

Health and Social Care Scrutiny Board (Scrutiny Board 5)  
Cabinet  
Council

16 June 2010  
22 June 2010  
24 June 2010

**Name of Cabinet Member:**

Cabinet Member (Community Services) – Councillor O'Boyle

**Director approving the report:**

Director of Community Services

**Ward(s) affected:**

All

**Title:**

Law Commission Consultation on reforming Adult Social Care Law – Consultation Response

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**Is this a key decision?**

No

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**Executive summary:**

This report details the City Council's response to the public consultation on proposals to change Adult Social Care Law, published by the Law Commission on 24 February 2010, described as the most radical shake up of adult social care law in 60 years. The Law Commission is a non-political independent body, set up by Parliament in 1965 to keep all the law of England and Wales under review, and to recommend reform where it is needed.

The Consultation Paper sets out a number of consultation questions each of which has been addressed within the City Council's response (see appendix 1).

The current legal framework for adult social care law is complex and fragmented. The sheer volume of legislation has led to overlap and duplication. Not all of the Acts sit easily with each other and in some instances they impose inconsistent obligations.

The aim of the proposals is to create a legal framework that is clear, consistent, accessible, and transparent which will help users to be aware of their rights, and practitioners to understand their responsibilities.

The main recommendation from the Law Commission is that there should be one legal statute for Adult Social Care Law. The consultation proposal and subsequent questions focus on what should be included in the statute. The consultation is broken down into 13 different sections, reflecting the breadth of topics covered in this consultation document.

Once the consultation period has ended, the Law Commission will review and revise the proposals on the basis of all the feedback and start drafting a report which will set out their final recommendations for how the law should be changed. The final report will be published in 2011. Once the report has been published a draft bill will be produced for Parliament to implement the final recommendations.

It is important to note that the future of adults social care is subject to a newly appointee Royal Commission that will determine the future model of adults social care funding and provision and is expected to report during 2011. Any Law Commission proposals will need to reflect the legislative requirements of the commission's agreed outcome.

**Recommendations:**

Health and Social Care Scrutiny Board (Scrutiny Board 5) is asked to note the consultation response and forward any comments to the Cabinet.

Cabinet is requested to consider any comments from Health and Social Care Scrutiny Board (Scrutiny Board 5) and recommend that Council approve the consultation response.

Council is requested to approve the consultation response.

**List of Appendices included:**

Consultation response

**Other useful background papers:**

Law Commission Consultation on Adult Social Care Law – Full Consultation Document

[www.lawcom.gov.uk/docs/cp192pdf](http://www.lawcom.gov.uk/docs/cp192pdf)

**Has it or will it be considered by Scrutiny?**

Yes – Health and Social Care Scrutiny Board (Scrutiny Board 5) – 16 June 2010

**Has it, or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes – 24 June 2010

**Report title:**

Law Commission Consultation on reforming Adult Social Care Law – Consultation Response

**1. Context (or background)**

- 1.1 The Law Commission has a legal duty to review all law through an agreed programme of work with the Government, to ensure the law is fair, modern, simple and as cost effective as possible.
- 1.2 It is recognised that the current legal framework for adult social care is outdated and complex. The current laws that govern adult social care are spread across 38 different Acts of Parliament and this has led to overlap, duplication and fragmentation, including imposing inconstant obligations. The majority of service delivery is still delivered under the National Assistance Act 1948
- 1.3 The aim of the consultation is to make a range of proposals to simplify the current legal framework by creating a clear, modern and single statute for adult social care.
- 1.4 The consultation document does not take into account the recent policy directions stated by the newly elected national Government. National Government has stated its intention to break down the barriers between the health and social care sectors and the 'Total Place' agenda also support this approach. The implications of this policy direction would mean a revision of a range of primary legislation including that related to NHS and social care funding, eligibility and provision.
- 1.5 As this consultation response requires Council consideration and agreement on 24 June 2010, in order to be submitted to the Law Commission within the prescribed timescales, it is not possible to present this to a Cabinet Member (Community Services) meeting, (scheduled for 29 June) as this is after the Council meeting.

