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By email: [adultsocialcare@lawcommission.gsi.gov.uk](mailto:adultsocialcare@lawcommission.gsi.gov.uk)

Dear Amanda,

### Law Commission consultation: Adult Social Care

Thank you for the opportunity to make a short response to the Law Commission's consultation on Adult Social Care.

Making Every Adult Matter (MEAM) is a coalition of four national membership organisations focused on policy and practice change for adults with multiple needs and exclusions, representing over 1600 frontline agencies.

MEAM defines individuals with multiple needs and exclusions as those who experience a combination of problems at the same time (homelessness, criminal justice, substance misuse, mental ill health); are poorly and ineffectively served by statutory and voluntary services that deal with one issue at a time; and who tend to live chaotic, expensive lives as a result. This is a small group of individuals, around 60,000 nationally, but they are present in all our communities.

An uncoordinated approach from local services and national policy means that this group rely heavily on emergency and criminal justice responses rather than focused service interventions that can help change lives. Getting it right would have benefits for the individuals concerned but also for communities, national and local budgets and a wide range of departmental objectives. MEAM is therefore calling on the government to publish a multiple needs and exclusions green paper early in this new parliament to set out a shared vision and approach.

### Our response

It would be very beneficial for a future Adult Social Care Statute to also take account of this group. Adult social care should often play a part in supporting individuals with multiple needs and exclusions, but there are sadly many examples of when it does not fulfil this role. This is usually because an individual:

- Has no one need that meets eligibility thresholds despite their multiple needs being a serious cause for concern
- Has eligible needs that are overlooked because the individual does not fit neatly into one social care category and is therefore bounced between teams with no-one willing to take overall responsibility (we are aware for example of continuing substance misuse being seen as a reason for social care teams not to engage)
- Is found in need of social care services but does not 'fit' traditional provision and is therefore excluded, evicted or self-excludes. The known lack of a



suitable service response may also affect staff or an area's willingness to conduct an assessment in the first place.

We are pleased that a number of the proposals being made in the consultation document would help a future Adult Social Care Statute to change this situation. We are happy to be able to offer some brief thoughts for the Commission's consideration. We comment in particular on:

- The overall approach
- Duties to cooperate (part 11)
- Adult Safeguarding (part 12)
- Community Care Assessments (part 4)
- Eligibility for services (part 6); and
- The National Assistance Act (part 7)

We have purposefully kept our comments concise. We would be happy to discuss any of the points made in more detail if this would be helpful as the Law Commission's work develops.

### **The overall approach**

We agree that the law governing social care is complex and that it would benefit from simplification into one Adult Social Care Statute. This simplification itself may go some way to ensuring that people with multiple needs and exclusions receive the services to which they are entitled. Further clarifications to the legislation in specific areas as outlined below will also help.

### **Duties to cooperate (part 11)**

Cooperation between agencies and a coordinated response is vital to helping people with multiple needs and exclusions move forward in their lives. We agree that the law is only one factor in ensuring greater cooperation but believe that clear duties to cooperate in the new Social Care Statute would be helpful. In particular we:

- Support proposal 11-10 that the future Statute should place a general duty on social services authorities to make arrangements to promote cooperation between it and relevant organisations. We would extend this to ensure that other agencies also have a duty to promote cooperation and to engage in such work
- Support proposal 11-11 that the Statute include an 'enhanced' duty to cooperate in specified circumstances such as assessment, the provision of services or adult safeguarding. We would urge that this duty to cooperate apply not only to other agencies cooperating at the request of the social services authority but to the social services authority cooperating with other agencies at their request too (we often hear of situations where social services authorities do not engage fully with other agencies)

We agree with the general comments that a duty to cooperate should include some form of duty on parties to respond to the requesting authority rather than simply a duty for one or more authorities to request cooperation from others.

## Adult safeguarding (part 12)

At least one council that we are aware of is using its Adult Safeguarding function to support some of the most chaotic individuals in their area. This is commendable work, but there are a number of barriers that can hamper such progress:

- (a) The current safeguarding guidance refers closely to people who *are or may be in need of community care services*<sup>1</sup> meaning that someone not in receipt of care services (whether correctly or not and regardless of the level at which FACS is set locally) will find it difficult to be safeguarded. This is particularly problematic given that many people with multiple needs and exclusions will have social care needs but not be in receipt of care services for the reasons outlined above
- (b) Not every part of a local authority recognises the need to support individuals via safeguarding and the cooperation hinted at in No Secrets often does not occur<sup>2</sup>

