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Cabinet  
Council

11 September 2012  
18 September 2012

**Name of Cabinet Member:**

Cabinet Member (Health and Community Services) – Councillor Mrs Lucas

**Director Approving Submission of the report:**

Director of Community Services

**Ward(s) affected:**

All

**Title:**

Consultation Responses - Draft Care and Support Bill, New Safeguarding Power, Future of Independent Living Fund, draft guidance on Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies, and allocation options for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care

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**Is this a key decision?**

No

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**Executive Summary:**

This report responds to five separate Government consultations that relate to adult social care and health as follows:

- Draft Care and Support Bill
- New Safeguarding Power
- Future of the Independent Living Fund
- Draft guidance on Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies
- Allocation option for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care

**Draft Care and Support Bill**

The Department of Health has published the White Paper 'Caring for our future: reforming care and support', July 2012 (Care and Support White Paper). It is accompanied by a draft Care and Support Bill, which will provide the necessary legislation for adult social care reforms. The Bill creates a single framework for adult care and support, replacing more than a dozen pieces of outdated legislation. The Bill has been published for pre-legislative scrutiny and comments will feed directly into the process of parliamentary scrutiny. The Council is responding to the themes of the Bill rather than to each individual clause. This is not considered to be a formal consultation. The Council supports the consolidation of legislation, but considers some areas of the Bill should be strengthened.

### **New Safeguarding Power**

The draft Care and Support Bill includes a proposed duty on local authorities to make enquiries where there is a safeguarding concern. It states that local authorities “must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken. The Department of Health has launched a formal consultation as to whether it is necessary within the Bill to include specific power to support this duty. This could be in the form of a power of entry, enabling a local authority to speak to someone with mental capacity who they think could be at risk of abuse and neglect, in order to ascertain that they are making their decisions freely. The Council is in support of this proposed separate power, but considers it should only be used in exceptional circumstances.

### **Future of the Independent Living Fund**

The Department for Work and Pensions (DWP) is consulting on proposals that the Independent Living Fund (ILF) is devolved from an executive non-departmental public body, under the sponsorship of DWP to local government from April 2015. The original fund was created in 1988 and the aim of ILF monies was to provide a cash payment directly to disabled people, so that they could purchase care directly to support them to live independently in their communities rather than in residential care. The Council supports the transfer of funding to the local authority, but has concerns about the level of funding post 2015. The Council is also concerned about the impact on people who currently receive ILF monies but are not currently receiving support from adult social care and who following assessment, may not meet the eligibility for care and support.

### **Draft Guidance on Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies**

The Department of Health has published draft statutory guidance intended to support health and wellbeing boards and their partners in undertaking and contributing to Joint Strategic Needs Assessments (JSNA) and Joint Health and Wellbeing Strategies (JHWS). It is consulting on the clarity, effectiveness and potential impact the guidance will have on ensuring JSNAs and JHWSs improve the health and wellbeing on the local community and reduce health inequalities for all ages. The Council welcomes the guidance which it believes will support the Health and Wellbeing Board to discharge its duties in this area. However, the Council considers that the guidance could be further strengthened to provide clear drivers to reduce health inequalities.

### **Allocation options for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care**

In April 2013 the statutory duty for Independent Mental Health Advocate Services will transfer from the NHS to local authorities. Funding will come from a Department of Health grant and the Government is consulting on options for the allocation of funding. The Council supports funding allocation based on the adult social care needs formulae.

The Care and Support White Paper contains details of an amendment to social care regulation and charging guidance that means that, from October 2012, Armed Forces' Guaranteed Income Payment (GIP) compensation will be exempted from the means test for social care. The Council supports this change and already disregards the total sum of a veteran's war pensions, including GIP in its policy for charging for non-residential social care. A change to the local policy for residential care will need to be made, however. Funding will be issued as a Department of Health grant and the Government is consulting on its option for distributing the funding.

### **Recommendations:**

Cabinet is requested to recommend that Council approve the consultation response.

Council is requested to approve the consultation response.