**2. Options considered and recommended proposal**

- 2.1 For Adult Social Care the proposed legal structure is to have one primary piece of legislation (statute) for Adult Social Care for England and Wales. Underpinning the legislation would be statutory instruments and guidance.
- 2.2 At the centre of the proposed statute would be the community care assessment for both the individual and the family carer, the eligibility decision and the formation of a support plan. These processes would be underpinned by the use of statutory principles and statutory prohibitions on the services that can be provided by authorities responsible for the provision of adults social care through a broad list of community care services.
- 2.3 It is the provisional proposal of the Law Commission that there be a single gateway to access a community care services and that there should be a low threshold for qualifying for an assessment. This threshold would be where a person appears to the local authority to have social care needs that can be met by the provision of community care services, although the current eligibility criteria would still need to be met to receive a package of support from social care.
- 2.4 It is proposed that there is a single duty to assess a carer. The proposal is that a carer's assessment should be available to all carers who are currently providing care or intend to provide care; thus removing the current test of providing substantial and regular care.

- 2.5 The Law Commission proposes that the use of Personal Budgets and the way in which resources are allocated fit into the community care assessment process should be made clear within the proposed statute. This may include provisions for co-produced or pure self assessment processes.
- 2.6 The consultation examines Section 21 of the National Assistance Act 1948 and Section 2(1) of the Chronically Sick and Disabled Persons Act 1970. Both these Acts currently place duties on the local authority to provide residential accommodation and certain domiciliary and community based services respectively. It is being proposed that both parts of these Acts are repealed, and the recommendation in Part 6 that an assessment of need and application of eligibility criteria should be the sole means for determining a person's eligibility for services.
- 2.7 The consultation also examines the concept of ordinary residence and portability of services. It is being suggested that within the proposed statute that the concept of ordinary residence might apply to all community care services, where an individual has an assessed need. This would include the responsibility for providing carers' services is given to the local authority where the cared-for person lives. The reasons for this are that the authority where the cared for person lives benefits from the informal care being provided by the carer and carers' services are often delivered in the form of services to the cared-for person. The term 'portability of services' refers to the ability of users to ensure continuity of support when they move between local authority areas. To ensure a greater degree of portability in service provision the consultation proposes an enhanced duty to co-operate when users move areas, and through a national portable community care assessment and a national eligibility criterion.
- 2.8 The consultation considers the definition and scope of the community care services that can be provided under the proposed new legislation. The consultation asks; whether community care services should be defined, through an extensive consolidated list or a short and broad list of services (the law commission provisionally proposing the latter); and whether the list should be set out in the Act, or through separate statutory guidance. The consultation provisionally does not propose to include a central definition of a disabled person or user. It further proposes provisionally carers services should remain undefined.
- 2.9 One of the proposals being suggested by the Law Commission is to place a duty on local authorities to produce support plans for people with eligible needs. The consultation proposes to retain the existing content of the direct payments provisions placing them within the statute. Regulations are proposed to require or authorise local authorities to charge for residential services and to regulate for the production of a list of community care services to be provided free of charge.
- 2.10 Joint Working is a key element within the proposals as previously outlined with the duty to co-operate. The consultation also considers how assessments should be undertaken for young people aged 16-17 as the statute provisionally would apply to those aged 18 and over. The consultation also explores the need to incorporate the provisions relating to delayed hospital discharge into the proposed statute.
- 2.11 Clarity is proposed around duties for after care services for both health and social care, and the termination of that duty in respect of people who had been detained under certain provisions of the Mental Health Act 1983.
- 2.12 The consultation considers adult safeguarding and proposes that Government introduces new powers to safeguard adults from abuse and neglect and for these to be included in the statute.

- 2.13 Local Authorities have a duty under the National Assistance Act 1948 to maintain registers of disabled people. The Law Commission is provisionally recommending that the register should be abolished as it is unlikely that the registers are providing accurate records of disabled people in the area nor being utilised as a strategic planning tool due to the limited information documented on the register.
- 2.14 The Law Commission are also provisionally recommending that the proposed social care statute places a duty on local authorities to provide information on all adult social care services available in the local area. There are no proposals to include any strategic planning provisions in the statute.
- 2.15 It is considered that the Law Commission has started an important and necessary discussion on reforming adult social care law and the City Council values the opportunity to comment on the proposals.
- 2.16 The full response to the consultation can be found in Appendix 1.
- 2.17 Cabinet and Council are asked to note the proposals outlined in the Consultation Paper, as summarised above, and approve the consultation response.

