Full report

‘Past Caring’

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

20th Century care...

...in a modern world

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Introduction

Social care across the United Kingdom is facing serious difficulties. With an aging population, demand on services is increasing but funding is not keeping up. The 2012 survey of councils by ADASS (Association of Directors of Adult Social Services) reported a £900 million shortfall[1].

Furthermore some sources of funding such as the Independent Living Fund, which is used to top up care fees for disabled people under the age of 65, are to be stopped. The ILF became permanently closed to new clients in December 2010 and will be abolished in 2015[2]. No replacement funding has yet been announced.

The white paper on social care reform due in the Spring of 2012 was postponed. It was finally announced in the Queen's Speech in May 2012 and presented by Andrew Lansley on 11 July 2012[3]. However, while it sets out important principles and aims, it does not clarify the issue of funding, leaving councils with no obvious solution in sight.

As a result councils are resorting to more and more drastic measures such as cutting services entirely, tightening eligibility criteria to those with substantial or critical needs only and dramatically increasing contributions to social care costs[4].

However these actions are not without consequences for disabled people who are also facing difficult times. Disabled people are more likely to be either out of work or in part time work[5] and are therefore more reliant on benefits and tax credits. There have been recent major changes in these areas, which, in addition to the implementation of the Welfare Reform Act[6], have caused many disabled peoples' income to drop significantly.

Tightening criteria and removing care from disabled people already facing a loss of income has meant that many are unable to fund any replacement. Disability groups report rising numbers of disabled people cancelling their care as they are unable to afford the significantly increased contributions councils are demanding[7].

The effect is so great that in many cases it impacts on disabled peoples' human rights. This has led to an increase in court cases against councils undertaking such actions, more and more of which have been successful[8,9].

It is against this background that Worcestershire County Council is proposing the Maximum Expenditure Policy[10].

We submit that this is an unnecessarily extreme measure which will have a tremendously negative impact on its disabled residents, infringe their human rights, have unintended financial consequences and leave WCC wide open to legal challenge in the courts.

Section 1: An overview of the “Maximum Expenditure Policy”

Social Care in Worcestershire

Worcestershire County Council (WCC) currently supports disabled and elderly people with substantial or critical social care needs.

Under national guidelines these are usually people “unable to carry out the majority of personal and domestic tasks without daily help to do so”[11], whose health and safety could be at risk, or who would lose control over their lives without help.

In line with government and international guidelines disabled people are usually supported to live at home in the community through a variety of means.

For some, social services directly pay agency workers, or provide services in kind. Others take advantage of the direct payment or the individual budget scheme which allows them to employ their own carers directly and exercise more control over their lives. However this comes at the cost of much greater administrative and legal complexity[12] and is therefore unsuitable for those with little independence or outside support.

The Maximum Expenditure Policy

WCC is consulting on a new policy affecting social care provided to their disabled residents[10].

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**.**

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

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

1. Pay for the shortfall privately
2. Change the type or volume of care provided
3. Access community voluntary organisations and faith groups

Cost and Potential Impact of the Proposal

WCC has refused to release official figures on the proposed cap or the number of disabled people it would affect despite conducting a consultation on its new policy. This has made it very difficult for Worcestershire residents and ourselves to evaluate the potential impact of its proposal.

Furthermore the only official figure released by WCC is a statement released to the press in which it is claimed that care in the community "can cost up to £3000 per week"[13]. We do not contest this figure, which is possible in a small number of cases where disabled people require round the clock care.

However we submit that this is extremely misleading and that WCC's policy will begin at a far lower level, affecting a much greater number of people.

Despite the lack of data, the use of official figures freely available in the public domain does allow us to have some idea of the maximum number of hours of care which would be allowable under direct payments before a disabled person would be affected by the cap.

In 2009 the Local Authority Rates for care in an independent sector care home for a physically disabled person under 65 was £411 per week (inclusive of any RNCC)[14].

In 2009 the hourly direct payment rate was £9.22 per hour[15].

It is customary to keep some money aside for insurance, so it is reasonable to assume clients would pay around £8.50-9.00 per hour.

We note in passing that the amount payable varies according to both the nature of the disability (eg learning disability or physical disability) and age group. We will cover the legal relevance of this further on.

Had the cap been in place in 2009, a physically disabled client would have been able to purchase a maximum of around 46 hours per week before being affected by the cap.