### **List of Appendices included:**

Appendix 1 – Draft Care and Support Bill – Consultation Response  
Appendix 2 – New Safeguarding Power – Consultation Response  
Appendix 3 – Future of Independent Living Fund – Consultation Response  
Appendix 4 – Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies – draft guidance – Consultation Response  
Appendix 5 – Allocation options for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care

**Other useful background papers:**

Caring for our future: reforming care and support White Paper  
<http://www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/>

Draft Care and Support Bill website, including full text of the Bill and questions by topic:  
<http://careandsupportbill.dh.gov.uk/home/>

Government response to the Law Commission report on adult social care law  
<http://www.dh.gov.uk/health/2012/07/responsetolawcommission/>

Coventry City Council response to the Law Commission consultation on adult social care law  
Submitted to Council on 24<sup>th</sup> October 2010 and available from Governance Services

Consultation on a new adult safeguarding power  
<http://www.dh.gov.uk/health/2012/07/safeguardingadults/>

The Future of the Independent Living Fund Consultation  
<http://www.dwp.gov.uk/consultations/2012/future-of-ilf.shtml>

Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies – draft guidance  
<http://www.dh.gov.uk/health/2012/07/consultation-jsna/>

Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies explained  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_131702](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_131702)

Fair Society, Healthy Lives. The Marmot Review  
<http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review/fair-society-healthy-lives-full-report>

Consultation on Allocation Options for the Funding for Independent Mental Health Advocate Services and The treatment of Armed Forces' compensation in charging for social care  
<http://www.dh.gov.uk/health/2012/07/funding-allocations-imha/>

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

No - due to the timescales involved

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

No

**Will this report go to Council?**

Yes – Council - 18 September 2012

Report title: **Consultation Responses - Draft Care and Support Bill, New Safeguarding Power, Future of Independent Living Fund, draft guidance on Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies, and allocation options for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care**

## **1. Context (or background)**

1.1 Since May 2010, the Government has published a range of policy documents in relation to adult social care aimed at shaping and affirming the direction for the sector, and addressing the funding arrangements for care and support. In the autumn of 2011 the Government launched an engagement exercise, 'Caring for our future', to inform the Care and Support White Paper.

### **Draft Care and Support Bill**

1.2 The Law Commission consulted on proposals for Adult Social Care Law Reform in 2010 and reported their recommendations in May 2011. The draft Care and Support Bill is based on the key recommendations made by the Law Commission 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.

### **New Safeguarding Power**

1.3 The draft Care and Support Bill includes a proposed duty on local authorities to make enquiries where there is a safeguarding concern. The Government is currently consulting on whether there needs to be a separate power within the Bill to support this duty.

### **Future of Independent Living Fund**

1.4 The ILF funding stream was originally created in 1988 to mitigate the impact of the end of domestic allowances when Supplementary Benefit was replaced with Income Support which included flat rate disability premiums. In 1992 this fund was closed and replaced in 1993 with a new scheme, where people could only be eligible for funding if their local authority contributed towards their care package.

1.5 In June 2010, the Government announced that the ILF would no longer be accepting new applications during the 2010/11 financial year, pending a review of the fund. Following the review of ILF, the Government concluded that having an independent discretionary trust for social care was financially unsustainable, and the decision was taken to close the fund permanently for new applications. The Government committed to undertaking a formal consultation on how existing users would be supported in the future as part of the wider reform of adult social care.

### **Draft Guidance on Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies**

1.6 The Health and Social Care Act 2012 amends the Local Government and Public Involvement in Health Act 2007, to introduce duties and powers for health and wellbeing boards in relation to Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs). The draft statutory guidance has been produced to explain the duties and powers. JSNAs are local assessments of current and future health and social care needs, while JHWSs are strategies for meeting the needs identified in the JSNA.

### **Allocation options for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care**

- 1.7 Under the Health and Social Care Act 2012, four duties will transfer from the NHS and Department of Health to local authorities in April 2013. Funding for Local Healthwatch, Independent Complaints Advocacy Services and PCT Deprivation of Liberty Safeguards was consulted on in summer 2011. The Government is consulting on two options for the allocation of funding for Independent Mental Health Advocate (IMHA) Services, currently commissioned by PCTs. An IMHA is a specialist mental health advocate, who helps qualifying patients understand the legal provisions to which they are subject under the Mental Health 1983 Act, and to support that person's participation in decision-making.
- 1.8 Members of the Armed Forces seriously injured as a result of service receive a Guaranteed Income Payment (GIP). Currently, government guidance states that all but £10 per week of GIP is included in the means test for funding social care. The Care and Support White Paper announces that the Government will amend social care regulations and charging so that armed forces veterans no longer need to use their GIP to fund publicly arranged social care. The Government is consulting on its funding allocation proposal to support this change.