### **3. Results of consultation undertaken**

- 3.1 This response to the consultation is from the City Council and therefore wider consultation has not been undertaken.
- 3.2 The Council, as part of its role in supporting local debate of national policy, has distributed information about the consultation to a wide range of partner organisations in the city who have been encouraged to respond directly to the Law Commission.
- 3.3 The Older People's Partnership organised a one off event to enable users and carers to gain an understanding of the consultation and what the potential implications are for them, as individuals. People have been encouraged and where requested; supported to respond directly to the Law Commission.

### **4. Timetable for implementing this decision**

- 4.1 Responses to the consultation are required by 1 July 2010

### **5. Comments from Director of Finance and Legal Services**

- 5.1 There are no direct financial implications linked to the consultation response. Any changes to Adult Social Care law or governance may lead to further specific changes that do have financial implications. Any such implications would be reported at the relevant time.

### **6. Other implications**

N/A

- 6.1 **How will this contribute to achievement of the council's key objectives/corporate priorities (corporate plan/scorecard)/organisational blueprint/LAA (or Coventry SCS)?**

These proposals would support the continued provision of a range of statutory services to the people of Coventry, in partnership with health colleagues, in line with existing national and local policy direction supporting the personalisation of adult social care.

**6.2 How is risk being managed?**

N/A

**6.3 What is the impact on the organisation?**

The law underpinning how adult social care is of significant interest to the council and any changes to the current legal framework are likely to have an impact on the organisation, in terms of future service delivery for community care assessments and carer's assessments if the threshold for undertaking assessments is lowered. Within the consultation it is also being suggested that assessments should be portable between local authority areas, which could have potential cost implications for the receiving authority.

**6.4 Equalities/EIA**

N/A

**6.5 Implications for (or impact on) the environment**

N/A

**6.6 Implications for partner organisations?**

The consultation discusses partnership working between local authorities, the NHS and other relevant organisations to facilitate joined up assessments and services. The Law Commission are proposing that the statute includes two duties to co-operate. Firstly a general duty imposed on local authorities to make arrangements to promote co-operation with other relevant organisations such as housing, education and health authorities. The second is an enhanced duty to co-operate, whereby a local authority can request that another authority assist in specific circumstances, for example when an assessment is taking place. This duty would apply to education, housing, health and other local authorities. A requested authority would be required to give due consideration to the request. The enhanced duty would include a specific duty in relation to safeguarding adults from abuse and neglect.

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Legal: Julie Newman	Solicitor	Finance and Legal	14.5.10	20.5.10
Director: Brian Walsh	Director	Community Services	21.5.10	24.5.10
Members: Councillor O'Boyle	Cabinet Member	Community Services	24.5.10	27.5.10

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## Consultation Questions and Responses

### Part 2 – Approach to Law Reform

**Provisional Proposal 2-1: We provisionally propose that there should be a single adult social care statute for England and Wales, unless policy in Wales diverges enough to require separate statutes for England and Wales.**

Question 2-1: Is our proposed three-level structure for the regulation of adult social care law (consisting of primary legislation, statutory instruments and guidance) appropriate?

The City Council agrees that the proposed structure for the regulation of adult social care law is appropriate.

Question 2-2: Should there be a duty on the Secretary of State and Welsh Ministers to prepare a code of practice to bring together statutory guidance?

It is the view of the authority that one single code of practice would be helpful and be a useful tool for practitioners within adult social care. However it is important to ensure that a clear framework is laid out within the primary legislation.

Question 2-3: Is our process-driven approach to adult social care (a prescribed assessment and eligibility process, with support from prohibitions, a broad list of services, care plans and statutory principles) sufficient to determine the scope of adult social care, or is further definition required?

No further definition is required.

### Part 3 – Statutory Principles

**Provisional Proposal 3-1: We provisionally propose that our future adult social care should include a statement of principles**

Question 3-1: Should there be a principle in our proposed adult social care statute which provides that decision-makers must maximise the choice and control of service users?

