Analysis of the Consultation on Allocation Options for the Funding for Independent Mental Health Advocate Services and the treatment of Armed Forces' compensation in charging for social care

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Introduction

The Department of Health asked for views on the allocation of funding for Independent Mental Health Advocate Services and the Armed Forces' compensation (Guaranteed Income Payments) disregard.

Under the Health and Social Care Act 2012, the Department (DH) will allocate funding for four duties which will pass from the NHS and DH to local authorities in April 2013. We consulted on options to allocate the funding for three of these new duties in Summer 2011. A summary of the responses to the consultation is available http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129404.pdf

In our consultation in Summer 2012, we sought views on the best way to allocate funding for the fourth, Independent Mental Health Advocate Services.

The Independent Mental Health Advocate (IMHA) Service will be funded by DH grant from April 2013 onwards. Further details about the allocation of the grant will be made available in late 2012, alongside the provisional 2013/14 local government finance settlement.

In addition, the Care and Support White Paper announced that the Government will amend social care regulations and charging guidance so that members of Armed Forces injured as a result of service will no longer need to use monthly Guaranteed Income Payments (GIPS) for their injuries from the Armed Forces Compensation Scheme to fund publicly arranged social care. The Department also sought views on how to allocate additional funding for this new disregard.

The funding for the GIPS disregard funding will be issued as a DH grant in October 2012. Further details about the allocation of the grant were issued on 24 October in LAC(DH)(2012) 3.

Independent Mental Health Act Advocate Service

Background

An IMHA is a specialist mental health advocate, who helps qualifying patients understand the legal provisions to which they are subject under the Mental Health Act 1983 Act (the 1983 Act) and the rights and safeguards to which they are entitled, and helps those patients exercise their rights through supporting participation in decision-making.

Qualifying patients for IMHA services are patients who are:

- Detained under provisions (other than emergency provisions) of the 1983 Act (even if they are currently on leave of absence from hospital)
- Conditionally discharged restricted patients;
- Subject to Guardianship under the Act; or
- On supervised community treatment.

The role of the local authority will be to take over responsibility for commissioning IMHA services for its population. Local authorities will not be obliged to provide these services directly themselves. Nor will this change affect arrangements for commissioning more general mental health advocacy services.

Consultation responses

36 responses were received to the questions on allocation of funding for IMHA services, which breakdown as follows:

Local authorities	18
NHS	5
IMHA service providers	3
National organisations representing service users	8
Regulator	1
Other	1

Question IMHA1: Do you prefer Option IMHA 1; population based; or Option IMHA2 Relative Needs Formulae?

Of the respondents, seven preferred option 1 and 26 preferred option 2. Three respondents had no preference for either option. The breakdown reads as follows:

	Option 1	Option 2	Neither option	Total

			preferred	
Local authority	5	12	1	18
NHS	2	3	0	5
IMHA Service provider	0	3	1	4
National organisations representing service users	0	6	1	7
Regulator	0	1	0	1
Other	0	1	0	1
Total	7	26	3	36

Q2 Why do you prefer the option selected above?

Of the five local authorities which chose option 1, 80% (four) did so as they believed that the relative needs formulae do not themselves predict mental health or IMHA needs. Two local authorities highlighted possible unmet need in rural areas.

One of the two NHS services which chose Option 1 was concerned that those detained under the Mental Health Act with a learning disability or IMHA services working with those whose first language was not English required a greater level of investment which was not necessarily reflected in the relative needs formulae.

Of the 72% (26 respondents) who chose Option 2 did so on the grounds that the relative needs formulae more accurately reflect the prevalence of mental health needs in a particular area. It was suggested that IMHA funding should include a prediction of need based on available statistics of those subject to the Mental Health Act 1983.

There was concern that neither option would fulfil the statutory obligation to meet IMHA requirements and that in future commissioners would need to plan ahead to reflect an increased demand for services, making full use of the latest information available. Commissioners should commit sufficient funding to allow for advocacy outreach and presence on hospital wards.

Question IMHA3 Do you have evidence on the equality of any of the options i.e their impact on groups protected by equality legislation?

Both Mind and Action for Advocacy highlighted the CQC report *Monitoring the Mental Health Act 2010/2011* in which the CQC states that "without sufficient presence on the ward, access to IMHA is largely theoretical. The effect is likely to be magnified for people from BME communities, older people (particularly those with dementia) people with learning disabilities and people whose first language is not English. Referral rates suggest that this is already the case. Ensuring funding is sufficient to provide outreach to such groups is essential if local authorities are to be able to adequately meet their legal duties".

Other points raised as part of the consultation

CQC highlighted the problems that occur where patients are detained under the Mental Health Act 1983 outside their area. The home area is responsible for funding IMHA provision. The CQC has suggested that when local authorities become responsible for commissioning IMHA services, take there be reciprocal arrangements between local authorities or alternatively that the cost of IMHA provision be brought into a mental health provider's baseline costs and the relevant local authority subsequently charged back for this.

The Government's response

Of the 36 responses to the IMHA questions in the consultation, the great majority agreed with the proposal to use the RNF to allocate the funding to local authorities.

We received some helpful evidence on the impact that our proposals might have on groups protected by equality legislation. The evidence presented highlighted the importance of ensuring that the funding formula reflects local need as far as possible. The evidence did not, however, suggest an alternative approach.

