

West Berkshire Disability Alliance (WBDA)

working with

West Berkshire Neurological Alliance

Response to:

West Berkshire Council (WBC) Consultation on Proposals to cut 10 areas of Adult Social Care re: WBC's 2012-13 budget

Deadline for responses:

20/01/2012

Sent on:

20/01/2012

Sent by:

**Mick Hutchins, West Berkshire Disability Alliance (WBDA)
Chairman**

And;

**David Roberts, West Berkshire Neurological Alliance (WBnA)
Chairman**

On behalf of:

West Berkshire Disability Alliance (WBDA) www.wbda.org

And;

West Berkshire Neurological Alliance (WBDA) www.wbna.org.uk

Sent to (by email):

Nigel Owen, WBC Social Care Project Manager

Jan Evans, WBC Head of Adult Social Care Services

Email address: nowen@westberks.gov.uk

Copies sent to: **WBDA & WBDA Executive Committees & June Graves, WBC**

NB - WBDA & WBNA have formally responded in this format to enable the two Alliances to take a more holistic approach to the 10 proposals.

SUMMARY OF WBDA/WBNA CONCERNS AND RECOMMENDATIONS

WBC Proposal 1 - Voluntary Sector purchasing - WBC projected saving £85k

WBDA/WBNA – WBC must recognise that this is not a saving and that by making a 10% (£85,000) cut to this sector which could be returning an average 5:1 ratio on investment approx. £425,000 worth of service provision will be lost.

WBC Proposal 2 - Contributions towards the cost of care – projected saving £700,000

WBDA/WBNA – This is quite clearly a policy change that will affect the lives of many local disabled people and in not engaging and properly consulting with those affected and/or with the organisations and groups representing them, WBC has not fulfilled its Duty as required for Public Bodies under the Equality Act 2010.

WBDA & WBNA therefore calls on WBC to suspend proposal 2 until a full and detailed consultation is undertaken as laid out in the Equality Act 2010.

WBC Proposal 3 – Personal Budgets – Projected savings £150k

WBDA/WBNA - It is more likely that savings will be made when more people who are able/willing to take control of managing their own budgets and commissioning their own care and support, embrace the concept of what a Personal Budget (PB) can do for them.

WBDA & WBNA will only support WBC in its current programme of rolling out PB's if:

- People who are willing and able to take control of their PB are properly supported to do so and;**
- People who are NOT willing and/or able to take control of their PB are NOT forced to do so and;**

- The burden DOES NOT fall to manage a person's PB on an already hard pressed family carer against their will.

WBC Proposal 4 – Community meals – Projective savings £92k

WBDA/WBDA – We are greatly concerned that this proposal which will require people have to pay an extra £1.80 per meal (full cost £6) could mean:

- Some people will opt out of this service on cost grounds and not have any access to a hot meal on a day to day basis.
- Those opting out of service because of this increase may not have any other check calls, which is a hidden value of the current regulated WBC- approved delivery service.
- Some people may face the 'double whammy' of having to pay extra for a hot meal and social care.

WBC Proposal 5 – Purchasing Learning Disability supported living services Projected savings £80k

WBDA/WBNA – This could mean more disruption for people with a Learning Disability (LD) on the back of the 2010-11 round of WBC cuts and also by having a flat rate for service providers could stifle initiative and lead to cost cutting to maintain service provision under a lower rate. This will drive down standards e.g. staff training and development.

WBC Proposal 6 - Cost ceiling for care homes and home care – Projected saving £50k

WBDA/WBNA – believes WBC has AGAIN not fulfilled its Duty as required for Public Bodies under the Equality Act 2010.

WBDA & WBDA TOTALLY REJECTS PROPOSAL 6 ON LEGAL & MORAL GROUNDS

WBC Proposal 7 – Review of Home Care contracts – Projected Savings £50k

WBDA/WBNA is concerned that by having a flat rate for home care service providers this will stifle initiatives to overcome the

examples of poor service already well documented and lead to cost cutting to maintain service provision under a lower rate which will drive down standards e.g. staff training and development could be compromised in what is an already depressed industry re: poor motivation and high turnover of staff.

WBDA/WBNA - WBC should be rewarding good providers and penalising bad providers.

WBC Proposal 8 – Transport – Projected savings £40k

WBDA & WBNA recommends that WBC works with staff to overcome the potential problem of long and stressful journey times for clients e.g. by varying routes and identifying people who might suffer because of a long journey time.

WBC Proposal 9 – Support in sheltered housing – Projected saving £500k

WBDA & WBNA recommends that WBC works closely with the Social Landlords concerned to ensure that any potential gaps in support are filled and no extra burden to fill gaps in support is placed on the Voluntary Sector.

WBC Proposal 10 – Women's refuge – projected savings £50k - N/A

Accumulated Affect of proposed cuts on Individuals

WBDA/WBNA is very concerned the WBC seems to have done nothing to assess the accumulated effect the proposed cuts could have on individuals who will be affected by more than one proposal.

Unnecessary Pressure placed on WBC Social Care Budget

WBDA & WBNA – Local disabled people and their families should not suffer because of the ineptitude shown from WBC senior management re: NHS Continuing Healthcare Funding.