It is important that any chosen principles are not too defined to allow for sufficient flexibility. However the City Council recognises the need to ensure that users and carers are at the heart of co-produced assessments and care plans to ensure that individuals have choice and control over their lives.



Question 3-2: Should there be a principle in our proposed adult social care statute based on person-centred planning – or should this be incorporated into other provisions of the legislation?

There should be a broad principle to reflect the need to ensure individuals are at the centre of assessing and designing appropriate packages of support for themselves which is a key element of the personalisation agenda. The specific use of the term Person Centred Planning may not be easily understood by everyone.

Question 3-3: Should there be a principle in our future adult social care statute which provides that a person's needs should be viewed broadly?

The City Council does use a holistic approach to its assessment processes by looking at every aspect of a person's life; however it should be clearly stated within the statute or regulations which elements should be funded by the local authority or other agencies.

Question 3-4: Should there be a principle in our proposed adult social care statute based on the need to remove or reduce future need?

The authority believes that rehabilitation services play a key role in supporting people to retain their independence for as long as possible, and that the need for long term support is reduced.

Question 3-5: Should there be a principle in our proposed adult social care statute based on the concept of independent living?

Yes, the City Council would agree a principle addressing independent living would be appropriate as this is in line with the personalisation agenda for adult social care.

Question 3-6: Should there be a principle in our proposed adult social care statute based on an assumption of home-based living?

The City Council prides itself on supporting people within their own homes wherever possible. However it must not be forgotten that residential care can be the most appropriate way of providing support to some individuals. Any principle therefore must not create too specific a presumption to allow for flexibility and this may therefore not be the best example of an overarching principle to the Act.

Question 3-7: Should there be a principle in our proposed adult social care statute based on dignity in care?

Whilst the authority recognises the upmost importance of providing dignity in care, if there was a prescribed principle within the adult social care statute it could generate legislative confusion as the provision of dignity is a very personal to each individual.

Question 3-8: Should there be a principle in our proposed adult social care statute based on the need to safeguard adults at risk from abuse and neglect?

In the opinion of the City Council safeguarding adults from abuse and neglect is a key priority and should be reflected as an overriding principle within the statute.

Question 3-9: Should any one principle in adult social care be given primacy over all other principles?

Yes, Safeguarding Adults. Care should be given not to dilute the "messages" from any overarching principle by the inclusion of too many general principles.

#### **Part 4 Community Care Assessments**

**Provisional Proposal 4-1: We provisionally propose that there should be a duty to undertake a community care assessment in our future adult social care statute, triggered where a person appears to the local authority to have social care needs that can be met by the provision of community care services (including a direct payment in lieu of services) and where a local authority has a legal power to provide or arrange for the provision of community care services (or a direct payment) to the person.**

Question 4-1: Should our proposed adult social care statute include a right to have an assessment on request?

Not necessarily. The decision on whether to include the right to request an assessment would depend on what form that assessment would take and how resource intensive that would be for local authorities administer.

It is the Council's view that the approach taken within the Mental Health (Care and Treatment) (Scotland) Act 2003 might be appropriate, where a request does not trigger a duty to assess, but a Council can consider a request and if it refuses to carry out an assessment must formally state the reasons why.

**Proposal 4-2: We provisionally propose that the focus of the community care assessment duty should be an assessment of a person's social care needs and the outcomes they wish to achieve, and should not focus on the person's suitability for a particular service.**

Question 4-2: Should our proposed adult social care statute recognise co-produced self-assessments as a lawful form of assessment?

Yes.

Question 4-3: Should our proposed adult social care statute allow for a pure self assessment for certain people or groups of people?

The authority adopts an outcome focused assessment approach through our Promoting Independence Framework, focusing on what the individual wants to achieve rather than the provision of certain services. Therefore it is the view of the Council that the statute should not allow for pure self assessments.

**Provisional Proposal 4-3: We provisionally propose that our future adult social care statute should place a duty on the Secretary of State and Welsh Ministers to make regulations which prescribe details of the assessment process. The statute should specify the areas which these regulations must cover.**

**Provisional Proposal 4-4: We provisionally propose that local authorities should retain the ability to provide temporary services in urgent cases.**

Space for comments related to the provisional proposals on Community Care Assessments (Part 4)

The Council agrees with all four recommendations within this section.