This means anyone requiring between 6 and 7 hours of care per day will be affected. If someone requires a double visit (two carers at once), for instance to operate a hoist, this drops to just three hours per day.

Such people could easily be able to live fairly independent lives in the community and have no need to live in residential care.

Regardless of the above, WCC has ethical and more importantly legal obligations to all its disabled citizens, including all those with the more expensive care packages.

As was pointed out in the recent report from the Joint Committee of Human Rights on the Implementation of the Right of Disabled People to Independent Living[16], disabled people's rights cannot be infringed, despite the current financial situation:

"We recognise the exceptional economic circumstances facing the UK and the challenges involved in implementing the stringent cuts in public spending the Government feel are necessary. However, in tackling these economic challenges the Government must give due attention to their obligations under international law. (Paragraph 133)"

The government responds[17]: "As the Committee recognises, the current economic situation faced by the UK is both challenging and complex. Nonetheless, the Government remains committed to implementation of the Convention and to the removal of barriers that disabled people face."

Issues with proposed alternative options to residential care

1) Disabled people can pay for the shortfall privately through income or savings

This only applies to the very wealthy or is at best a stop gap measure for most people until savings run out.

2) Disabled people can change the type or volume of care provided

It is obvious from the very definition of people with "substantial needs"[11] that these are people who cannot forgo the help they receive.

Despite WCC's assurances, it is far from clear that their assessed care needs will continue to be met with a lower "volume" of care.

Changing the "type" of care provided, while indeed possibly providing savings for the council, may present serious issues of safety and reliability, not to mention affordability for the disabled person themselves.

If a person has been assessed as needing a number of care hours, it will be impossible to adequately meet that person's needs after a reduction in "volume".

Consider some of the consequences.

With less overall time available the disabled person may:

- Opt for quicker meals which are less healthy, leading to health deterioration.
- Opt to skip some showers or baths, resulting in poor hygiene, self confidence and dignity.
- Opt to get dressed only on certain days of the week such that other chores can be done as necessary, leading to a deterioration in work and social life, self confidence, and dignity.
- Opt to cancel check in calls, leading to a deterioration in safety and increasing the risk of serious harm.
- Opt to skip domestic tasks, resulting in a poor living environment and reduction in hygiene, health and dignity.

Changing the "type" of care provided may also be problematic and alternatives should not be used if the change means care needs are not adequately met.

The suggestion of **adaptive technologies** put forward by WCC[10],[18] while a useful tool and addition for many disabled people, would only be a safe *alternative* to an assessed need care in a small number of scenarios and does not address the issue of cost, insurance, maintenance and eventually replacement of such equipment, which would have to be met by the disabled person. Nor does it address the possibility of equipment breakdown.

Using **frozen meals** instead of freshly cooked meals is not only contrary to NHS guidelines, leading to health deterioration, but is also prohibitively expensive, particularly for people who are already contributing towards their care costs through the Fairer Charging Scheme.

For many disabled people frozen ready meals are not an option if they are required to follow a specific diet prescribed by their health professional.

While **alarm buttons** are suitable for some people, for others check in calls are necessary and cannot be cancelled. To do so would cause an unacceptable increase in the risk of harm.

One suggested option is for disabled people to **change to direct payments** to make their care cheaper[18].

There are three major objections to this.

- In the recent report from the Joint Committee of Human Rights on the Implementation of the Rights of Disabled People to Independent Living[16] it was made quite clear that individualisation of care should not be used as a cost cutting exercise.
- Secondly, according to the few figures available to us, even on direct payments relatively independent people will face having to go into an institution. It is possible that only 46 hours of weekly direct payments will be affordable under this new policy. If someone requires 2 carers per visit, this amounts to just 3 hours per day. Yet such a person can easily live independently in the community.
- Finally as previously indicated, direct payments require a large amount of paperwork and legal support[12] which is not possible for all user groups, especially those without outside support, for example from family members.

In conclusion we submit that this option would leave many disabled people with their care needs inadequately met, leading to a deterioration of their health, safety, quality of life and dignity.

3) Disabled people can access community voluntary organisations and faith groups

This is not a satisfactory long term solution.

Charities do not tend to give long term help and thus disabled people would face an uncertain future over the funding of their care.