## **2. Options considered and recommended proposal**

### **Draft Care and Support Bill**

- 2.1 The team leading on the Draft Care and Support Bill is seeking pre-legislative comments on the content of the draft Bill. The Bill addresses the Law Commission's recommendation for a new and simplified statute for adult social care. The aim of the Bill is to modernise care and support law so that the system is built around people's needs and what they want to achieve in their lives through a set of statutory principles which embed the promotion of individual well-being.
- 2.2 The Bill will give clear legal entitlements to care and support for both users and carers. This will give carers a right to support for the first time. Everyone receiving support from Adult Social Care will have the right to a personal budget as part of their care and support plan and be able to receive the personal budget in the form of a direct payment. There will also be new duties to ensure that no-one's care and support is interrupted when they move from within one local authority's boundary to another.
- 2.3 The Bill will place duties on local authorities to provide information and advice, prevention services, and shape the market for care and support for their local population. There are also a number of duties placed on local authorities and specified partners to co-operate to support and improve the way organisations work together. One of the duties placed on local authorities will be to promote the integration of health and social care services. There will also be a specific duty of co-operation in relation to adult safeguarding.
- 2.4 The Council supports the consolidation of legislation, but considers some areas of the Bill should be strengthened in particular the clauses relating to local authority responsibilities as follows:
  - The narrow wording of the clause relating to providing information and advice on how to raise concerns about the safety of a vulnerable adult
  - The general duty to co-operate needs to clearly define the specific roles and responsibilities for partner agencies, especially in relation to adult safeguarding.
  - The duty to preventing needs for care and support would require the local authority to identify adults within the city with needs for care and support which are not being met. This clause is considered to be too onerous and unworkable for a local authority to meet this requirement.
  - The well being principle needs to be strengthened to reinforce that delay in assessing or meeting need could hinder an individual's well being.

- 2.5 The Bill does not address the funding of Care and Support. Although the Council acknowledges that the task of funding the reforms is not complete there is a risk that the gap between expectation and reality will widen as funding solutions are deferred.

#### **New Safeguarding Power**

- 2.6 There will be a new statutory framework for adult safeguarding, setting out the responsibilities for local authorities and their partners, and creating a statutory requirement for Adult Safeguarding Boards to operate in every area.
- 2.7 The draft Care and Support Bill includes a proposed duty on local authorities to make enquiries where there is a safeguarding concern. It states that local authorities "must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken". A separate consultation is being undertaken by Government to seek views on whether or not there should be a new power to support this duty.
- 2.8 The Council is in support of the proposed power. The Council believes that the proposed power is important and necessary but should only be used in exceptional circumstances. The circumstances in which the power would be needed should be rare, but in cases where the power needs to be utilised it might reduce the harm caused to an adult at risk.

#### **Future of Independent Living Fund**

- 2.9 The Government is also consulting on the proposal that current Independent Living Fund (ILF) monies should be devolved from an executive non-departmental public body, under the sponsorship of DWP to local government from April 2015. Through the consultation the Government is seeking views on what the likely impact of this change would be for the different groups that receive ILF monies and how these could be mitigated as part of the transfer of responsibility to local authorities.
- 2.10 Since the inception of ILF in 1998 the fund has changed its focus and eligibility criteria. Group 1 users are individuals that received funding between 1988 and 1992. When a new fund was created in 1993, individuals receiving adult social care support became eligible to apply for ILF monies. These individuals are referred to as Group 2 users within the consultation document.
- 2.11 The Council agrees that ILF monies should transfer to local government from April 2015 given that the majority of individuals receiving ILF funding are already within the mainstream care and support system. The Council does however have concerns about impact on group 1 users who may not meet the eligibility criteria for adult social care support post 2015, and how the expectations of this group are managed as part of the transfer process.
- 2.12 Under the proposals the local authority would be required to assess all individuals in receipt of ILF funding. The Government will need to ensure that local authorities are given enough time to assess individuals not currently known to adult social care, and time to reassess those already receiving care and support from the local authority, as this will create additional pressure on the assessment and case management teams within Adult Social Care.

#### **Draft Guidance on Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies**

- 2.13 Local authorities and clinical commissioning groups (CCGs) have an equal and joint duty to prepare JSNAs and JHWSs, through the health and wellbeing board. The draft statutory guidance has been developed to explain this duty, and to outline how the Department of Health expects partners in the local health and social care economy to use JSNAs and

JHWSs to assess, plan, deliver and commission services to best meet local need and address the wider determinants that impact on health and wellbeing.

