wide set of public service partners – and would encourage Government to ensure that all parts of the local public sector are aware of the importance of fulfilling this duty. This is particularly critical for providers and national commissioners – as well as local CCGs.

We would, however, note our disappointment that the Government did not take the opportunity earlier in the legislative process to further ensure the requirement for other parts of the public sector to cooperate in delivering some key elements of the Act. In particular, we were disappointed the Government did not support a move to require the NHS to cooperate in the identification of carers – a group for whom the system will change dramatically. Likewise, we were also disappointed the Government did not place a duty on the CQC and Monitor to support integration of health and social care.¹¹

⁹ <https://www.gov.uk/government/consultations/sharia-compliant-student-finance>

¹⁰ For example in our recent publication 'Opportunity knocks'

¹¹ Amendments NC3 and NC12 respectively at the Care Bill Report Stage

Statutory oversight

We would also welcome further clarification on the intended relationship between the new Safeguarding Adults Board and other statutory boards and organisations operating in this space across the health and care system [including Quality Surveillance Groups (QSGs), Health and Wellbeing Boards (HWBB), Local Safeguarding Children's Boards (LSCB) and Community Safety Partnership (CSP)]. We would also urge the Department to examine learning from the development of LSCBs over recent years.

In particular, we would welcome clarification on the relationship between the SAB, LSCB and Health and Wellbeing Board. In more general terms, we also believe that a relatively simple framework, outlining the roles of the various Statutory Boards operating in this space and their relationships to each other, would give local authorities and the public clarity about responsibilities and accountabilities.

Communications and public awareness

Partnership will also be critical will be in securing public understanding of the reforms. We have welcomed the opportunity to be involved in discussions to date about planned Government communications to support the reforms and are supportive of the work that has been done. However, we would like to use this opportunity to further encourage Government to ensure that these communications are of sufficient scale and ambition.

As is widely noted¹², public understanding of the current social care system is already poor. Given some of the major new entitlements and changes being proposed (rights of carers, a new financial system & new eligibility regulations) it is vital that people are properly informed and able to access support. Ensuring this will require a collaborative approach across national and local government bodies, combining a large-scale national public information campaign with targeted local work to reach individuals with a specific need to know.

This campaign should be properly sequenced and holistic in its coverage of Part 1 and Part 2 of the reforms¹³. In particular, we would urge the Government not to allow the General Election to undermine strategic planning for this.

¹² For example in A new settlement for health and social care, Kings Fund, 2014

¹³ In particular, the campaign needs to cover the 'non-financial' changes proposed and not just the new financial framework.

WIDER CONTEXT

We share the Government's passion for a modern social care system which has wellbeing at its core and would like to commend the open and collaborative approach that has been taken to developing these reforms with the sector. The Act represents the largest transformation of social care in a generation and we all share the desire to make it a success.

However, it is important to note that these reforms are not being pursued in a vacuum. They are being undertaken in the most challenging financial public service context for a generation – pursued in parallel with changes like the Government's SEN reforms, the Better Care Fund and large-scale acute service reorganisation in several challenged areas. This broader context affirms the need for these reforms to be completely, and transparently, funded if they are to be a success. It also highlights the range of interdependent programmes being undertaken in parallel and at pace. We believe it is crucial that these are drawn together nationally and locally into a single, coherent approach to transformation.

We also need a clear commitment from both the Government and opposition parties that they are willing to undertake the reforms necessary to secure a health and care system which is fiscally sustainable in the long term. As the Kings Fund Commission on the Future of Health and Social Care in England noted in its interim report: *'We believe spending on health and social care combined is inadequate in both the long and the short term'*¹⁴. Solace agrees, and believes that further reform is needed to ensure a health and care system which is fiscally and socially sustainable in the long term. Greater moves toward horizontal integration (for example through the Better Care Fund or further moves in this area) will enable more investment in prevention and early intervention and thus result in some efficiency savings. However, we must be clear that they will not address this fundamental challenge alone.

Recent changes to the Better Care Fund¹⁵, alongside recent reports of changing Opposition policy on health and care, do not reassure the Society that Westminster recognises the scale and breadth of this challenge.

We need a system which provides joined up health and social care support designed to promote people's wellbeing, enable them to be active members of their community and to maintain their independence where possible. These reforms are a welcome first step on this journey and we encourage government to continue its strong partnership with the local government sector in securing a health and care system fit for the twenty first century.

¹⁴ A new settlement for health and social care: Interim report, Kings Fund, 2014 pg 5

¹⁵ See Solace response to these changes here: <http://www.solace.org.uk/press/government-announcement-bcf/>



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