Furthermore, since any money received would not be classed as an official social services “direct payment”, benefit claimants on means tested benefits such as Housing Benefit[19] or ESA[20] would contravene savings rules and see their benefits reduced.

If help is given in kind, disabled people will lose any control over their care. Helpers would not necessarily be trained, vetted or checked.

WCC itself concedes that the support given would no longer be supplied by specialists[21]. Given the very personal nature of the type of help most disabled people affected by this policy would require, this is an unacceptable state of affairs.

More worryingly WCC directly suggests approaching “faith groups”[10]. However many disabled people are not members of any faith organisation, some of which only offer help to members of their parish or community. Given a choice between loss of independence and finding help, some disabled people may feel pressured into joining a faith.

The only other option offered by WCC is that of a residential care home.

Given this, we submit that disabled people will indirectly be coerced into entering residential care through the loss of essential care services if they stay in the community.

Impact of involuntarily entering residential care

The impact of entering a residential care home cannot be overstated; there are many issues to consider.

For disabled adults under 65 it may be extremely difficult to accommodate their need for the company of people of a similar age group, leading to them being housed in an unsuitable environment with much older residents.

In the event that such suitable accommodation can be found, it is highly unlikely to be local, due to its scarcity. This would lead to uprooting with severing of local ties to the community and loss of social network. Depending on the distance of the residential home it may be extremely difficult for friends and family to visit regularly leading to extreme isolation and deterioration of existing relationships.

Unlike elderly people, adults under the age of 65 are less likely to be widowed and more likely to be family members. However provision for family is rarely provided in a residential setting, leading to family break-up. This would lead to emotional and psychological distress and the breakdown of relationships.

Moving away not only means the loss of friendships and relationships, it may also mean the loss of any social activities the disabled person currently enjoys in their area. There is no guarantee such activities will be available in their new setting. Having to give up hobbies, sports and activities is a major cause of stress, anxiety and depression and an unacceptable loss of quality of life.

Living in residential care can have restrictions which are very different to the freedom enjoyed by disabled people being supported in the community.

Common complaints include having to share meals and having little choice over menus. Residents may be unable to leave the building unaccompanied, or may have to give details of when and where they are going.

Residents by definition have to share care and therefore have to adapt their day around other disabled residents. All of this leads to a significant loss of freedom and independence.

There is serious concern over the wellbeing of disabled people forced into residential care. A recent study[22] shows that even people who accept their deteriorating disability still strongly support choice and care in the community. Furthermore those who go into residential care early against their wishes adapt very badly to their circumstances.

There are also certain financial considerations.

If the disabled person is in work, going into residential care is likely to lead to job loss. Having to move away may mean travelling to work is no longer possible. Furthermore due to a charging abnormality referred to in the Report from the Joint Committee of Human Rights on the Implementation of the Right of Disabled People to Independent Living[16], the disabled person's income will become liable for care costs whereas it wasn't when they were receiving community care[23,24].This will have an even greater impact if the disabled person was supporting or helping to support a family reliant on his or her income. Not only will the disabled person have to go into residential care, but their family will have to cope with the loss of salary, with the disabled person only allowed a personal allowance of £22.30 per week instead[24]. While there is provision for 50% of an occupational pension to be protected and to continue to go to one's spouse, no such protection exists for a salary or any other earned income. *IMPORTANT NOTE: This funding abnormality will be abolished from April 2013 according to the white paper on social care reform[3].*

Financial considerations also come into play for single homeowners. As community care receivers, the property they lived in was not liable to pay for their care fees[23]. However, once they are forced into residential care their property can be considered as an asset to pay towards their costs and they face losing their home[24]. While funding changes announced in the white paper on social care will mitigate this, younger disabled people are less likely to have paid off their mortgages. This means the proposed loan scheme[3] will be unavailable to them and they will indeed lose their home. This means there is little chance of a return into the community once this step has been taken.

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 who 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 are 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, 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 or her 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.

