Manchester Alliance for Community Care

Self Directed Support:

A discussion document on reforms of the adult social care system in England.

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Contents

1. Background

2. A Change in the Delivery of Services

3. What Will Not Change

4. Manchester: Unanswered Questions

5. Opportunity or Threat to the Voluntary and Community Sector?

6. The Future of Social Care

7. Further Information

8. About MACC

1. Background

The Government is reforming the social care system for adults as a response to the demographic challenges of an ageing society and the raised expectations of people who depend on social care and support. We know that there are now more people over the age of 60yrs than under 16yrs in the UK. By 2040 there are expected to be over 5 million people over the age of 65 yrs. With far more people living well beyond retirement age, there is a new language and a change of emphasis in the way 'social care' is delivered to people – ***personalization, choice, control and citizenship.***

The amount of care and support older people will need will depend on how healthy and active they are. There has therefore been a welcome change of focus by the Government onto prevention, early intervention and independent living. The values underpinning the reforms are personalised services delivered with dignity and respect that will promote independence and equality of citizenship.

Future Funding

Following the publication of the King's Fund Report in 2006 and the findings of a national debate (Caring Choices) on the future funding of long-term care, the Government has agreed to look again at the whole system of funding social care and will publish their proposals in a Green Paper for consultation. Though the King's Fund recommended that the current means tested funding system should be scrapped, Ivan Lewis, the Minister for Social Care, has made it clear that this will not happen. However, the Government may be recommending 'a partnership model' where everyone would be entitled to an agreed level of free care, after which individuals will be means tested and expected to pay a contribution matched by the state.

2. A Change in the delivery of services

Self-Directed Support is the vehicle for bringing about the changes in the way social care is delivered on the ground. Self-Directed Support is for everyone who uses social care services, including older people and people with disabilities. Direct payments, Individual budgets and Virtual budgets should, in the long term, transform social care services to be tailored to meet the needs of individuals and give choice and control to the person using those services.

An Individual budget is designed to give people who currently receive services greater choice and control over their support arrangements. They have been piloted across the country at 13 sites, including Manchester and Oldham. They are being evaluated but early signs say that people are very satisfied with the new arrangements, enough for the Government to make an official announcement of the major reform of the Adult Social Care system, on 12th December 2007.

The central idea behind the Individual Budget is to place the service user at the centre of the process and to give them choice and control over how their own care is funded and the support they receive. Early evidence suggests that they can lead to significantly better outcomes for service users and save money for the social care budget.

In a sense, it's a logical continuation of the main principle of Community Care: the dismantling of institutionalised forms of care. In terms of the number of people it affects, the biggest remaining institution in community care is not an "institution" in the more typical sense of a building – it is the financial system which constrains the choice of how and by whom services are provided. Self Directed Support can bring together a variety of funding sources such as community care budgets, integrated equipment services, disabled facilities grant and Supporting People – and place them in the hands of the service user. There are future plans for this budget to include NHS funding as well, but the mechanisms will take some time to sort out.

How do they work?

A community care assessment is still part of the process and will also include a self - assessment questionnaire, completed with the Care Manager. In order to link the needs assessment to the eligibility criteria for services, points will then be allocated under each level of need and this will dictate how much money they will have to spend on their support.

Once this is known, the person will need to write their own support (care) plan with help from the care manager, friend, family or advocate, if needed. The plan

needs to show that it will keep the service user, healthy, safe and well, and then the Care Manager will sign it off.

Once the plan has been agreed, the individual can decide how they would like the support delivered and there are three main options:

- **Direct Payments**. – cash for the individual to employ their own staff or commission from an Agency. (opened to older people in 2001) Cash payments are given to service users in lieu of community care services they have been assessed as needing.
- **Virtual Budget** – this is where the care manager continues to organise the support, but the service user will know how much the services are costing and will be more involved in the writing of their care plan.
- **Individual Budgets** – allocate resources in a transparent way, giving individuals a clear cash or notional sum for them to use on their care package. This gives individuals the ability to use the budget in a way that best suits their own particular requirements.

What are the differences between Individual Budgets and Direct Payments?

- Individual Budgets include a number of different income streams, not just social care services.
- They allow the individual to choose how they receive the allocation (does not have to be cash)
- Choices over the services needed support the belief that individuals know best about their own needs. Government rhetoric recognises that real change will only happen if service users (including carers) are involved at every stage of the process.
- The individual can buy support from friends and family.