- 2.14 Overall, the Council considers that the draft guidance is adequate and sufficient, while providing the local flexibility needed for health and wellbeing boards to execute their duties appropriately. The draft guidance states that CCGs, the NHS Commissioning Board (NHS CB), and local authorities' plans for commissioning services must be informed by JSNAs and JHWSs and where they are not, must explain why. CCGs are required to consult with health and wellbeing boards about their commissioning plans, while local authorities and the NHS CB are not, but it is good practice for them to do so. While health and wellbeing boards can 'raise their concerns' where plans do not take proper account of the JSNA or JHWS, the Council considers that clearer and stronger mechanisms for health and wellbeing boards to address this would be beneficial.
- 2.15 The Council welcomes that health and wellbeing boards can decide locally to manage their own JSNA and JHWS timetables, where it can be joined up with local commissioning cycles.
- 2.16 The Council considers that the Health and Well-Being board should be able to take a broad view of commissioning and hold stakeholders to account for reducing the health inequalities that exist in the City. The guidance enables a much narrower approach and should be strengthened in the following areas:
- The guidance focusses on the Clinical Commissioning Groups and does not pay enough regard to the accountabilities of other commissioners.
  - The Coventry Health and Well-Being Board has adopted the policy objectives from the Marmot Review in order to make a difference to the Health and Well-Being of the population across the life course. These themes form the basis of the Coventry JSNA and JHWSs. However, the guidance would enable a much narrower approach to be taken and, as a result, opportunities to effect system change to be lost. The Council therefore urges the Department of Health to require JSNAs and JHWSs to be more ambitious.
  - The guidance should provide clear accountabilities to Health and Well-Being boards to ensure that Clinical Commissioning Groups, the NHS Commissioning Board and other commissioners pay close attention to the needs of local communities identified through JSNAs and JHWSs and that they commission services accordingly.
  - It would be beneficial for the guidance to explicitly reference the importance of working with children, young people and family services in order to ensure 'early intervention' approaches underpin the strategy.

**Allocation options for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care**

- 2.17 From April 2013, local authorities will take over responsibility for commissioning IMHA services for its population. Local authorities will not be obliged to provide these services directly and there will be no change to the arrangements for commissioning more general mental health advocacy services. The Department of Health currently provides funding for IMHA services through PCTs' general allocations. The amounts transferred from the NHS to local authorities is £8.38 million, which is the amount allocated in 2009/10 plus inflation uplifts.
- 2.18 The Department of Health (DH) will allocate funding to local authorities for IMHA through a grant. There are two proposed options for allocating the funding. The first option is based on the size of a local authority's adult population and the second is based on a calculation of the relative need for state supported social care. It is recognised that both measures are imperfect; neither option predicts mental health needs, or IMHA needs, for instance. The

DH expresses a preference for the second option, stating that the measure is likely to be a better reflection of local service need than simply the size of the local population.

- 2.19 The Council supports this view and selects funding option 2 as its preferred option. This would mean a grant allocation to the Council of £54,465. NHS Coventry currently commissions IMHA services for the current year 1 April 2012 – 31 March 2013. It is considered that the allocation would be sufficient to continue to deliver an IMHA service.
- 2.20 In recognition of the exceptional contribution made by members of the Armed Forces injured as a result of service, veterans will no longer need to use their GIP to pay for publicly arranged social care. Existing guidance states that £10 per week should be disregarded when assessing income and contributions to social care. The Council already has an established local policy whereby it chooses to disregard 100% of veteran and war widow pensions (including GIP) when assessing a person's financial contribution to their non-residential social care support. A policy change will need to be made to the local policy for residential social care, where currently the standard £10 disregard is applied. Therefore, this national change will formalise and extend an already established local arrangement, which has been supporting our injured veterans for a number of years.
- 2.21 Due to the timescales involved, the Council's response to this consultation will be submitted after the closing date. However, the Council will be submitting its response to the Department of Health as a mechanism for registering its full support for this amendment to social care charging for Armed Forces' veterans injured as a result of service.
- 2.22 The DH states that the disregard will mean an additional cost for local authorities because of a reduced ability to raise income from user fees. The DH estimates that the burden will be £0.5 million in 2012/13 (change comes into effect from October 2012), £1.4m in 2013/14 and £2m in 2014/18. This funding will be included in a DH grant. A range of allocation options have been considered and it is proposed that funding is allocated in line with the younger adult social care relative needs formula (RNF). This formula predicts need for local authority supported care for people aged 18 to 64. For Coventry, this means a grant allocation of £3,533.

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

- 3.1 These consultation responses are from Coventry City Council and therefore wider consultation has not been undertaken.