Section 2: Legal Issues surrounding the "Maximum Expenditure Policy" Proposal

Legal concerns raised by Worcestershire County Council's consultation on a maximum expenditure cap for adult social care

Scant information upon which to base consultation responses

As described above, WCC has released very scant information about the proposed policy on which it is consulting; this makes it very difficult to respond to their proposal, but it may also invalidate the consultation exercise. Recently local residents successfully judicially reviewed Birmingham City Council's decision to implement a higher eligibility threshold on the basis of a flawed public consultation. The court's decision was influenced by the scant information made available to the public about the proposal, which made it difficult to effectively consult with residents:

'It is common ground that a consultation process must provide consultees with sufficient reasons in support of particular proposals to allow an intelligent response to be made'[9]

WCC has provided very limited information about the likely impact and justification for this proposal. In particular we highlight that the published consultation documents do not supply information on the following points, which would be important in formulating a consultation response:

1. **A ballpark figure for the likely value(s) of the 'maximum expenditure' cap.** This could be in the region of several hundred or several thousand pounds a week. The difference in these possible caps would have a very significant impact in the number of people affected, and the severity of the impact. Without this information it is very difficult to respond.

2. **A projection of the numbers of people who may be affected.** WCC have simply said that the policy will affect new service users, or existing service users whose needs change. However, we note that the policy will be more likely to detrimentally affect individuals with higher value packages of care. Linked to the absence of any ballpark value of a 'maximum expenditure cap' is the absence of any indication of which categories of service users might be most at risk. This makes it difficult to respond intelligibly to the consultation, but it may also mean that individuals who would be affected by this policy are not aware of this, and therefore not minded to respond. This weakens WCC's public consultation exercise.

3. **Information on whether the maximum expenditure cap will vary between different primary client groups.** We note that WCC indicated that the cap will equate to 'the weekly cost to Worcestershire County Council of a care home placement that could be commissioned to meet the individual's assessed eligible needs' – but this seems likely to vary between different user groups. WCC has given no clear statement of how it intends to calculate this for different individuals. Furthermore, care for some user groups attracts additional funding streams, and some forms of care are much more costly to deliver. We are uncertain how WCC's proposal will take this into account, but note also that WCC must not introduce policies that discriminate on grounds of age or disability. It would have been helpful had WCC provided some detail in their consultation document on how they planned to navigate this tricky issue.

4. **WCC states that in 'exceptional circumstances' they would depart from the proposed maximum expenditure policy, but offer absolutely no guidance on what such circumstances might be**. In what follows, we highlight areas that WCC will need to consider when implementing the policy where we feel it may need to depart from it.

5. **WCC is not explicit about its reasons for considering the policy.** It states that it 'has to operate within current available financial Resources', that it must 'ensure the effective and efficient use of resources', and that it has a 'duty to spend limited funds available according to statutory requirements'. From this we infer that the policy is being implemented to introduce cost savings, yet there is no indication of the projected scale of these savings, nor the necessity of them. This makes it very difficult to respond to the consultation. We note that in the Birmingham case referred to above the court was highly critical of Birmingham City Council's failure to make clear the scale of the projected savings from the proposed policy, and to canvass alternative ways to make those savings.

In summary, we feel the consultation exercise is flawed 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. 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.

We now turn to some other legal issues raised by WCC's proposed maximum expenditure policy.

The application of a blanket policy like the one proposed would be unlawful

In common with other local authorities, WCC has considerable discretion in how it chooses to discharge its statutory obligations to provide social care services. The application of a blanket policy in how a public authority exercises its discretion is straightforwardly unlawful, and provides grounds for judicial review where the circumstances of the individual case have not been considered.

Although WCC claims that in 'exceptional circumstances' it will depart from the maximum expenditure policy, there is little in the consultation document to reassure us that this is anything more than a legal fiction designed to insulate the council from legal challenge. The kinds of exceptional circumstances in which it would consider departing from the policy in are not outlined, yet they will need to be in order to guide front line staff charged with making such decisions and in order to avoid illegality. As a vital safeguard against illegal fettering of the council's discretion, we feel that these 'exceptional circumstances' should have formed part of the consultation in order for local residents to respond effectively.

Should WCC decide to implement its maximum expenditure policy, we will continue to monitor the guidance it provides for staff, and the actual value of packages of care provided to new service users, to ensure these 'exceptional circumstances' are more than a mere legal fiction.

Unmet eligible needs and human rights implications

WCC indicate that the maximum expenditure cap would be:

'... no more than the weekly cost to Worcestershire County Council of a care home placement that could be commissioned to meet the individuals assessed eligible needs.'