We therefore support changes to the law that would widen the range of people eligible for adult safeguarding. In particular we:

- Support proposal 12-1 that a future Adult Social Care Statute should place a duty on local authorities to make enquiries where they have 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 their powers in order to safeguard that person from harm.
- Support proposal 12-2 that the term ‘vulnerable adult’ in the legislation should be replaced with the broader ‘adult at risk’; and
- Support (with amendments) proposal 12-3 that an ‘adult at risk’ should be defined in the Statute as ‘anyone with social care needs who is or may be at risk of significant harm.’ The boxed text shows our proposed amendments to the definition outlined in paragraph 12.41

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<sup>1</sup> A ‘vulnerable adult’ is currently defined in statutory guidance No Secrets as a person aged 18 years or older who: “is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation.” (consultation document, 12.24)

<sup>2</sup> One example is cooperation between housing and social services and the difficulties caused by terminology: “Housing staff in local authority housing departments reported lack of clarity in policy and management around vulnerability and safeguarding. The term vulnerability had a specific meaning in relation to housing law and had another meaning in relation to ‘duty of care’. Whether or not individuals were ‘statutorily vulnerable’ affected their housing rights and housing options – but how did it fit with their right to safety and safeguarding? Housing professionals acknowledged substantial confusion and reported that negotiating these issues was getting in the way of safeguarding: ‘We spend a lot of time working out and arguing whether someone is statutorily vulnerable rather than focusing on what measures could be put in place to enable a person to keep themselves safe’ ” *Dept for Health (2009) Safeguarding Adults: Report on the consultation on the review of ‘No Secrets,’ paragraph 6.3*

An adult at risk could be defined as:

- (1) a person aged 18 or over and who:
- (a) is eligible for or receives any adult social care service (including carers' services) provided or arranged by a local authority; or
  - (b) receives direct payments in lieu of adult social care services; or
  - (c) funds their own care and has social care needs; or
  - (d) otherwise has, or reasonably appears to have, social care needs that are low, moderate, substantial or critical regardless of whether they are currently receiving care services or have been found ineligible for care services in their local area; or
  - (e) falls within any other categories prescribed by the Secretary of State or Welsh Ministers; and
- (2) is at risk, or likely to be at risk, of significant harm, where harm is defined as ill-treatment or the impairment of physical or psychological health, wellbeing or development or unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion).

In addition we:

- Support proposal 12-7 to place a statutory duty on each social service authority to establish an adult safeguarding board
- Support proposal 12-8 (linked to proposal 11-11, above) that would require relevant organisations to cooperate around safeguarding adults from abuse and neglect. As stated in our comments around proposal 11-11 this duty should apply not only to other agencies cooperating at the request of the social services authority but to the social services authority cooperating with other agencies at their request too.

These proposals, with the suggested amendments, would allow councils to make far greater use of the safeguarding function as one avenue in supporting the most chaotic and vulnerable people in their community.

#### **Community Care Assessments (part 4)**

While our main focus of this response is on the cooperation and safeguarding issues already covered we also wish to comment briefly on two other areas, the first being community care assessments. As mentioned above there are many examples of individuals not getting community care assessments especially when:

- The individual has no one need that meets eligibility thresholds despite their multiple needs being a serious cause for concern
- The individual has eligible needs that are overlooked because the individual does not fit neatly into one social care category and is therefore bounced between teams with no-one willing to take overall responsibility (we are aware for example of continuing substance misuse being seen as a reason for social care teams not to engage)
- The known lack of a suitable service response affects staff or an area's willingness to conduct an assessment.

Everyone, regardless of their circumstances, should have easy access to a CCA if there is any reasonable likelihood of need, and the process should be needs rather than service led. We therefore:

- Suggest that the reference to services should be removed from proposal 4-1 so that the part that currently reads ‘there should be a duty to undertake a community care assessment 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’ should read simply ‘there should be a duty to undertake a community care assessment triggered where a person appears to the local authority to have social care needs.’ This would support the assertion made in paragraph 4.3 that ‘the authority cannot refuse to assess on the basis that it does not have in place arrangements to provide services which the individual is likely to need, or that it does not have the resources to meet a need’ and remove the temptation highlighted by the Commission for Social Care Inspection and outlined in paragraph 4.29 for professionals to ‘equate needs with certain services’ rather than focus on needs alone.
- Agree with proposal 4-2 that ‘the focus of the CCA 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’
- Answer question 4-1 by stating that we believe that a future Adult Social Care Statute should include the right to have an assessment on request so that no individual, or group of individuals, can be refused an assessment
- Agree with proposal 4-4 that local authorities should retain the ability to provide temporary social care services in urgent cases

