THE LAW COMMISSION
Consultation Paper 192

ADULT SOCIAL CARE

CIH Response

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This consultation response is one of a series published by CIH. Further consultation responses to key housing developments can be downloaded from: http://www.cih.org/policy/papers.htm
1. Introduction

CIH welcomes the move by the Law Commission to bring greater clarity and simplicity to adult social care law in England. CIH believes that as the law currently stands, it is extremely complex and complicated which can hinder the development and delivery of services that may best meet the needs of our increasingly ageing and diverse society, and the likely increased demands for services.

CIH is the body for housing professionals and those with an interest in housing and communities, and many of our members work for organisations that interact with social services, and deliver services for many clients that also receive social care. Housing organizations and professionals are also involved in delivery of preventative services, such as adaptations and housing related support, which contribute to the well being of many in the community who might otherwise require more intensive and costly care services.

As such CIH is pleased to make this submission to the Law Commission. We do not address every proposal made in the consultation paper, but only those pertinent to the issues and interests of housing professionals, organisations and their customers.

2. Summary

CIH believes that the simplification and clarity offered by a single adult social care statute will be very important and welcome to those receiving care services, and those involved in their support and care, which includes housing professionals such as support workers and sheltered scheme managers.

Given the projections of demographic change, and advances in medical and clinical treatment, there will be increased demands for a greater range of care and support services in the future, and the need for greater diversity in the nature of care responses to peoples’ needs.

In addition to that, the economic situation is likely to mean that increasingly scare social care resources will need to be more thinly spread, causing potential problems for those at the lower scale of need. Within the context of these pressures, it will be increasingly important that services which provide preventative or early intervention in people’s support and care needs are encouraged, and therefore that more joint working across other sectors and services is made possible. This means not only between health and care services, but also with housing and related support. The proposed adult social care statute must be able to promote and not hinder such policy developments.

CIH has demonstrated in a recent report, Housing, Health and Care, how vital housing is to enabling such preventative and re-ablement measures. Whilst we recognize that the report deals with policy, and the consultation paper is concerned with changes in the law, we believe that such policy development will
continue to be necessary and the flexibility to work with housing as well as health
should be enabled by any changes to the legislation

3. Responses to proposals and questions
The following section gives responses to the individual provisional proposals
and questions in the consultation paper and is numbered to match the numbering
in the consultation paper for convenience.

Proposal 2.1
CIH agrees with the proposal for a single adult social care statute for
England, and also for Wales, unless or until policy divergences require
separate statutes for England and for Wales. The primary aim should be to
provide a more clear and simplified structure that can give people in receipt of
care services more certainty about their rights and what they can or cannot
expect.

Questions 2.1 and 2.2
CIH agrees that there should be a clear and simple structure for the
regulation of social care law, consisting of primary legislation, statutory
instruments and guidance. The guidance should be revised and consolidated
following any change to the primary legislation, and to achieve this, there
should be a duty on the Secretary of State to prepare a code of guidance.
Above all, there should be an attempt to keep as simple a structure as
possible, so that there is not a repeat of the current situation where different
Acts have to be considered together in different cases, which can lead to
many different interpretations and outcomes for people requiring help.

Question 2.3
A process driven approach such as described is useful, with the caveat that
any prohibitions do not preclude adult social care working more
collaboratively in partnership with other services such as housing or health to
achieve positive outcomes for people requiring services.

Proposal 3.1
The proposed statute should set out the statement of principles underpinning
adult social care. These need to be clear but also enable a strong partnership
approach for looking holistically at an individual’s needs and requirements
and their wishes in relation to services they receive.

Questions 3.1, 3.2 and 3.3
The statute should ensure that the way assessments and service delivery are
planned maximizes the involvement and control of the individual concerned,
that enables person centred planning and looks at the range of aspirations and needs of the individual and different ways in these can be met. It should involve an approach that considers all the aspects that the individual themselves considers pertinent.

Questions 3.4, 3.5 and 3.6
There will be an increasing need to look at measures that can prevent dependency of care services, and that enable speedy and full recovery after initial problems and this approach should be built into the proposed statute. This is why the legal structure must facilitate a strong partnership based approach that allows for the consideration of support services such as adaptations. The right adaptation to a property delivered in time can prevent the need for more costly care interventions later on. It will therefore deliver a more focused ‘independent living’ and home based approach to planning services, within the wider framework of person centred planning.