As outlined above, where a person's eligible needs would cost more to be met in their own home, they therefore have the following options open to them:

1. To receive insufficient support to ensure eligible needs are met, but remain in their own home;
2. To 'top up' the limited care available in their own home with their own savings, if they have any;
3. To access informal or charitable sources of support to meet eligible needs;
4. To move into residential care, where all their eligible needs would be met.

There are serious difficulties with all these outcomes. Many service users may choose to remain in their own home, but receive inadequate services to ensure their eligible needs are met. This will have serious detrimental effects on their quality of life and health, but furthermore it may also lead to infringements of their human rights. Cases like *R (Bernard) v London Borough of Enfield*[25] confirm that local authorities have positive obligations under the Human Rights Act 1998 to ensure that service users' dignity and wellbeing is not compromised in violation of their human rights. Situations where there are concerns about possible neglect may make a policy which results in high levels of unmet need legally problematic. 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 second and third options will only be available to limited numbers of service users. For the most part local authority social care services are only available to those with limited financial means, so the option to 'top up' with savings or other income will be limited and short lived for most service users. Reliance on informal or charitable sources of support may not always be possible, and the quality, safety and sustainability of such support may not be guaranteed.

The policy will result in increased institutionalisation of disabled people

We cannot see how WCC can avoid the likely outcome that large numbers of people will be forced to make a difficult choice between living in their own homes with unmet social care needs, or moving into residential care as a result of this policy. In effect, the policy could force many individuals into institutional care, flying in the face of decades of policies which aim to decarcerate institutionalised groups and support adults with disabilities to live in their own home and communities.

The Joint Committee on Human Rights has recently highlighted national treaty obligations under the Convention on the Rights of Persons with Disabilities to promote a right to independent living[16]; this policy would undermine that national effort. The policy will significantly interfere with the Article 8 rights of social care service users under the European Convention on Human Rights[26] to respect for private and family life, yet the consultation document gives no indication of how it proposes to ensure such interferences are legitimate. Interferences with Article 8 rights are permissible for 'the economic well-being of the country', but they must be *proportionate* and *necessary*. A blanket policy would not assist in ensuring these criteria are met in the individual circumstances of a particular case. Furthermore, as we have argued above, we do not feel that WCC's consultation has gone any way towards showing that the policy is *necessary* as it has not indicated the scale of the financial difficulties it faces, the proposed savings the policy would bring in, nor the alternatives it has considered and rejected. The policy will have a disproportionate impact on the Article 8 rights of disabled people under the ECHR, raising the possibility that it may also be discriminatory under Article 14.

Families may be torn apart by this policy, individuals displaced from their homes and communities, yet this is barely acknowledged in the consultation document. We are deeply concerned that WCC has not acknowledged the significant human rights implications of the policy, and taken steps to inform local residents how it will address them.

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 in their best interests. The Mental Capacity Act 2005 requires that the local authority consider the 'least restrictive option', but this policy will reduce many less restrictive options available to many individuals. In some circumstances, where a best interests decision is take to place somebody in residential care, and as a consequence they are subject to heightened restrictions or they or their families object to their institutionalisation, this step will have to be authorised under the deprivation of liberty safeguards (DoLS). Research indicates that the assessments alone required by the DoLS will cost in excess of £1277[27], and furthermore if a detainee or their family are objecting to their placement the local authority *must* refer the matter to the Court of Protection to ensure their Article 5 rights to appeal against their detention are enabled[28]. Research indicates that appeals against detention under the DoLS may cost local authorities in excess of £20,000, and in some cases may cost towards £60,000[29]. The cost of such legal proceedings seem likely to wipe out any possible savings made through the policy, and are not considered in the consultation document.

Furthermore, recent cases in the European Court of Human Rights indicate that the court is troubled by cases where people have been automatically detained in social care institutions because no other community based alternatives were available[30]. It is deeply concerning to imagine that this policy may result in larger numbers of incapacitated adults being detained against their will, and the wishes of their families to be cared for at home, as a result of this policy. Once again, this possibility is not explicitly countenanced by the consultation document, yet it seems unavoidable in circumstances where local authorities are required to make best interests decisions between a person remaining unsupported in the community, or institutionalising them without their consent.