3. What will not change

It's important to remember that these changes are really only about the way that money is administered and what can be purchased. There is no change to the Local Authority's duties in regard to ensuring social care needs are met. The laws which require the Local Authority to carry out an assessment remain in force:

- The NHS and Community Care Act 1990
- The Disabled Persons (Services, Representation & Consultation) Act 1986
- The Carers (Recognition and Services Act) 1995
- Carers and Disabled Children Act 2000
- Carers (Equal Opportunities) Act 2004

Assessment

The first part of the Local Authority's duty is to carry out an assessment of a person's needs – legally, this is not affected by the changes to the financial systems which Self Directed Support will bring about.

This is highly significant because it is often at the point at which an assessment takes place (or should do), that problems can occur – as the large body of court cases on the subject proves – and the most frequent cause of these problems is financial arguments.

The Local Authority's duty to assess is ultimately driven by the "appearance of need" – in effect, the assessment is about defining the need. It is not affected by the availability of services, money or anything else. A frequent complaint across the country is of Local Authorities using a financial reason for carrying out an assessment – either because the Local Authority "cannot afford" to provide any services or because the person being assessed would be required to pay for their own services anyway.

This point has been reinforced in both court decisions and government guidance such as the Fair Access to Care (FACS) guidance 2003:

> The carrying out and completion of a community care assessment should not be contingent on whether or not an individual can pay for care services be they provided in a care home or the individual's own home.
> (Q8.5, FACS practice guidance 2003)

Service provision decision

The second part is where the Local Authority decides which needs identified during the assessment "call for" the provision of community care services – again, this is all part of the 1990 Community Care Act and remains unchanged.

It is only at this point that "resources" (which usually means "money"!) can be taken into account.

Because of much confusion and variation across the country, the Department of Health issued "Fair Access to Care" (FACS) guidance in 2002. This established four "bands of risk" (levels of need) and allowed Local Authorities to set their own eligibility criteria for services – essentially by saying which of the four they would fund services under.

The four bands are: **critical**, **substantial**, **moderate** and **low**. Increasingly, Local Authorities across England are taking the view that lack of money is forcing them to provide services only to people falling into the critical band.

In Manchester, the Local Authority currently provides services to people falling into the critical **and** substantial bands. The City Council's website sets out the local Fair Access to Care framework. (Go to www.manchester.gov.uk and search for "Eligibility for Social Care Services").

It's also worth noting that even if a person's assessed needs fall outside the bands under which funding is provided, there is still an obligation to provide information about where support may be obtained from. This is important for voluntary sector organisations because many people are referred to them at this point: and as the eligibility thresholds rise, **it means that voluntary sector organisations are finding they are being asked to support people with much greater levels and complexity of needs.**

Again this is still an area which is being shaped by court cases, but there remains a clear distinction between the right to an assessment (in which resources may not be considered) and the eligibility criteria (in which resources can be taken into account but must not be the only factor). The implementation of Self Directed support does not in itself change the eligibility criteria.

Care plan

This is where the most visible difference will be made. In the past there have been many disputes which boil down to the difference between, as the 1990 Act put it, "what does this person need?" and "what have we got that he/she could have?" This is where Self Directed Support has huge potential to enable service users to be much more creative in planning their care services, as discussed above – but it's only at this stage of the process that terms such as "individual budgets" or "direct payments" should come into play.

In seeking to protect the rights and entitlements of people who need support, it's essential to remember that the assessment and eligibility criteria will not change. (*however, see page 13!*)

4. Manchester: unanswered questions

Manchester is one of a number of national pilot sites for the implementation of Individual Budgets. In December 2007, only 173 people in Manchester were using Individual Budgets, but the City Council has a target to have 3000 people using them by 2010. There are currently no published statistics on the range people using Manchester's Individual Budget pilot, but we do know that 19% of Direct Payment users are from BME communities. For the new systems to work, they need to be inclusive and offer equal choice and quality for all.

There is pressure on the system to improve services to enable choice, produce better outcomes for the service user and reduce costs. The theory behind these reforms is that producing what is effectively a social care marketplace will provide those benefits – but this is not without risk and individuals will need to be able to navigate this new environment.

There are still a lot of unanswered questions about how the new reforms will work in practice. Issues raised by older people at network meetings that have not been resolved, have mainly focussed on managing risk, quality control of the social care market (do the Commission for Social Care Inspection have the capacity?), availability of services that will enable 'a choice' and questions around equality of access, for example, will the agenda of choice and control extend to people already living in care?