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

- 4.1 Consultation responses are required by:
- Draft Care and Support Bill - 19 October 2012
  - New Safeguarding Power - 12 October 2012
  - Future of the Independent Living Fund - 10 October 2012
  - Draft guidance for JSNAs and JHWSs - 28 September 2012
  - Allocation options for the funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care - 7 September 2012

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

- 5.1 Financial implications  
There are no direct financial implications arising from this report. The outcomes of the consultations may have an impact as follows:

#### **Draft Care and Support Bill**



The new right for carers to receive support may lead to additional costs to local authorities depending upon the levels of support currently offered.

### **Future of Independent Living Fund**

If the Independent Living Fund is transferred to Local Authorities this may impact on resources required to conduct relevant assessments and reviews, as well as increasing City Council resources and also costs in relation to packages of care currently funded by ILF, independently of the City Council.

### **Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategies**

There are no financial implications arising from this draft guidance.

### **Funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation**

The two allocation methodologies proposed for IMHA would result in additional resources of either £49k or £54k to the local authority to support Mental Health Advocacy. It is considered that either allocation would be sufficient to continue to deliver an IMHA service. As data is unavailable for the treatment of Armed Forces compensation it is not possible to identify whether the new burden funding of £3,533 would be sufficient to cover any reduction in income received based on this proposal.

## **5.2 Legal implications**

The proposed draft Care and Support Bill is described as representing 'an historic reform of care and support legislation' as it consolidates numerous provisions from many acts into a single framework. The Bill itself, if it becomes law, will of course have many implications for the City Council and the way in which it provides services to those in need of social care support and the funding of those arrangements. The pre-legislative scrutiny in respect of the draft Bill and response in the other consultation processes do not, however, have any specific implications themselves. This is nevertheless an important opportunity for the Council to comment on the current draft proposals.

## **6. Other implications**

### **6.1 How will this contribute to achievement of the Council's key objectives/corporate priorities (corporate plan/scorecard)/organisational blueprint/Local Area Agreement (or Coventry Sustainable Community Strategy)?**

These proposals support the continued provision of a range of statutory services to the people of Coventry. The draft Care and Support Bill will replace an outdated and complex legal framework and the new legislation will support the national and local policy direction for adult social care. The New Safeguarding Power will ensure the key corporate priority of adult safeguarding is enshrined in law.

The guidance on Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies will help to ensure their effectiveness and therefore support the aims of the Sustainable Communities Strategy to help Coventry citizens live longer and healthier lives.

The transfer from the PCT to the local authority will ensure continued provision of IMHA services for this vulnerable group.

Armed Forces veterans, injured in service who live in the city and in receipt of GIP, already benefit from their GIP income being disregarded when assessed for any financial contribution to their non-residential social care support, and will continue to do so. This

policy will now be extended to those in residential care. This will further support the Council's objective of protecting the city's most vulnerable residents.

## **6.2 How is risk being managed?**

Any risks resulting from these proposals will be managed through the Council's risk management process.

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

The Care and Support White Paper and accompanying legal framework will have a significant impact on the future direction for adult social care. The proposed Bill will impact on service delivery for community care assessments and carer's assessments through possible changes to entitlements to care and support for both users and carers and the portability of assessments between geographical locations. The proposed transfer of ILF monies will again create additional pressures for assessment and case management teams which will need to be appropriately managed by the service.

Statutory guidance for Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies will ensure clarity around duties, roles and responsibilities and provide the local flexibility needed to best fit local needs and commissioning cycles.

The local authority will become responsible for the commissioning of an IMHA service.

The Council already disregards 100% of Armed Forces compensation, including Guaranteed Income Payment, as part of its charging policy for non-residential adult social care. The policy for residential care will now need to be changed to align with this. The impact of this change on the organisation is likely to be minimal as the number of people it will affect will be small.

## **6.4 Equalities/EIA**

Equality considerations and impact assessments are included within the Government proposals. A separate Equality and Consultation analysis is not required.

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

Not applicable.

## **6.6 Implications for partner organisations?**

The draft Care and Support Bill places two duties of co-operation on the Council and partners. 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 at risk from abuse and neglect. The Bill also makes Adult Safeguarding Boards a statutory requirement.

Statutory guidance for Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies will ensure there is clarity regarding roles and responsibilities of partners, particularly clinical commissioning groups and the NHS Commissioning Board, in

contributing to, and taking proper account of, the identified health needs and priorities for the local community.

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Members: Councillor Lucas	Cabinet Member	Health and Community Services	14.08.12	14.08.12
Members: Councillor O'Boyle	Chair	Health and Well Being Board	14.08.12	15.08.12

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## Draft Care and Support Bill Consultation

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### 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 are:

1. Promoting individual well being
2. Providing Information and Advice
3. Promoting diversity and quality in the provision of services
4. Co-operating generally
5. Co-operating in specific cases
6. Promoting integration of care and support with health services
7. Preventing needs for care and support

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.

