

'Past Caring'

The WeareSpartacus Response to Worcestershire County Council's Maximum Expenditure Policy



*20th
Century
care...*

**...in a
modern
world**



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Social Care and the Maximum Expenditure Policy

Worcestershire County Council (WCC) currently provides social care support to disabled people with substantial and critical needs¹. While making a means tested contribution towards costs, disabled people are able to live in the community, receiving care in their own homes. This is in line with the Government's policies on disability equality and inclusion.

WCC is now consulting on a new policy affecting social care provided to their disabled residents².

This policy would affect all new users as well as existing users whose conditions deteriorate and who require more support.

Under the proposed policy, WCC will restrict the maximum value of an individual disabled person's care package to the cost of a residential placement that would meet the individual's assessed eligible needs.

Figures from Worcestershire Council for 2009 suggest that the maximum weekly fee paid for a care home placement for someone under 65 requiring personal (not nursing) care is £411.

This could leave thousands of disabled people with a shortfall and force them to move into residential care.

Where it costs more than the care home fee for an individual to be supported at home, the Council's position is that it is not obliged to deliver care at home and that people should consider moving out of their own homes and into residential care homes.

WCC denies it will force anyone to move into residential care but its own documents outline only 3 other possibilities open to disabled people, none of which are satisfactory.

Issues with the Maximum Expenditure Policy Options

Paying for the shortfall privately

- Paying for the shortfall privately is only available to the very wealthy, or is at best a stopgap measure until funds run out.

Accessing community voluntary organisations and faith groups

- Reliance on informal or charitable sources of support may not always be possible, and the quality², safety and sustainability of such support may not be guaranteed.
- Asking disabled people to rely on community faith groups may pressure them into joining a particular faith, since some local groups only help residents of their faith community.

Changing the type or volume of care provided

- Changing the amount or type of care provided will leave many disabled people with inadequate support which will be detrimental to their health and quality of life. The policy raises serious safeguarding concerns.

The only other option is for the disabled person to move into residential care

Moving into residential care for purely economic reasons is highly disruptive and detrimental. Disabled people will have to move away from their local community and friends. They will suffer a serious loss of freedom and independence. They may lose their jobs and social hobbies. Single homeowners will have to sell their homes and disabled people in work will lose their salary to pay for their care³. Finally, and perhaps most importantly, they will be forcibly separated from their families.

Who is likely to lose out and how?

Two groups of disabled people will be seriously affected by this policy.

The first group are those with significant disabilities whose care costs are much greater than the cap but are currently happily living independently in the community.

It is highly unlikely they will be able to fund the difference themselves and no change to their care package will allow them to reduce costs below the cap.

Such people will have no other option than to move into residential care regardless of their wishes. Bar a policy change they will never be able to return into the community.

Thus the Maximum Expenditure Policy will lead to the routine institutionalisation of entire user groups who will be shunted off to care homes for the rest of their lives.

The second group most affected will be those whose care costs are close to the level of the cap.

Such people are likely to make significant changes to their care packages in an attempt to avoid going into a care home.

The desire to remain in the community is usually very strong and therefore people could take quite desperate and detrimental measures in order to avoid losing their independence or their home, or leaving their community and loved ones. For example:

- A disabled woman might forego a lunchtime visit and miss a meal in order to reduce costs.
- A disabled man might cut down on evening visits and shower just once a week instead of several times.
- A young disabled adult with uncontrolled epilepsy might reduce the number of daily check in visits and try using a less reliable alarm system instead, putting his safety at risk.

Thus the quality of life and safety of this user group is highly likely to be compromised by the Maximum Expenditure Policy.

Incompatibility with the 2012 white paper on social care and funding reform

The Maximum Expenditure Policy is totally incompatible with the aims of Andrew Lansley's flagship white paper on social care reform⁴.

Far from standardising care levels across the country it will introduce a new post code lottery with a lower level of care offered in Worcestershire than anywhere else. A disabled person who would be independent in the community elsewhere in England would be forced into residential care in Worcestershire.

The proposals are incompatible with the government's aim of portability of care and, through the threat of loss of independence, would prevent disabled people from moving to be closer to family members or to accept job offers.

By forcing people to access unregulated community care in an effort to cut costs, the policy countermands the government's drive to raise care standards and allow disabled people free access to information on the quality of care available.