MACC raised the question about being able to exercise choice in the purchase of services, which are not classed as social care. References were made to cases collected by the pilot schemes where there is evidence of flexible thinking from the Local Authorities – a woman being able to purchase a dog, a man being able to buy a football club season ticket for his carer and hours for the care worker to accompany him on match days. Clearly, in these cases, the focus has truly been on the outcomes for the service user rather than the service purchased. People also wanted to know if the single assessment process itself would act as a barrier to 'outcomes focussed' services.

Manchester has not clarified how decisions will be made here. Will they have a shopping list of services that can be purchased or will they have a panel that will consider individual cases?

There's an underlying issue of risk – for example, putting more choice and control in the hands of service users means people will have a chance to try out different types of support and see what works best…but that means people must have 'permission' to get it wrong from time to time and to go back and try again.

We don't yet know how commissioners in Manchester will handle these issues. Some of the other pilots have built a risk assessment panel stage into the process – where service users and professionals sit down together to consider the risk issues in the proposed care package. For commissioners, there are clearly legal responsibilities to be fulfilled as well as a duty of care (such as safeguarding vulnerable adults), not all of which may be apparent to service users.

Even assuming that some level of risk and experiment is allowed, it creates a problem for the Local Authority – putting together a new care plan is a time-consuming process. Care Managers are already under pressure with high caseloads so there is a clear concern that there simply won't be time to keep resetting and refining care plans – at least, if the assumption is that this must always be done with the involvement of a Care Manager.

Another question is one of managing the money and the responsibilities – some people who are already on Direct Payments have effectively built up a small business around themselves and are now employing carers. If you have the skills and the will to do this, it can be very empowering – but if you don't feel confident to take on this responsibility does that mean you lose out? It's acknowledged that there will be a need for **"brokerage**", i.e. someone similar to an advocate who would help you find the kinds of services you're looking for and support you in making the contractual arrangements. What's not yet clear is, if you do need the support of a broker, will you get an extra component in your personal budget to pay for it? Or will brokerage services be funded or provided separately – in which case, the same concerns about funding compromising the **independence of advocacy** services come into play.

And finally there was concern that with the creation of a care services 'market place' and the changes in the way services are commissioned, **there may not be the range of services needed to provide real choices** – this is where Self Directed Support presents some dilemmas for voluntary sector providers.

Manchester City Council has created a section on Self Directed Support on its website www.manchester.gov.uk .

5. Opportunity or threat to the Voluntary and Community Sector?

The sector has a history of developing 'personalised care services for the individual' and including their stakeholders in planning and delivering the services they provide. The sector has been a driving force behind some of these changes because of the values which underpin the work we do and because we have been able to campaign with communities for change. Everyone would agree with the principle of giving control and choice to the individual.

However, it's clear that this will be the beginning of a changing relationship between service users and the voluntary and community sector – every bit as much (and possibly more so) as for statutory services.

For a start, it means **marketing** services directly to **customers**. And you will have to be clear with customers about the **price** of your services. The choice of words there is deliberate: we're moving into service industry territory here. Service users will be shopping around, they are becoming 'customers'.

That's all perfectly logical – but look at the examples we've seen so far: buying a dog, getting a season ticket, etc. These aren't "services" in the sense that we've traditionally understood them and it points to the idea that people simply may not be interested in buying the services which are currently on offer – irrespective of whether they're provided by the voluntary, statutory or private sector.

But it's the principle of choice and control – so it must surely be a good thing? Undoubtedly, for some individuals it's a step forward but it does raise a question: what happens to existing services?

The theory of the open market would say that they're no longer needed and will inevitably close down – a simple case of supply without demand. It's not as simple as that of course: few businesses close because of "no demand": they usually close because of "**not enough** demand" – there simply aren't enough customers to keep the business viable.

So for example imagine the position of a day centre. If not enough service users are attending, then the day centre may not be covering its fixed running costs (e.g. rent). Assuming there are no further service users, the options are therefore to reduce the running costs or increase the price of the service. The perverse situation here would be that these changes would have nothing to do with the outcomes or quality of the service to those people still using it – simply that there aren't enough of them. Those people who do want a day centre may

find that there isn't one available because the market won't support one. The issue of supporting the needs of minority "markets" is a major challenge and obviously raises particular **concerns in meeting minority needs such as within BME communities.**

An instinctive reaction might be that in such cases the voluntary sector could simply put on its fundraising hat and bring in more funds to prop up such a service – but this would put the sector in the position of subsidising from charitable funds, services which are being provided as the result of a statutory assessment of need, something the Charity Commission in particular views as unacceptable.