Question 3.7
Dignity in care should be an explicit principle of the statute, underpinning the other aims of choice, control and person centred planning.

Question 3.8
The need to safeguard adults is critical, but must be balanced with the issue of choice and control which may involve allowing some enabling a reasonable level of risk. Within the housing sector work has been done on personalising support that considered such issues that may be helpful (see Look Ahead's publication on personalisation).

Proposal 4.1 and 4.2
We agree with this proposal in relation to a duty to undertake a community care assessment, and that such an assessment should be focused on needs and outcomes the individual wants to achieve.

Question 4.1
There should be a right to request an assessment, and there should also be an expectation about the role of the local authority and its partners in giving advice and information about that right.

Proposal 4.3
The statute should include the duty for an assessment, with the details of that assessment made clear in regulations. These should ensure that certain key elements are covered, such as the involvement of the individual and carer, the timescale in which the assessment is to be done, the timescale for a formal
response and the reasoning behind the response. It should also encourage full consideration of the range of potential solutions/services that can deliver the desired outcomes, including preventative services such as housing related support, adaptations etc.

Proposal 4.4
We agree with the proposal to retain the ability to provide temporary services in urgent cases.

Proposal 5.1 and 5.3
We agree with the proposal for a duty to undertake a carer’s assessment, and that this should be made where there is or will be needs that could be met by services to the carer or cared-for person. There should also be a duty to respond when the carer requests an assessment.

Questions 5.1 and 5.2
Where possible a unified assessment of carer and cared-for person would be helpful except where it is clear it cannot be done (due to issues of confidentiality or refusal by one party). We do not think there should be a merged duty of community care and carer’s assessments.

Proposals 6.1 and 6.3
It is important to have clear and simple eligibility criteria to provide consistency (and proposal 6.6 introduces a mandatory national eligibility framework). We agree but are concerned that this should not constrict local authorities in the development of more preventative services in partnership with other services. The statute should be able to encompass the development of preventative and re-ablement services, where this continues as a matter of government policy, and to enable local authorities to develop more innovative services in this area.

Proposal 8.1
We agree with the duty of care for people ordinarily resident in the local area and the power to provide services for those who do no meet that criteria. In particular there is the need for local authorities to be able to undertake assessments and to respond in cases of urgent need.

Proposal 8.3
Portability of services should be enabled by an enhanced duty to cooperate on the part of other local authorities, and clarity and consistency in assessments and eligibility.
Proposals 9.1 and 9.2
CIH agrees with the proposal that community care services should be defined by a short and broad list of services on the face of the statute. These should be phrased in such a way as to give flexibility for the development of new and preventative services, which may be delivered in partnership. Where more detail is required this should be included in the guidance.

Proposal 9.3
We have some concerns about removing any central definition of service users. Whilst we agree that the language in many current pieces of legislation is outdated, we believe that there is value in some broad definition of service users. The broad categorisation on page 95 is helpful, although with the caveat that it should also include persons who by reason of age and frailty requires services to maintain their safety and secure their independent living.

Proposals 9.6 and 9.7
CIH agrees that there needs to be clarity about the respective roles of health and social care, as well as other partners such as housing. However, the legislation should be able to support and facilitate the development of greater joint working across these and other partners, in order to meet the increased needs, to focus on prevention and early intervention, and to respond properly to a system that is truly person centred, maximising choice and control over services that contribute to desired outcomes.

Proposal 10.1
A duty to provide a care plan should be included with the detail in the regulations. It should be made clear that such a plan, and any later amendments, must be undertaken with the involvement and agreement of the service user where possible, or their carer.

In relation to section 11 on Joint Working, we would note that there should be opportunity and flexibility for local authorities to look beyond other social care authorities but also to health services, housing and wider public services for partnership in developing and delivering services that can meet the required outcomes and needs of adults who need help. We think that this should be considered in the proposals 11.10 and 11.11 in relation to general and enhanced duties to promote cooperation and give due consideration to such requests.
Proposals 12.1, 12.2 and 12.3
We agree with the proposal on safeguarding adults at risk, with the change of terminology and the definition in statute.

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