The Council wishes to make a number of comments relating to specific clauses outlined above.

#### Providing information and advice

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. The Council is of the opinion that the current wording of the clause is too narrow. Citizens may have concerns regarding a vulnerable adult whereby they wish to notify the Council, 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 the Council is in agreement with a duty to co-operate with partner agencies, the current wording of clauses 4 and 5 needs to be clarified and strengthened. The general duty to co-operate needs to clearly define the specific roles and responsibilities for partner agencies, especially in relation to adult safeguarding. The Council also considers our 3<sup>rd</sup> Sector organisations as partner agencies and therefore suggests that these organisations are also included in the list of relevant partners in clause 4.5.

Additionally the Council 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.

#### Preventing need for care and support

The Council is committed to the provision of early intervention services due reduce dependency for long term support but considers the duties outlined in clause 7 and in particular 7(2) (b) to be too onerous and unworkable for a local authority.

#### **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?**

The Council is in agreement with 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.

#### **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?**

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

#### **Question 4 – The well being principle and care and support planning**

**Does the new well-being principle and the approach to needs and outcomes through care and support planning, create the right focus on the person in the law?**

The Council agrees that the well-being principle does put the individual at the centre of care and support planning. The Council believes the well being principle needs to be strengthened to reinforce that delay in assessing or meeting need could hinder an individual's well being. 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 "well being" principles.

#### **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 well-being principle that the adult is best placed to make decisions and judge their well being. The concept of "genuine intention" is also ambiguous and causes the potential for increased litigation in this area.

## Consultation on New Safeguarding Power

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### Consultation Questions and Responses

**Question 1: Do you agree that there is a gap in the proposed legislative framework for people with mental capacity, which this power would address?**

Yes. Although the gap is small, the repercussions of it could be significant.

**Question 2: What are your views on the proposal that there should be a new power of entry, enabling the local authority to speak to someone with mental capacity who they think could be at risk of abuse and neglect, if a third party prevents them from doing so?**

This would be an important and necessary power. Controlling the life of a person with capacity in this way is possibly an abuse in itself in the sense that it is a denial of an individual's human rights to privacy, to association and to free expression, as well as a potential deprivation of liberty.

**Question 3: (for care and support professionals working in adult safeguarding): How many times in the last 12 months, have you been aware of a situation where, had this power existed, it would have been appropriate to use it? What were the circumstances?**

Once. The circumstances involved a dispute between two parts of a family living in different local authorities. The person was transferred back and forth between different family members as a result of a series of disputes over the person's finances. The ability to intervene when the person was living in this authority would have stopped this unnecessary disruption to their life and enabled a formal investigation into the concerns regarding financial abuse to take place at a much earlier stage.

**Question 4: What safeguards would we need to ensure local authorities use such a power effectively and appropriately?**

For example, would the following provide adequate safeguards?

A warrant would be applied for from a Circuit Judge (e.g. a nominated judge of the Court of Protection), the local authority would present the court with evidence of the need for the warrant, the local authority would ensure that there is a process by which the occupiers of the premises understand that they can complain about the way in which a power has been used, the local authority would have to verbally inform the affected persons how they might access that process.

Agree with the example given. In addition, perhaps a visit should be made jointly with the police

**Question 5: Do you have any other comments?**

It is considered that this should be a power used very sparingly. The circumstances in which it might be used are few, but where they exist, the use of such a power might reduce the harm caused to an adult at risk. Data on the use of the power should be collected through the Abuse of Vulnerable Adults (AVA) return so that comparisons can be done on its use across authorities.



## Future of Independent Living Fund (ILF) Consultation

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### Consultation Questions and Responses

**Question 1: Do you agree with the Government proposal that the care and support needs of current ILF users should be met within the mainstream care and support system, with funding devolved to local government in England and the devolved administrations in Scotland and Wales? This would mean closure of ILF in 2015.**

The Council agrees with devolving the Independent Living Fund monies to local authorities. It is critical that a planned and timely approach is taken during the transfer process. Local authorities will need time to fully understand and plan for the possible implications of the transfer both for those people already known to adult social care and those identified within group 1 without eligible care and support needs under the Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care.

