Learning Disability Voices

THE CARE CRISIS MANIFESTO 2017
Learning Disability Voices comprises charities, not-for-profit and independent sector companies that provide learning disability services in the UK, including Voyage Care, United Response, Lifeways, The Wilf Ward Family Trust, Hft, Dimensions and Mencap. We represent 20% of the total sector provision for learning disability care.
Executive Summary

Social care is in crisis and services for people with learning disabilities are at risk of collapse. This Manifesto sets out the perspective of providers in the Learning Disability Voices coalition, and calls on the newly-elected Government to address the funding challenges that face the sector in the short and longer-term.

Summary of Key Issues:
- The National Living Wage’s application to sleep-in shifts which is pushing providers’ costs up by approximately 4% a year.
- People with learning disabilities and the services they use are being left behind in favour of other areas of care.
- At 39% of England’s adult social care spend, learning disability services are too big to ignore.
- The majority of people with learning disabilities have had issues since birth and do not have the opportunity to ‘self-fund’.
- Providers are paid for hours of care; there is no ‘market opportunity’ in this arrangement, and driving further efficiencies is almost impossible.

Learning Disability Voices’ Key Asks of the Newly-Elected Government

1. Enhance the Better Care Fund by:
   a. ‘Front-ending’ £800m of the extra money promised through the Improved Better Care Fund, making it available this year to address the immediate crisis in social care. The Local Government Association, Association of Directors of Adult Social Services, and The King’s Fund all support this.
   b. Ensuring that areas increase the provision of care packages for people with learning disabilities by making this a requirement of access to the Fund.

2. Ensure that the National Living Wage (NLW) is applied fairly by:
   a. Urgently clarifying whether overnight ‘sleep-in shifts’ are exempt from the NLW rate, as Parliament originally intended. If not exempt, ensure full and proper funding is provided in recompense.
   b. Ensuring that providers do not face financial penalties from a retrospective application of a recent change in departmental guidance.
   c. Considering setting a separate, lower NLW rate for sleep-in shifts as a short-to-medium term solution for the sector.

3. Remove the 6% two-year cap on the Social Care Precept and give local authorities the freedom to raise it to 5% annually on an on-going basis, to enable them to compensate for the current funding shortfall and cost increases imposed by the introduction of the NLW.

4. Urgently provide clarity on the size and scope of the local top-up fund for supported housing.

5. Ensure that social care providers are able to recruit and retain staff from the EU following Brexit negotiations.
Learning Disability Voices is a coalition of charity, not for profit and independent sector organisations that provide services to some of the most vulnerable people in society. Yet our ability to provide a quality service – whilst remaining financially viable – has become increasingly difficult. For too long now our sector has had to cope with damaging local government cuts, and providers have been forced in the face of static fees, to strip back services.

Progress has been made since we first published the Care Crisis Manifesto in May 2016, yet our sector still faces immense challenges. While policy has moved in the right direction, the prioritisation of support for elderly care risks leaving behind people with learning disabilities that rely on vital services. Last year we warned that our sector was approaching crisis point. We have now reached it.

Real-terms budget cuts, insecure hourly agreements and a lack of clarity over payment arrangements for our workforce have brought about a perfect storm. Additionally, the UK’s decision to leave the European Union has raised major questions about our ability to recruit and retain care staff in the longer-term.

In the midst of this crisis, many providers are now operating without incentive and, in some cases, they have no option but to withdraw their services and walk away from care packages funded by local authorities. We do so with the utmost reluctance as, in some cases, this can put lives at risk.

Elsewhere, these challenges put us in danger of reversing the progress made in transforming the way services are delivered. The terrible events exposed during the Winterbourne View scandal called time on an outmoded way of delivering care for those with complex needs and learning disabilities.

Since then, progress has been made but reforms are at risk of being undone. The Government’s Transforming Care Programme set out a clear vision for ensuring people with learning disabilities receive the right level of high-quality care in their local communities, to support them in living as independently as possible. However, for this initiative to succeed there needs to be a significant transfer of funding from in-patient to community and other specialist settings.

There have also been various attempts at reforming the adult social care sector over the past two decades, but the issue of long-term funding has not been resolved. A forthcoming Green Paper is aimed at putting the social care system on a ‘more secure and sustainable long-term footing’ and, we hope, will provide the Government with an opportunity to introduce measures to safeguard care for people with learning disabilities.

The Care Crisis Manifesto 2017 explores the nature of the challenge facing the sector and suggests policy interventions that the Government should pursue, in order to shore-up providers and ensure that high-quality services remain sustainable for the people that need them most.