## **Part 5 – Carers Assessments**

**Provisional Proposal 5-1: We provisionally propose that there should be a duty to undertake a carer's assessment in our future adult social care statute.**

**Provisional Proposal 5-2: We provisionally propose that the duty to assess a carer should apply to all carers who are providing or intend to provide care to another person, not just those providing a substantial amount of care on a regular basis.**

**Provisional Proposal 5-3: We provisionally propose that the duty to assess a carer should not be triggered by the carer making a request, but should be triggered where a carer appears to have, or will have upon commencing the**

caring role, needs that could be met either by the provision of carers' services or by the provision of services to the cared-for person.

**Provisional Proposal 5-4:** We provisionally propose that our future adult social care statute provides that the following carers are not excluded from the definition of a carer for the purposes of a carer's assessment: (1) a previously unpaid carer who now receives payment for their services through direct payments received by the cared-for person; (2) a carer who is paid for some but not all of the care they provide; and (3) a carer where the local authority believes the caring relationship is not principally a commercial one.

Question 5-1: Should our proposed adult social care statute encourage a more unified assessment process for carers and cared-for people?

The Council is in agreement that there needs to be a unified assessment process for carers, focussed on the outcomes that they need to enable them to continue in their caring role which would promote and maintain their well being and provide opportunity for a life outside of their caring responsibilities.

Question 5-2: Do you think the carers' assessment duty should be merged with the community care assessment duty in our proposed adult social care statute?

Not necessarily. It is important to recognise that a joint assessment process with the carer and the cared for may not always be appropriate. It may also be appropriate that a Carers Assessment could be carried out by suitably trained professionals outside of the Council with experience of carer issues. For example by Carers Centre staff who have been appropriately trained and competency assessed

Space for comments related to the provisional proposals on Carers Assessments (Part 5)

The proposal 5.2 is recommending that the duty to assess should apply to all carers who are or intending to provide care to another person rather than just those providing a substantial amount of care on a regular basis. Whilst the Council recognises the benefits of providing early support to carers. Clear guidance would be needed over the type and length of assessment that would be required to discharge the duty to assess. Having to assess all current and potential carers would have resource implications for local authorities. The rules relating to ordinary residence would need to be explicit within any guidance.

## **Part 6 – Eligibility for Services**

**Provisional Proposal 6-1:** We provisionally propose that our future adult social care statute should place a duty on local authorities to: (1) determine whether a person’s social care needs are eligible needs, using eligibility criteria; and (2) provide or arrange community care services (including a direct payment in lieu of services) to meet all eligible needs.

**Provisional Proposal 6-2:** We provisionally propose that our future adult social care statute should place a duty on the Secretary of State and Welsh Ministers to make regulations prescribing the risks to independence that will call for the provision of services and the objectives that are to be achieved by the provision of services.

**Provisional Proposal 6-3:** If a right to re-ablement services is introduced, we provisionally propose this should be accommodated in our future adult social care statute.

**Provisional Proposal 6-4:** If the eligibility criteria are to be set at a national level in England and in Wales, we provisionally propose that the eligibility criteria should be prescribed in regulations issued by the Secretary of State and Welsh Ministers respectively.

**Provisional Proposal 6-5:** We provisionally propose that our future adult social care statute should prescribe that the Secretary of State or Welsh Ministers may by regulations require that a local authority must allocate a personal budget in fulfilling the duty to meet all needs that are eligible.

**Provisional Proposal 6-6:** We provisionally propose that there be a mandatory national eligibility framework which local authorities must use to decide whether or not to provide services to carers, and a duty to meet the eligible needs of carers.

Space for comments related to the provisional proposals on Eligibility for Services

Standardising eligibility for carers would enable a clear and consistent carer offer across the country. A right to reablement would enable further moves across social care towards prevention; this would need to align with the prevention and self care agenda within the health service.

Having a mandatory national eligibility framework would require national funding. The Resource Allocation System should be seen as secondary to assessment; any funding allocation has to be based on a final evidence based assessment.