**Question 2: What are the key funding challenges that ILF users would face moving from joint ILF/Local Authority to sole Local Authority Funding of their care and support needs? How can any impacts be mitigated?**

A quick decision on the level of funding for existing packages of care will be required. However, it is important to acknowledge that the funding challenges will be different for individuals in group 1 (pre 93) and group 2 (post 93). There will be individuals within group 1 who potentially have no ongoing care and support needs that could be met by the Council because for example, they do not meet the Council's eligibility criteria. Therefore, clarification is needed on what requirements will be placed on local authorities to support these individuals, so that expectations of this group can be managed appropriately by the local authority.

**Question 3: What Impact would the closure of the ILF have on Local Authorities and the provision of care and support services more widely? How can any impacts be mitigated?**

There will be an expectation placed on the local authority to assess or reassess all users of ILF, including individuals who are currently not in receipt of services from adult social care. Local authorities need to be given enough time to undertake the required assessment or re-assessments so that capacity with assessment and case management teams can be appropriately managed to undertake this task.

The eligibility criteria for meeting care and support needs in adult social care, as mentioned above in Coventry is set at critical and substantial under the Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care - guidance on eligibility criteria for adult social care. criteria. Following assessment some individuals may not qualify for adult social care support, therefore Council responsibilities to the wider group outside of adult social care need to be clarified so that expectations of ILF users can be managed.

For those people who already receive funding from adult social care, clarification will be needed on what expectations will be placed on the local authority in relation to this group. For example, will local authorities be required to commission services or will the expectation be that funding is transferred to individuals as a direct payment.

**Question 4: What are the specific challenges in relation to Group 1 users? How can the Government ensure this group are able to access the full range of Local Authority care and support services for which they are eligible?**

As outlined above the key challenges in relation to group 1 users would be managing expectations if after an assessment individuals do not meet the eligibility criteria for adult social care and then understanding the impact of this on individual circumstances.

**Question 5: How can DWP, the ILF and Local Authorities best continue to work with ILF users between now and 2015? How can the ILF best work with individual Local Authorities if the decision to close the ILF is taken?**

As outlined above, it is critical that the Councils know details of the level of funding transferring to individual local authorities and any stipulations on how this funding should be deployed, as soon as possible, to enable local authorities to plan accordingly. Similarly, information on all ILF users within each local authority area needs to be shared at an early stage to enable re-assessments and reviews to be undertaken. As part of this process, it would be advantageous that local authorities have information on how ILF have previously undertaken assessments for ILF monies for both group 1 and 2 individuals, as this will enable social workers to understand and explain the differences in assessment processes and criteria levels.

## Consultation on draft guidance for Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies

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### Consultation Questions and Responses

**Question 1: Does the guidance translate the legal duties in a way which is clear in terms of enabling an understanding of what health and wellbeing boards, local authorities and CCGs *must* do in relation to JSNAs and JHWSs?**

The guidance provides the flexibility for health and wellbeing boards to operate successfully. The Council considers that the guidance could be strengthened by providing clear drivers to ensure that Clinical Commissioning Groups and the NHS Commissioning Board pay close attention to the needs of local communities identified through JSNAs and JHWSs and that they commission services accordingly.

It would be beneficial for the guidance to explicitly reference the importance of working with children, young people and family services in order to ensure 'early intervention' approaches underpin the strategy.

Health and Well-Being Boards are uniquely placed to deliver improvements in health through bringing together a whole range of stakeholders. The guidance focusses on the Clinical Commissioning Groups and does not pay enough regard to the contribution of broader health determinants such as housing and community safety.

The Coventry Health and Well-Being Board has adopted the policy objectives from the Marmot Review in order to make a difference to the Health and Well-Being of the population across the life course. These themes form the basis of the Coventry JSNA and JHWSs. However, the guidance would enable a much narrower approach to be taken and, as a result, opportunities to effect system change to be lost. The Council therefore urges the Department of Health to require JSNAs and JHWSs to be more ambitious.

**Question 2: It is the Department of Health's (DH's) view that health and wellbeing boards should be able to decide their own timing cycles for JSNAs and JHWSs in line with their local circumstances rather than guidance being given on this; and this view was supported during the structured engagement process. Does the guidance support this?**

Largely, although experience of this year's practice identifies that the NHS Regional Office/Regional Director of Public Health impose timetables on the NHS for completing the JSNA which is not helpful and detracts from this stated aim. Timing cycles should be agreed locally and aligned with the annual commissioning cycle.

**Question 3: Is the guidance likely to support health and wellbeing boards in relation to the content of their JSNAs and JHWSs?**

Yes, it is reasonably enabling and not overly prescriptive in relation to the content of JSNAs and JHWSs. Effective health and wellbeing boards will have the right partners as members to ensure that the appropriate information, data and collective insight is included. Local solutions are likely to be more successful than those that may be nationally prescribed.