Andrew Cannon and Tim Cooper, Co-Chairs of Learning Disability Voices
**Challenges**

Councils commission our care services, meaning that – as providers – we are very much exposed to Whitehall decisions on funding for local government. In this respect, the public sector cuts implemented over the last seven years have posed a severe challenge.

It is also important to note that the way our sector is funded differs from other areas of social care in three key areas:

- Staffing accounts for the vast majority of our costs because our clients often have complex needs and require 1:1 or 2:1 support, 24 hours per day.
- There are virtually no self-funders among our clients, so we cannot ‘cross-subsidise’ with private fees, which is common in other care sectors.
- We are paid to provide hours of care and do not receive a guaranteed weekly fee; as a result, when we are successful at reducing the needs of our clients through better outcomes, the savings flow to commissioners and not to us.

‘Sleep-in Shifts’

We are eager to pay our care support staff a better wage (indeed, this is something we have been struggling with for many years) and members of the Learning Disability Voices coalition regard the National Living Wage (NLW) as an important step in recognising the vital work that they do, day-in-day-out.

Care workers on ‘sleep-in’ shifts effectively operate ‘on-call’ responding to emergencies and specific requests for support through the night. For years these workers have been paid a flat-rate by providers – usually between £35 and £45 – and the shifts have been regarded as a fundamental part of overnight service provision.

However, recent enforcement activity by HM Revenue & Customs (HMRC), as well as a number of ongoing employment tribunals, indicate that there is an increasing expectation by Government agencies and departments that the NLW should be applied to sleep-in shifts.

This raises major funding problems for the sector. Wage budgets account for approximately 70% of the sector’s total costs, meaning providers are hugely exposed to increases posed by the application of the NLW to sleep-ins. Specifically, it presents two acute problems to organisations operating in the sector as identified by the independent consultancy Cordis Bright:

- The first is a shortfall in funding that rises to nearly £200 million each year as the rate of the NLW increases.
- The second is a back-pay liability from tribunals of around £160 million, which can be extended by HMRC investigations to six years, thereby increasing the total to £400 million.

If sleep-ins were deemed to be “working time” for NLW purposes, this would cost providers an additional £800 million by 2020, with unintended knock-on effects on the people we support. The combined impact of the NLW and local government funding cuts means that we are already seeing care packages being withdrawn and services closed.

"We would deliver a more efficient NHS and better health if we spent the money on supporting people out of the health service rather than waiting for them to become ill."

Rt Hon Stephen Dorrell, Former Secretary of State for Health
Recent examples provided by our member organisations indicate the scale of these concerns. They include:

- A provider that has withdrawn from a service package in Sheffield, the care fees for which are £748,421 per annum (employing 48 people).
- A provider that has withdrawn from packages with an estimated total of £2.6 million in care fees during the past year.
- A provider that has withdrawn from contracts totalling £3 million in annual care fees since April 2014.
- A provider that has returned or not bid for existing services to the value of £1 million over the past 18 months, due to the unviable costs associated with the tenders.

If this continues, quality providers will cease to operate in this sector, and commissioners will be left with limited choices to ensure that people with learning disabilities receive the support they need.

**The Transforming Care Programme**

The Department of Health and NHS England set up the Transforming Care Programme in December 2015 with a view to transitioning people out of mental health hospitals more quickly. This followed the Winterbourne View abuse scandal which exposed the widespread misuse of assessment and treatment provision as a form of long-term placement for people with learning disabilities.

As a result, the Government has recognised that the community is the best place for people with a learning disability, autism, and behaviours that challenge, to receive care, as well as being the most cost-effective solution.

However, a report from the National Audit Office (NAO) – published in March 2017 – found that while there has been some success in realising the ambitions of Transforming Care, money is not being released from hospitals quickly enough to help pay for extra community support.

The NAO asserts that the sum needed to fund community-based health and social care support for people with learning disabilities who have been discharged from mental health hospitals is between £135 million and £195 million annually.

It is welcome that NHS England will provide £30 million in revenue funding over three years and that this funding will be matched by partnerships – commissioning bodies that include Clinical Commissioning Groups and local authorities – and an additional £100 million of capital funding. However, it is clearly not enough as people moving into a community setting are at the highest intensity of care provision and will require significant support packages.

Around £600 million is currently being spent on in-patient provision and this money must follow people as they move back into the community. Further capital must also be made available, however, to ensure that the right housing options can be developed to meet people’s needs.

Providing specialist accommodation for people with learning disabilities leaving hospital could become even more difficult if the Care Quality Commission (CQC) – following its “Registering the Right Support” listening exercise – recommends that registration of learning disability services is limited to housing for six people or less. This short-sighted approach judges providers on size of accommodation rather than the quality of the care they offer. If adopted, this guidance will reduce community provision and limit the success of the Transforming Care Programme.