Summary: a flawed consultation, and a policy that may result in illegality

It seems to us that this consultation is flawed as it does not provide sufficient information for consultees to respond to on a range of important topics. There is no indication of the likely number of people that will be affected, or how – specifically – WCC proposes to calculate the value of the maximum expenditure for different user groups. There is no acknowledgment of the equalities and human rights issues raised by the proposal, nor how WCC intends to navigate these issues. We suggest it may lead to the 'fettering' of WCC's discretion in how it discharges its community care duties, and are not reassured by vague assurances that it will depart from the policy in 'exceptional circumstances'. Most significantly, the 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. We suggest that the consultation itself is illegal, and that once implemented the policy may lead to further illegality.

Section 3: Compatibility with the 2012 white paper on social care and funding reform

Andrew Lansley presented the white paper on social care reform on 11 July 2012[3]. While avoiding the issue of long term funding, the paper nonetheless sets out several key recommendations and Government policy, with which we submit the WCC proposal will be incompatible.

The government clearly states its aim of “personalisation”, giving disabled people “choice and control over the care and support they need to achieve their goals, to live a fulfilling life and to be connected with society”. The blanket policy of the WCC proposal runs completely counter to these aims.

The government seeks to end a post code lottery of care funding by establishing a national minimum eligibility threshold to be introduced from April 2015. This is in response to the observation that “people in very similar circumstances can be treated very differently and this can seem unfair and confusing”[31].

We submit that implementing the Maximum Expenditure Policy, far from removing the post code lottery and solving the above observation, would in fact introduce a new one with WCC providing a worse level of care than the rest of the country. Many disabled people able to live independently in the community anywhere else in England would be subject to the policy in Worcestershire and forcibly put into residential care. This is a major difference in control, independence and quality of life.

Similarly the government seeks to introduce an element of portability such that disabled people are able to either move closer to family members, or perhaps to take up a job offer without fear of significant disruption. In particular disabled people “will have continuity in their care and support” and “the draft Care and Support Bill provides for a duty on local authorities to ensure this”[31].

The maximum expenditure policy would be an obstacle to this. Any disabled person who would be affected by it would be highly unlikely to move to Worcestershire as they would lose their independence. In particular, retaining a job from a residential care setting is often problematic.

The government commits itself to raising care quality standards[3]. By forcing care users to rely on unregulated community, voluntary or faith organizations, which by WCC own admission are not specialised care providers, WCC would be offering a lower standard of care than that requested by the government. Furthermore, contrary to government plans, disabled people will be unable to access information regarding the quality of care offered.

The government wants disabled people to have more control over their support, recognizing that care users “know what is best”. As such they want “everyone who is eligible for support from their local authority to have access to independent advice and support to help them develop their care and support plan and help them choose how their needs could be met.” While we accept that advice would still be given, the actual choice would be completely compromised by this proposal.

Conclusion

While we accept that WCC faces challenging economic times, we have seen no evidence presented which warrants such a draconian measure as the Maximum Expenditure Policy.

Contrary to its claims, WCC has given no viable option to disabled people likely to be affected by the cap. Such people face the unenviable choice between a care package unlikely to meet their needs and institutionalisation.

We see no outcome which cannot lead to a marked deterioration in the quality of care received by some people, accompanied by serious safety concerns and loss of quality of life. Furthermore there could be serious financial knock on costs to both the health and social care services as a result of unmet needs.

For others, moving into residential care for purely economic reasons will lead to curtailing of independence, curtailing of freedom, loss of income, loss of social ties, loss of community ties, loss of daily social activities, potential job losses and perhaps most shockingly family break up.

The proposed policy flies in the face of decades of progress in disability rights and integration and would be a serious setback to current government policy of equality and encouraging inclusion of disabled people in society and the workplace.

We see no evidence that WCC has given proper and due consideration to the legal implications of this proposed policy, in particular its implications for the human rights of the people affected.

The consultation held on the proposed policy is itself legally flawed and open to challenge in the courts.

Given the enormous legal issues surrounding the effect of the proposal on the human rights of disabled people, and given recent successes in the courts in relation to both similar cases and cuts in care, we submit that WCC would leave itself open to many legal challenges should it proceed with this proposal.

We further submit that WCC has not fully appreciated the legal costs involved in forcing people into residential care, presented by DoLs and potential court cases, and that this would negate much of the proposed savings, in addition to the significant risk of the policy being permanently overturned.

Finally, the proposal moves completely against many of the most important stated objectives and aims of the government’s flagship 2012 white paper on social care reform, presented just a couple of weeks before the close of the consultation.

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

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