**Question 4: Does the guidance support the principle of joined-up working between health and wellbeing board members and also between health and wellbeing boards and wider local partners in a way that is flexible and suits local circumstances?**

Yes. The health and wellbeing board is joined up and the practical implementation is multi-agency. However, it is not clear from the guidance what 'powers' boards have if members do not co-operate.

**Question 5: The DH is working with partners to develop wider resources to support health and wellbeing boards on specific issues in JSNAs and JHWSs, and equality is one theme being explored.**

**a) In your view, have past JSNAs demonstrated that equality duties have been met?**

Past JSNAs have been adequate in relation to previously required equality duties. Future JSNAs will meet the requirements of current legislation. The JSNA and JHWS will be used by the Council as a tool to identify and improve access and outcomes for vulnerable and disadvantaged groups.

**b) How do you think the new duties and powers, and this guidance will support health and wellbeing board members and commissioners to prevent the disadvantage of groups with protected characteristics, and perhaps other groups identified as in vulnerable circumstances in your area?**

Adequately, although the responsibility and duty is a local one, not regional or national, and it will therefore be for local authorities and their partners to meet the requirements, and subsequently demonstrate that the duties have been met, regardless of the guidance.

**Question 6: a) In your view, have JSNAs in the past contributed to developing an understanding of health inequalities across the local area and in particular the needs of people in vulnerable circumstances and excluded groups?**

Yes. In the past JSNAs have been a useful tool for highlighting health inequalities and for identifying the practical steps health and social care economies can take to reduce them. The creation of JHWSs and the requirement for commissioners to respond to health inequalities identified in JSNAs will be a useful development.

**b) What supportive materials would help health and wellbeing boards to identify and understand health inequalities?**

Nothing further. Detailed information is available from regional and local observatories, national statistic sources and local information and surveys.

**Question 7: It is the DH's view that health and wellbeing boards should make use of a wide range of sources and types of evidence for JSNAs and they should be able to determine the best sources to use according to local circumstances. This view was supported during the structured engagement process. What supportive materials would help health and wellbeing boards to make the best use of a wide range of information and evidence to reach a view on local needs and assets, and to formulate strategies to address those needs?**

Nothing further. See response to question 6b.

**Question 8: What do you think NHS and social care commissioners are going to do differently in light of the new duties and powers, as a result of this guidance? – what do you think the impact of this guidance will be on behaviour of local partners?**

The guidance will focus health and wellbeing boards, local authorities and NHS partners on working together to meet the needs of our communities and improve outcomes; a public demonstration and engagement element will be an important part of this. Locally, it is considered the involvement of the voluntary sector is important in the operation of the Health and Wellbeing Board and it will remain so.

There are very limited powers contained in the guidance to compel NHS and social care commissioners to operate differently.

**Question 9: How do you think your local community will benefit from the work of health and wellbeing boards in undertaking JSNAs and JHWSs? – what do you think the impact of this guidance will be on the outcomes for local communities?**

JSNAs and JHWSs will support improved commissioning through a co-ordinated planning approach for agreed needs and priorities that are meaningful to the local population. This will give the best possible chance for improved outcomes across the community.

**Consultation on allocation options for the funding for Independent Mental Health Advocate Services and the Treatment of Armed Forces' compensation in charging for social care**

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## Consultation Questions and Responses

**Question IMHA1: Do you prefer: Option IMHA1: population based; or Option IMHA2: Relative Needs Formulae?**

The Council prefers option IMHA2, based on the relative needs formulae.

**Question IMHA2: Why do you prefer the option selected above? Do you have any comments about the options or alternative suggestions for allocating the funding?**

It is considered that the relative needs formula is the most appropriate of the two measures to reflect local service need.

No further suggestions for allocation of funding.

**Question IMHA3: Do you have any evidence on the equality impact of any of the options, i.e. their impact on groups protected by equality legislation?**

No

**Question GIPS1: Do you agree with the proposal to allocate funding for the armed forces GIP compensation disregard using the younger adult social care RNF formulae?**

Yes. The Council already operates this policy and disregards 100% of GIP compensation when assessing a person's financial contribution to their non-residential social care support.

**Question GIPS2: Do you have any comments about the proposal or alternative suggestions for allocating the grant?**

The Council supports this proposal.

**Question GIPS3: Do you have any evidence on the equality impact of any of the options, i.e. their impact on groups protected by equality legislation.**

No