#### **Eligibility for services (part 6)**

Once an assessment has been undertaken the authority must consider whether an individual is eligible for services. Our experience suggests that many individuals with multiple needs and exclusions who are likely to be eligible do not get assessed and so do not reach this stage. However, if they do it is important that the process for assessing eligibility is clear and works for them. We therefore:

- Agree that the FACS eligibility criteria are in practice the way that most authorities determine access to social care services regardless of the overlapping powers/duties that still exist in the underlying social care legislation such as s21 of the National Assistance Act (as outlined in the consultation paper)
- Suggest that in relation to proposal 6-1 we can see (with caveats) potential value in simplifying access to community care services as outlined in paragraph 6.17 so that ‘eligibility criteria, set by a local authority in accordance with FACS [become] the sole means by which a person’s eligibility...is determined.’ Our caveat is that we share the concern of the Law Commission that as this would mean the repeal of parts of the underlying legislation (in particular s.21 of the NAA) some groups would lose rights (now and in the future) and we cannot support simplification if this is the case as any loss of rights must be prevented. We outline our thoughts around this in detail in the next section.

## The National Assistance Act (part 7)

We state above that while we can see potential value in relying purely on FACS to determine eligibility for services we share the concerns of the Law Commission that some groups would lose existing rights if parts of the underlying legislation (i.e. s.21 of the NAA) were repealed and that this must be prevented. Individuals who presented with similar needs/situations in the future would also lose these rights. Moreover, we believe that the loss of rights would affect a broader group in practice than in the theory expressed in the consultation paper. We are of this opinion because:

- Section 21 currently acts and is broadly understood as a last-resort safety net for a small group of people in dire circumstances and is therefore used to help people with multiple needs and exclusions (and other groups such as destitute migrants). The opposite applies to FACS, where current practice shows that it is not well applied to people facing multiple needs and exclusions - see for example the circumstances detailed above. This means that some of those that in theory would be expected to have rights under a new FACS regime covering accommodation would lose out if s.21 was repealed, leading to a huge risk for these individuals.
- The consultation paper touches on some of the technical issues at play. For example as outlined in paragraph 7.18 there is a risk that individuals may be found to be ineligible under FACS if hypothetical future accommodation was taken into consideration. This is thought 'highly unlikely' in the consultation paper, but we are aware of individuals refused assessment on the street, taken to accommodation and then found ineligible for social care services because of that accommodation (this despite homelessness accommodation providers not being funded to deliver care services). It is very possible therefore that a FACS assessment of someone sleeping rough may conclude that their needs would be met if they had accommodation, and find them ineligible.
- It is also not clear that current FACS practice takes proper account of escalating needs should accommodation not be provided (as outlined in paragraph 7.24). The assertion that this is the case does not correlate with the present situation of homeless individuals with low to moderate needs who are not in receipt of social care services.
- These technicalities are in addition to people with multiple needs and exclusions simply not receiving the community care (and then FACS) assessments to which they are entitled.

We appreciate that our argument here is about the application rather than the letter of the law. However the consultation paper admits that even if implemented to the letter, a group of people would lose rights. This, and the risk of this being a larger group of individuals in practice than theory, is in our view good reason not to repeal s.21. We note however that this would not prevent a residential power being brought into FACS if the safety net of s.21 was retained behind it.

Therefore:

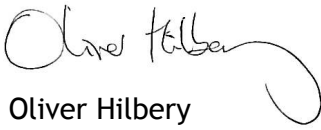
- We do not support proposal 7-1, which would repeal s.21. We find it unlikely that other parts of government would provide support for those who would lose their entitlement (either in theory or practice) or those in similar situations who would not have that entitlement in the future. Moreover, individuals

presenting in the future would need to prove that they would have had rights under the repealed s.21 - in effect a test against legislation that no longer existed

- Proposal 7-2 is preferable to 7-1 in that it retains s.21 for those who would otherwise lose their entitlement (or not have it in the future). However, given the theory/practice difficulties (outlined above) of determining this 'lost entitlement' group we think it would be more straightforward for s.21 to be retained in full as a safety net, alongside a new residential power in FACS.

We hope that these comments are helpful and would be happy to discuss them in more detail. I can be contacted at [oliver.hilbery@meam.org.uk](mailto:oliver.hilbery@meam.org.uk), 020 7012 1407 or via the mobile number below. Further information on MEAM is available at <http://www.meam.org.uk>

With Best wishes,



**Oliver Hilbery**  
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