## Part 7 – The National Assistance Act 1948 and Section 2(1) of the Chronically Sick and Disabled Persons Act 1970

**Provisional Proposal 7-1:** We provisionally propose that section 21 of the National Assistance Act 1948 should be repealed and that the Government should ensure a proper scheme for the provision of residential accommodation to those people who might lose their entitlement.

**Provisional Proposal 7-2:** If the Government does not introduce a proper scheme for residential accommodation, we propose that section 21 should be retained but *only* in relation to those people who would otherwise lose their entitlement.

Question 7-1: If section 21 of the National Assistance Act 1948 were repealed, do you think that any groups would lose their entitlement to accommodation under our proposed structure?

No. It is the view of the authority that section 21 of the National Assistance Act 1948 be abolished, as their needs would be met through the proposed legislation.

**Provisional Proposal 7-3:** We provisionally propose that section 2(1) of the Chronically Sick and Disabled Persons Act 1970 should be removed from adult social care legislation.

Space for comments related to the provisional proposals on The National Assistance Act 1948 and the Chronically Sick and Disabled Persons Act 1970 (Part 7)

The council considers that this should only be done if the relevant provisions become redundant due to inclusion within any new and revised legislation.

## Part 8 – Ordinary Residence and Portability

**Provisional Proposal 8-1:** We provisionally propose that the local authority be placed under a *duty* to provide services for people ordinarily resident in their area and have the *power* to provide services for people who are not ordinarily resident in their area. In cases of urgent need of residential accommodation, there should be a duty to provide accommodation to those people not ordinarily resident in the authority's area. Assessments of need and the provision of temporary urgent services should not be limited by the ordinary residence rules.

**Provisional Proposal 8-2:** We provisionally propose that the local authority in which the cared-for person lives should be given responsibility for providing carers' services.

**Provisional Proposal 8-3:** We provisionally propose that our future adult social care statute should enable the portability of services by the introduction of: (1) an enhanced duty to co-operate when users move

areas; and (2) if these policies are implemented, a national portable needs assessment and national eligibility criteria.

Space for comments related to the provisional proposals on Ordinary Residence and Portability

The authority recognises the need co-operate and support individuals in moving to another area and therefore supports the duty to co-operate. The concept of absolute portability of assessments is risky. There needs to be some flexibility in place to ensure that the 'receiving' authority has the opportunity to question the quality and appropriateness of a current assessment, within a given timescale e.g. 12 months. This must be separated from portability of a financial assessment or personal budgets or allowances or allocations of funding, which should not be portable.

## **Part 9 – Scope of Adult Social Care**

**Provisional Proposal 9-1:** We provisionally propose that community care services should be defined by a short and broad list of services.

**Provisional Proposal 9-2:** We provisionally propose that the list of community care services should be set out on the face of our future adult social care statute.

**Provisional Proposal 9-3:** Provisionally, we do not propose that our future adult social care statute should include a central definition of a disabled person or service user.

**Provisional Proposal 9-4:** We provisionally propose that carers' services should remain undefined in our future adult social care statute.

**Provisional Proposal 9-5:** We provisionally propose that our future adult social care statute should allow for regulations to be issued that are capable of defining Shared Lives schemes as being non-residential services in all cases.

**Provisional Proposal 9-6:** We provisionally propose that the existing divide between health and social care service provision should be maintained in our future adult social care statute. This would mean that local authorities would be prohibited from providing residential accommodation, if this is authorised or required to be provided under the NHS Acts 2006; any non-residential services that are required to be provided under the NHS Acts 2006; and nursing care which is required to be provided by a registered nurse.

**Provisional Proposal 9-7:** We provisionally propose that social services authorities should continue to be prohibited from providing ordinary housing and connected services, if these services are authorised or required to be provided by or under other legislation.

Question 9-1: Do you think that community care services should be undefined in our future adult social care statute?

No. However community care services need to have a broad definition to enable creative options to be used to meet people's support requirements, like those described in paragraph 9.15 of the consultation document. Any over definition would limit creativity which is a key element of the personalisation agenda.

Question: 9-2: If Government policy towards asylum seekers continues, what are the likely consequences of retaining the prohibition on adult social care services to those subject to immigration control solely because they are destitute or because of the physical or anticipated physical effects of being destitute?