The enforced entry into residential care for whole categories of disabled people is irreconcilable with the government's aim of control, choice, and the support to be connected to society.

Legal Concerns Surrounding the Maximum Expenditure Policy

There is no acknowledgment in the consultation of the equalities and human rights issues raised by the proposal, nor how WCC intends to navigate these issues.

Local authorities have positive obligations under the **Human Rights Act 1998**⁵ to ensure that service users' dignity and wellbeing is not compromised in violation of their human rights.

These rights are seriously endangered by this proposal due to the strong wish of most disabled people to stay in the community. This may lead service users/people needing care to agree to drop vital elements of their care package in order to keep costs below the level of the cap. Furthermore the knock-on costs to health and social care services of unmet need may also make the policy financially unviable in the longer term and there has been no impact assessment for this.

The Joint Committee on Human Rights has recently highlighted national treaty obligations under the UN **Convention on the Rights of Persons with Disabilities** to promote a right to independent living⁶; this policy would undermine that national effort.

The policy will significantly interfere with the **European Convention on Human Rights**⁷ **Article 8** rights of social care service users to **respect for private and family life**.

Furthermore the disproportionate impact on the Article 8 rights of disabled people raises the possibility that it may also be discriminatory under **Article 14 of the ECHR**.

Where people lack the mental capacity to make decisions about how their care needs should be met, WCC will have to make decisions on their behalf.

This could lead to **Deprivation of Liberty** whereby incapacitated adults are detained against their will and the wishes of their families to be cared for at home.

Assessments alone cost £1277 and appeals can cost between £20,000 and £60,000⁸. This cost impact is not mentioned at all and we question the effect on any estimated savings.

Finally the consultation itself may be invalid as local residents have not been given sufficient information upon which to base a response. It is unclear who the policy will affect, how severe its consequences may be for individual service users, how much money this will save the council, and what alternatives have been, or are being, considered.

Given the major impact of the policy on the right of people to respect for family and private life under Article 8 of ECHR, WCC must also show that it is proportionate and necessary. Due to the above lack of information the consultation gives no arguments on either account.

We contend that the legality of any future policy based upon this consultation is therefore questionable, and open to challenge by means of judicial review.

Conclusion

This policy, once implemented, may result in high levels of unmet need and coercive institutionalisation – both of which bring serious undesirable social, legal and financial consequences.

WCC will leave itself wide open to legal challenge should it proceed, both on the basis of the human rights implications of the policy itself and the legality of the consultation undertaken in order to implement it.

Given these ethical, legal and financial issues we respectfully but strongly recommend that WCC abandon this policy and look for alternative solutions.

References

¹ Care&Support Services: Achieving Best Practise- Eligibility
<http://www.understandingindividualneeds.com/page.php?identity=eligibility>

² [May 2012] Worcestershire Maximum Expenditure Policy FAQ
<<http://www.worcestershire.gov.uk/cms/pdf/02-FAQs-Proposed-Max-Expenditure-May2.pdf>

³ [June 2011] Worcestershire Adult and Community Services-Paying for Residential and Nursing Home Care
<<http://www.worcestershire.gov.uk/cms/pdf/Adult%20Social%20Care%20-%20Paying%20for%20Residential%20and%20Nursing%20Home%20Care%20Jun11.pdf>

⁴ Caring for our Future: Reforming Care and Support http://www.dh.gov.uk/health/files/2012/07/2900021-CaringForFuture_ACCESSIBLE-10.07.2012.pdf

⁵ Human Rights Act 1998 <http://www.legislation.gov.uk/ukpga/1998/42/contents>
<http://wearespartacus.org.uk>

⁶ JOINT COMMITTEE ON HUMAN RIGHTS *Implementation of the Right of Disabled People to Independent Living* (Twenty-third Report of Session 2010–12: 2012)

<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/25702.htm>

⁷ Council of Europe: Convention for the Protection of Human Rights and Fundamental Freedoms

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CM=7&DF=02/07/2012&CL=ENG>

⁸ SHAH, AJIT, PENNINGTON, MARK, HEGINBOTHAM, CHRIS & DONALDSON, CAM (2011) 'Deprivation of Liberty Safeguards in England: implementation costs'. *The British Journal of Psychiatry*, 199(3), 232-238.