As a result, people with a learning disability will spend more time receiving restrictive, unsuitable care in hospitals.

**Brexit and the Social Care Workforce**

90,000 EU nationals work in social care across England – which equates to around 7% of the country’s social care workforce – and the numbers are increasing. Without the contribution of foreign workers, the struggle to deliver sustainable services would be even greater.

It is well known that the care sector struggles to recruit and retain staff. Skills for Care found that the social care sector has an estimated vacancy rate of between 5.4% and 7.7% and an overall turnover rate of 25.4%. This equates to 300,000 workers leaving their role every year.

This situation will only get worse if there are restrictions on providers’ ability to recruit staff from the EU, following Brexit, and will be particularly acute if the UK’s migration arrangements become more stringent. Any further bureaucratic or financial barriers will add further costs to our members at a time when they are already struggling to remain financially viable.

It is not just providers who are concerned. Both the House of Commons Health Select Committee and the King’s Fund have called for the Government to recognise the need for the adult social care sector to continue to be able to recruit EU nationals when there is clearly not enough staff in Britain to fill vacancies. It is Britain’s most vulnerable people who will suffer if this option isn’t available.
Funding services for people with learning disabilities: The long-term future

At the 2015 Spending Review, the Government set out plans to provide approximately £2.3 billion in funding for adult social care. It followed this at the 2017 Spring Budget with a further £2 billion, injected over the next three years, and the promise of a Green Paper on a forthcoming review of long-term funding.

Yet, while our providers welcome these developments, the Government has not prioritised securing the future of services for people with learning disabilities which, at 39% (or £4.6 billion) of the total adult social care spend in England, is the second-largest area of service provision after elderly care.

The extent of the financial restrictions currently impacting on providers is critical. Services are at risk of failure, with many organisations considering their future in the sector. Ultimately it restricts our capacity to deliver truly person centred-care and our ability to provide genuine choice to individuals and their families.

Prior to the 2017 Budget, analysis conducted by the Local Government Association had suggested that – at its most conservative estimate – adult social care would face a shortfall of at least £2.6 billion by 2019/20. This factored in £1.3 billion of current market pressures (including the NLW), in addition to a future £1.3 billion in terms of a funding gap.

This analysis verifies our own sector estimates of a £1 billion shortfall facing learning disability services by 2020. While there is the potential for more money to be released to learning disability services through the Better Care Fund post-Budget, funding is yet to reach any of the Learning Disability Voices member organisations through this mechanism.

Alongside the Better Care Fund, the Council Tax Precept has allowed local authorities to generate additional revenue (through a council tax uplift) to support local older and disabled people. Coming on top of five years of spending cuts and the introduction of the NLW, however, this is nowhere near sufficient to cover the shortfall in funding, even despite the rise in the threshold announced at the 2017 Local Government Finance Settlement.

It is clear a longer-term, more stable funding solution is required and the forthcoming social care funding Green Paper is an opportunity to achieve this. As well as ensuring that services are put on a more sustainable footing, the Green Paper should address the separate and relatively greater lifetime needs of people with learning disabilities, and ensure a future system recognises these needs with a separate and distinct funding stream.

Additionally, the future, long-term settlement should account for the fact that the majority of providers’ clients have needed care since birth and have no opportunity to establish the cash-flow and build the assets required to fund the support they receive, and that already over-stretched local authorities cannot be relied on as drivers of funding.

Finally, the Green Paper must also recognize that hourly rates punish Learning Disability Voices’ members for doing their job well, as should clients become more independent and require less support, providers receive a reduced income.
Care in the learning disability sector is in crisis. Our partnerships with local government – our only customer – are unsustainable, uneconomic and are ultimately failing vulnerable people in great need.

We are clear that the Social Care Green Paper must not become another missed opportunity to address the crisis facing the learning disabilities sector. There is an urgent need for a cross-party consensus on reform of adult social care provision, in terms of a guarantee for more meaningful funding, as well as the way in which services are commissioned. Without this, learning disability service providers will be forced to leave the sector and the market will fail.

It is therefore paramount that future reform recognises that people with learning disabilities face severe barriers in contributing to the cost of their own care. We call on the newly-elected Government to ensure that a sustainable funding solution for people with learning disabilities is a central tenet of the forthcoming Green Paper.

We do, however, realise that a long-term funding solution could be some way off. Until the Green Paper takes shape, we ask the newly-elected Government to review the existing arrangements that determine the level of funding received by the social care sector.

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