The likely consequences are that groups of people who may be reasonably be considered to be at risk will be excluded from access to support. This would not be appropriate nor would it be acceptable to a responsible authority exercising its duty of care as normally understood, ensuring that there is no breach of an individual's human rights.

Space for comments related to the provisional proposals on Scope of Adult Social Care (Part 9)

The legislation needs to broadly define social care as it is at present to ensure that there is no radical shift between the responsibility from health to social care and vice versa. It would also assist local authorities if the legislation clearly describes what social care will not provide. This will support local authorities to set limits on what we do.

The Council agrees with proposals 9-1, 9-3, 9-4, 9-6 and 9-7.

## **Part 10 – Delivery of Services**

**Provisional Proposal 10-1: We provisionally propose that our future adult social care statute should place a duty on local authorities to produce a care plan for people who have assessed eligible needs. This would be supported by a duty placed on the Secretary of State and Welsh Ministers to make regulations concerning the form and content that the care plan must take.**

**Provisional Proposal 10-2: We provisionally propose that the choice of directions should be placed in statute law and that the additional payments regulations should be retained in secondary legislation.**



**Provisional Proposal 10-3:** We provisionally propose that the direct payment provisions should be retained in their existing form in our future adult social care statute.

**Provisional Proposal 10-4:** We provisionally propose that our future adult social care statute should include a regulation-making power to enable the Secretary of State or Welsh Ministers to require or authorise local authorities to charge for residential and non-residential services.

**Provisional Proposal 10-5:** We provisionally propose that the existing regulation making power, which enables certain community care services to be provided free of charge, should be retained. All services that must be provided for free should be listed in the regulations.

Question 10-1: Should direct payments be extended to cover residential accommodation?

Yes. On the basis on extending choice and control to individuals, although the emphasis should be supporting people to live in their own homes.

Space for comments related to the provisional proposals on Delivery of Services (Part 10)

The City Council agrees that there should be a duty to produce a support plan for those with eligible needs. However the content of these plans should not be rigidly defined within any regulations, to ensure that focus is on the outcomes people want to achieve to live their life as independently and inclusively as possible.

## **Part 11 – Joint Working**

**Provisional Proposal 11-1:** We provisionally propose that our future adult social care statute should apply to those aged 18 and above, and the Children Act 1989 (and the CSDPA 1970) should apply to those aged 17 and below.

**Provisional Proposal 11-2:** We provisionally propose that local authorities should have a power to assess 16 and 17 year olds under our proposed adult social care statute and young people aged 16 and 17 (and their parents on their behalf) would have a right to request such an assessment.

**Provisional Proposal 11-3:** We provisionally propose that the C(RS)A 1995 and the CDCA 2000 should be retained and amended so that they only apply to young carers.

**Provisional Proposal 11-4:** We provisionally propose that parent carers should continue to be eligible for a carer’s assessment under the C(RS)A 1995 and the CDCA 2000. We also propose that where a young person aged 16 and 17 is being assessed under our proposed adult social care statute, parent carers should also be given a carer’s assessment under this statute.

**Provisional Proposal 11-5:** We provisionally propose that the delayed discharge provisions should be retained in their existing form in our proposed adult social care statute.

**Provisional Proposal 11-6:** We provisionally propose that the choice of accommodation directions should cover residential accommodation provided under section 117 of the Mental Health Act 1983.

**Provisional Proposal 11-7:** We provisionally propose that the additional payments regulations should cover residential accommodation provided under section 117 of the Mental Health Act 1983.

**Provisional Proposal 11-8:** We provisionally propose that the concept of ordinary residence should be extended to apply to after-care services provided under section 117 of the Mental Health Act 1983.

**Provisional Proposal 11-9:** We provisionally propose that section 117 should be amended to clarify that the duty falls on health authorities to provide *health care after-care*, and on social services authorities to provide *social care after-care*. We also propose that section 117 should be amended to clarify that health and social services authorities can commission after-care services.

**Provisional Proposal 11-10:** We provisionally propose that our future adult social care statute should place a general duty on each social services authority to make arrangements to promote co-operation between the local authorities and specified relevant organisations.