There is still a debate to be had about the relationship between personalised budgets and commissioning. At first glance, they may appear to be polar opposites: personalised budgets are about purchasing for an individual whereas commissioning is about purchasing for a community. Rather than seeing that as a problem, it could be said that this is the key to a solution: there will be some services which the Local Authority have to ensure are available which are about meeting **assessed** needs, while there are others which are services to which people turn in times of crisis and need to be available without an assessment taking place beforehand. Clearly it's impractical to provide Accident and Emergency services on an individual budget! To take that further, another example might be providing frontline services for people with chaotic lifestyles such as drop-in services or emergency hostels – there is already a clear need for them to be available and able to respond irrespective of short term fluctuations in demand.

From the commissioners' perspective, there is a clear need to develop the market for providers and yet there does not appear to be any clear idea of what this means in terms of practical action.[1] Indeed, there will be pressure to release capacity in social care budgets by <u>decommissioning</u> existing services, thus destablising the market rather than developing it.

The practical solution may be to adopt a "mixed economy" approach – maintaining commissioning for an infrastructure of crisis response services which then enable people to move towards Self-Directed Support as a longer term plan.

One other aspect of the new system which clearly presents an opportunity for the voluntary sector is the role of the "broker". As with advocacy services, the independence of the voluntary and community sector suggests the sector is ideally placed to perform this function in providing impartial information and support to people wanting to find services. Equally, though, there will be similar conflict of interest issues as have been found in the

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[1] Henwood, M. and Hudson R. (2007)

provision of advocacy as a service. For one there is a recurring complaint around advocacy provision that "everyone wants it but no-one's willing to pay for it." Self-Directed Support potentially solves this by giving service users the power to spend funds on whatever services they feel are useful – including brokerage.

As we've alluded to above, however, there is still the question about how a brokerage services might be funded should the service user need one. There would seem to be three options, each of which raises further questions:

If there is an additional allocation for brokerage:

- **What level of service will it cover?** Basic information? Support in approaching providers? Support in financial and employment management?
- **Would people need to "qualify" for this additional support?** If so, what criteria would be used? Capability? (As distinct from mental capacity – i.e. people who simply wouldn't know where to start but could make informed choices with adequate support). Level or complexity of need? The size of the personal budget?

If there is **NOT** an additional allocation for brokerage:

- **Will service users be expected to fund support from the same funds from which they are expected to purchase services?** If so, doesn't this mean service users who need support are effectively required to meet their needs on a reduced budget?

If brokerage is a separately provided / commissioned service:

- **Who will provide it?**
- **What service will be provided?**
- **How will the services' independence be protected?**

It would seem that a similar mixed-economy approach as for general services would be the best option to ensure a sustainable brokerage infrastructure: an element of universal provision of basic information (e.g. a simple directory of available services) with specialist support for people with limited capability. This specialist support, however, would need to be funded as an additional element – effectively as an assessed need.

There is some concern about creating a new "profession" of "brokerage" and creating a costly layer of additional bureaucracy. It also has potential to overlap with the role of the care manager. Again, these are the same debates which have been running around advocacy services for many years. At present, until the funding mechanism for brokerage is decided, brokerage remains something which voluntary sector organisations may be expected to provide but which we cannot yet judge to be economically viable.

6. The Future of Social Care

The third report from the Commission for Social Care Inspection (CSCI) was published at the end of January 2008. In response, **Care Services Minister Ivan Lewis has ordered a fundamental review of eligibility criteria –** acknowledging the fact that two out of three Local Authorities now offer care only to those who have **substantial** or **critical** needs under Fair Access to Care (FACS) criteria (see Section 3). There are also inconsistencies in how departments interpret FACS criteria between and even within local authorities.

The report is divided into two parts, one that describes trends in the range, quality and availability of social care services in 2006-2007 across public, voluntary and private sectors. Broadly speaking, those who qualify for Council support are experiencing better services. The other part reports on what is happening to people seeking support, who are not eligible for council-arranged care or who are 'self-funders'.