The Government agrees that neither formula is perfect. However, we agree on the basis of the responses to the consultation that, of the options available, the adult social care relative needs formulae will better reflect local need to provide IMHA services. The Government proposes to use these formulae to allocate the funding.

Guaranteed Income Payments

Background

Where a local authority arranges residential care for a person, it is required to carry out a financial assessment of the person's resources and charge them what they are assessed as being able to pay. Until 29th October 2012 only the first £10 per week of a Guaranteed Income Payment was disregarded.

For non-residential care (i.e. home care) local authorities design their own charging policies, within the scope of statutory guidance issued by DH Ministers – Fairer Charging Policies for Home Care and other non-residential Social Services. The "Fairer Charging Guidance" broadly follows the rules on charging for residential care.

Guaranteed Income Payments are made to armed forces veterans injured on active service. The Ministry of Defence Review of the Armed Forces Compensation Scheme, published in February 2010, recommended that all Armed Forces Compensation Scheme payments, including Guaranteed Income payments should be disregarded in the assessment for charging for local authority supported social care. After careful consideration, the Government accepted this recommendation. The decision to disregard Guaranteed Income Payments from October 2012 was announced in the Care and Support White Paper, published on 11th July 2012.

Because disregarding Guaranteed Income Payments would be a New Burden on local authorities, the Department of Health agreed to cover the cost to local authorities for the remainder of this Spending Review.

The Department consulted local authorities on the formula by which the funding to cover these costs should be allocated to individual local authorities. The consultation closed on 7th September.

The consultation asked the following questions:

Question GIPs 1: Do you agree with our proposal to allocate funding for the armed forces GIP compensation disregard using the adult social care Relative Needs Formula (RNF) formulae?

Question GIPs 2: Do you have any comments about the proposal or alternative suggestions for allocating the grant?

Question GIPs 3: Do you have any evidence on the equality impact of any of the options, i.e. their impact on groups protected by equality legislation?

The table below sets out the response to the GIPs related questions.

GIPs Q1	14 responses
GIPs Q2	3 responses
GIPs Q3	4 responses

Question GIPs 1: Do you agree with our proposal to allocate funding for the armed forces GIP compensation disregard using the adult social care Relative Needs Formula (RNF) formulae?

The use of the RNF was supported by 12 of the 14 who replied to question 1. Concern was expressed at the absence of concrete evidence concerning the number of veterans needing social care and their location. However, the numbers of such people are, currently, very small – by 2014/15 it is estimated there will only be 285 people receiving GIPs who may also need social care. The RNF predicts relative need for local authority supported care for people aged 18 to 64. The social care RNF takes into account relative deprivation (as wealthier people are less likely to receive state-funded social care). The RNF was broadly accepted, by respondents, as a reasonable way to allocate the money to cover the cost of the New Burden.

Question GIPs 2: Do you have any comments about the proposal or alternative suggestions for allocating the grant?

Despite the concerns expressed in reply to question one, none of the respondents suggested an alternative method of allocating the money.

Question GIPs 3: Do you have any evidence on the equality impact of any of the options, i.e. their impact on groups protected by equality legislation?

One respondent felt the disregard would have a positive effect.

One respondent felt there was a need to ensure the service related Gurkha population in Hampshire were linked to mainstream services tailored to their needs.

One respondent expressed concern at the possible, indirect, effect of the disregard on equality; if the funding from the Department did not cover the cost of the disregard.

One respondent raised the issue that the disregard does not apply to veterans receiving payments under the previous, War Pensions Scheme.

The Government's response

Of the 14 responses to the GIPs questions in the consultation, the great majority agreed with the proposal to use the RNF to allocate the grant money to cover the New Burden caused by disregarding GIPs. None of the respondents suggested any other method for allocating the grant. In view of this, the Government proposes to use the RNF formula to allocate the grant.

Regarding the equality concerns, we received helpful evidence on the potential for the number of veterans with care needs to be unevenly spread across the country. We have investigated this issue with the Ministry of Defence, and we believe that, on the basis of the available, national-level data, the social care RNF is the best predictor of where veterans with a social care need live. The replacement of Income Support by Universal Credit means the Department of Health will have to review the social care charging rules. As part of this review, the Department of Health will be considering a wide range of social care charging issues.

Annex A: List of respondents

Organisation	Type of Organisation
Action for Advocacy	Other
Advocacy in Somerset	Other
Buckinghamshire and Oxfordshire PCT Cluster	PCT
Buckinghamshire County Council	LA
Care Quality Commission	Other
Coventry City Council	LA
Essex County Council	LA
Gateshead Advocacy and Information Network (GAIN)	Other
Gateshead Council	LA
Gloucestershire County Council	LA
Hampshire County Council - Adult Services	LA
Havering Mental Health Services	PCT
Hertfordshire Public Services	LA
Isle of Wight PCT and Council	PCT and LA
LAMP	Other
Lancashire County Council	LA
Liverpool City Council	LA
Loud and Clear Mental Health Advocacy	Other
Manchester City Council	LA
Mental Health Matters	Other
Middlesbrough Social Care	LA
MIND	Other
Newcastle City Council	LA
Newcastle Council for Voluntary Services	Other
NHS North Essex	PCT
POhWER	Other
Salford City Council	LA
Staffordshire County Council	LA
Stockton-on-Tees Borough Council	LA
Suffolk County Council	LA
Surrey County Council	LA
Surrey County Council	LA
University of Central Lancashire	Other
VoiceAbility	Other
Whittington Hospital NHS Trust	PCT
Wish	Other
	Individual