**Provisional Proposal 11-11:** We provisionally propose that our future adult social care statute should specify that a local authority can request certain authorities to assist in a number of circumstances, including when an assessment of a service user or carer is taking place and in providing services to a service user or a carer. In such cases, the requested authority would be under a duty to give due consideration to the request.

Question 11-1: We welcome further comments on how the well-being power is being or should be used in practice.

The well being power is being used in a range of ways to support the reduction of health inequalities in Coventry and should continue to be available to local authorities.

Question 11-2: We welcome comments about whether prisons should be included or excluded from adult social care.

Yes they should be included. It is considered that in order to successfully support prisoners and integrate them into broader society, then health and social care provision generally available should be available to those in prison.

Question 11-3: If the section 117 duty should be split between health and social services authorities, should the termination of the duty also be split so that, for example, *social care after-care* ceases when the social services authority is satisfied that the person no longer needs social care after-care; or should both authorities be involved in the decision?

No. The duty should not be split and both authorities should continue to be involved in the decision.

Question 11-4: Should section 117 be recast from a free-standing duty to a gateway provision?

Yes. It will vary from person to person as to their needs when discharged from hospital having been detained under Section 3 etc. under Section 117

It is currently unclear as to when Section 117 ends. Clarity is also required around Section 117 and Continuing Healthcare criteria.

Space for comments related to the provisional proposals on Joint Working (Part 11)

The Council agrees that there should be a duty to co-operate within the new legislation. Within the enhanced duty we would like it specifically stated that the PCT and the local authority co-operate with social care assessments and provide specialist assessments when needed.

## Part 12 – Safeguarding Adults at Risk

**Provisional Proposal 12-1:** We provisionally propose that our future adult social care statute should place a duty on local authorities to make, or cause to be made, such enquiries as it considers necessary where it has reasonable cause to suspect that a person appears to be an *adult at risk* and consider whether there is a need to provide services or take any other action within its powers in order to safeguard that person from harm.

**Provisional Proposal 12-2:** We provisionally propose that the term *vulnerable adult* should be replaced by *adult at risk* for the purposes of the duty to make enquiries.

**Provisional Proposal 12-3:** We provisionally propose that an *adult at risk* should be defined in our statute as anyone with social care needs who is or may be at risk of significant harm.

**Provisional Proposal 12-4:** We provisionally propose that if the Government in England or the Welsh Assembly Government decides to introduce new

compulsory or emergency powers to safeguard adults from abuse and neglect then these will be included in our future adult social care statute.

**Provisional Proposal 12-5:** We provisionally propose that section 47 of the National Assistance Act 1948 should be repealed.

**Provisional Proposal 12-6:** We provisionally propose that a local authority should continue to be under a duty to prevent the loss or damage of a person's property when they have been admitted to hospital or provided with residential accommodation.

**Provisional Proposal 12-7:** We provisionally propose that our future statute should place a duty on each social services authority to establish an adult safeguarding board and should specify the functions and membership of the board, the requirement to share information and a duty to contribute to serious case reviews.

**Provisional Proposal 12-8:** We provisionally propose that the enhanced duty to cooperate, as proposed in Part 11 of this consultation paper, should include specific provision to promote co-operation between the organisations in safeguarding adults from abuse and neglect.

**Provisional Proposal 12-9:** We provisionally propose that *No Secrets* and *In Safe Hands*, or their successors, are linked clearly to a local authority's statutory functions to safeguard adults from abuse and neglect, as set out in our future adult social care statute.

Space for comments related to the provisional proposals on Safeguarding Adults at Risk (Part 12)

The Council would support the proposal of the Law Commission that the Safeguarding of Adults be built into a legislative framework.

### **Part 13 – Strategic Planning**

**Provisional Proposal 13-1:** We provisionally propose that the disabled persons register should be abolished.

**Provisional Proposal 13-2:** Provisionally, we do not propose to include any strategic planning provisions in our future adult social care statute.

**Provisional Proposal 13-3:** We provisionally propose that our future adult social care statute should place a duty on a local social services authority to provide information about services available in the local area.

Space for comments related to the provisional proposals on Strategic Planning (Part 13)

It is the view of the Council that the disabled persons register should be abolished.