It states that although 2 million people of all ages accessed social care services arranged by Local Authorities (LAs) during this period, many people are no longer eligible who may have been a few years ago. Local Authorities say this is due increasing demand and tighter budgets. At this early stage indications are that the new arrangements can reduce the cost of meeting needs, but how those needs are met is still determined by how the Councils define and interpret eligibility criteria and that will largely be influenced by their budgets. **Under FACS guidance this is still permissible.**

All of this takes place in the context of a push by Central Government to increase collaboration between the NHS and social services departments. The new "Local Involvement Networks", the successor to Patient and Public Involvement have for the first time, a mandate to oversee not just the NHS but also social care. This is mirrored by the integration of the current regulatory bodies - Commission for Social Care Inspection (CSCI), the Healthcare Commission and the Mental Health Act Commission. All the health and social care functions will now be scrutinised by the new Care Quality Commission.

Clearly it makes sense to stimulate joint working across the sectors – it has long been known that the artificial boundaries between "health" and "social" care are the cause of many of the problems faced by service users. However, previous experience of mergers suggests that while it may create some shared expertise, what it is unlikely to do is increase the capacity of systems for inspection and regulation across - and yet this is increasingly an issue, with the development of a "care market" bringing a much wider range of providers than there has ever been before.

It is clear from statements made by Ministers that the Government's view is that Self Directed Support is seen as the way forward for social care.

Overall, Self Directed Support does offer huge potential for many service users. However, it raises some serious concerns which, while not insoluble, do need to be addressed if the benefits of the system are to be equally accessible to all. How will the needs of minority interests be met? What levels of advocacy and brokerage support will be available? How will quality and safeguarding be maintained across such a wide range of providers, many of whom will be family members?

It remains to be seen whether there will be any changes to the guidance or implementation of eligibility criteria for care services. There is some emerging evidence that Self Directed Support is seen as more "cost effective" as well as providing better outcomes for service users. If so, it will be inevitable that it will be seen in the long term as an attractive proposition by Local Authorities.

There must also be concern about the future of voluntary sector groups in meeting those needs: in order to provide services, there will need to be a viable market. Many local organisations are simply not ready to compete in this environment.

For people whose needs fall outside eligibility criteria, the voluntary and community sector is a major source of support. These organisations also face an uncertain future: at the same time as the funding mechanism for services to meet assessed needs is changing, voluntary sector organisations are also facing tough challenges from the implementation of new commissioning and procurement requirements which may exclude many groups from key funding streams.

It would be a cruel irony if the available range of services was to be reduced now that the system may finally be starting to enable service users to make genuine informed choices.

7. Further information

- Luke Clements, *Community Care and the Law - Third Edition*, Legal Action Group 2004

- Commission for Social Care Inspection, *The State of Social Care in England 2006-07*. January 2008
  www.csci.org.uk

- Melanie Henwood and Bob Hudson, *Evaluation of the self-directed support network: an overview of key messages*. June 2007

- UNISON – Positively Public
  Community and Voluntary Sector
  http://www.unison.org.uk/voluntary

- Care Services Improvement Partnership
  Presentation by Carey Bamber
  www.olderpeoplesmentalhealth.csip.org.uk/

- Manchester Older People's Network
  www.macc.org.uk/olderpeople

- Help the Aged
  www.helptheaged.org.uk

- Manchester City Council
  Presentation by Julie McConnell Manchester Adult Social Care
  www.manchester.gov.uk

8. About MACC

Manchester Alliance for Community Care (MACC) is a voluntary sector development agency which, for over 20 years, has been working to reduce inequalities in health and social care and wellbeing across Manchester.

Broadly our work includes

- challenging both statutory and voluntary sectors to design and deliver services which address the rights, needs and wishes of individuals rather than the ability of organisations to deliver them
- the development of the capacity of local voluntary and community groups to identify unmet needs and to work to meet this need, through building up the skills base of the individuals inside these organisations.
- supporting networks of local voluntary and community groups to enable them to be a mechanism for developing collaborative work across the sector
- encouraging and enabling participation by the voluntary and community sectors in the planning and decision making structures which shape the health and social care economy in Manchester and to provide a conduit for this participation.
- promoting understanding of inequalities in health, social care and wellbeing and the role of the voluntary and community sectors in addressing them

Further details about our work can be found on our website www.macc.org.uk

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For further information and regular updates on our work, please visit our website **www.macc.org.uk**