WBDA/WBNA Alternative suggestions to making cuts Social Care Budget

- **Cuts to other services**
- **The 20 senior management positions to be reduced**
- **WBC to work swiftly to ensure the PCT/NHS makes a fair and proper contribution to high end cost care packages in the 2012-13 budget**
- **WBC to invest to save via:**
 - **Investing more not less in the Voluntary Sector**
 - **Supporting people who are willing and able to manage their Personal Budget**
- **Raise Council Tax to an appropriate level to maintain services at the current**

The legal and human rights position:

WBDA/WBNA – believes that re: Proposals 2 & 6:

WBC is in breach of the Equality Act 2010

**WBC is also in breach of the spirit of the following Article of UN Convention on the Rights of People with Disabilities re:
ARTICLE 19 – Living independently and being included in the community**

WBDA & WBNA DETAILED RESPONSE

WBC Proposal 1 - Voluntary Sector purchasing - WBC projected saving £85k

We are reviewing how we commission services in Adult Social Care from the voluntary and community sector. This proposal is expected to reduce our spending in the voluntary and community sector by £85,000 next year. This would result in an approximate 10% reduction in purchasing on Adult Social Care services provided by voluntary and community organisations. We anticipate that organisations may be able to absorb some of this reduction through

efficiencies, but it may lead to a reduction in the level of service provided.

WBDA/WBNA – WBC representatives have stated in various consultation meetings that the council provides £1M funding p.a. in this area and they consider that the 10% savings can be achieved by

- **Management, governance and back office efficiencies**
- **Amalgamation of some services**

WBDA/WBNA – many Voluntary Sector Organisations (VSO's) providing services have a proven record in being efficient in the areas of management, governance and back office activity.

EXAMPLE – The Newbury Shopmobility Scheme Testimony provided by Garry Poulson, CE, Newbury Volunteer Bureau:

Newbury Shopmobility is one of about 250 such schemes in the UK that provides electric scooters and wheelchairs for the less able to get around the town. Local charity Newbury Volunteer Bureau has run Shopmobility in Newbury since 1995. A far sighted council officer saw the both the economic value of such a scheme and the value of the equality of accessibility that such a scheme would bring to Newbury.

Long before the Big Society agenda hit the news Newbury Volunteer Bureau has been adding considerable value to West Berkshire Council grant to run the scheme on its behalf. Small charities are able to run schemes far more efficiently than local councils due to their lower employment costs and other overheads, their ability to engage loyal volunteers to assist in the running of the service and to be able to bring in charitable donations and external grants, as it has in the past from the likes of the Greenham Common Trust, Vodafone and donations of equipment from individuals and small companies.

Volunteering with the scheme amounts to a little over a 1,000 hours per year. Using the accepted multiplier of £12.50 per hour this equates to a saving of £12,500 per year in employment costs. Since its inception in 1995 the service has never lost a single day of operation except during snowfall.

The Newbury Scheme is one of three local schemes that have been free at the point of use, Reading and Oxford being the other two. The proposed cut of one third of the revenue to this scheme is equivalent to 2 days operational costs. The trustees of the Volunteer Bureau have now been asked by the authority to consider imposing a charge to users. This remains the only way to avoid a reduction of the service. Trustees are determined to maintain the flexibility that six days service offers to visitors to the town and affording them the equality of access that most of us can enjoy.

WBC representatives have also said that the voluntary sector is placed to obtain grants/funds not available to Statutory/private sector.

WBDA/WBNA – most VSO's already tap into all relevant funders and funding streams, grants and undertake fund raising in other areas e.g. collections, sponsored activities, trade stalls, etc.

WBC must recognise that many local VSO and groups often have to chase the same limited 'pots of money' which is becoming more stretched from greater demand from VSO's and cuts from funders because of the current financial climate. Also if VSO's have to engage in extra fundraising activity to make up a 10% shortfall this will waste staff and volunteer time and take them away from providing services and other vital work.

WBDA/WBNA – we believe that VSO's can show up to and beyond a 5:1 ratio in return on investment in the added value and volunteer time such organisations provide

WBDA/WBNA – WBC must recognise that this is not a saving and that by making a 10% or £85,000 cut to this sector which could be returning an average 5:1 ratio on investment approx. £425,000 worth of service provision could be lost.

WBC Proposal 2 - Contributions towards the cost of care – projected saving £700,000

We are proposing to revise the way that we ask people to contribute towards the cost of their care. Currently we make some discretionary local allowances related to disability which we can no longer afford to do at the same level.

It is proposed:

- to review our charging structure to account for the total package of care
- to remove items not covered in the national fairer charging guidance which we have previously allowed for, such as water rates and buildings maintenance.
- to review the level of disability related expenditure which we allow

Individuals whose charges are likely to be affected by these changes will be informed in an individual letter which we will be sending out early in December, which will give an indication of how this will affect them.

It is likely that the majority of people who receive care and support services will be affected by this change. This proposal will enable the Council to collect a further £700,000 in income from service users.

WBC says the £700,000 will be collected from an estimated 756 affected users (average per head = £925)

NB – a 1% rise in Council Tax = approx. £800,000 raised

WBDA/WBNA – It is clear by the regrettable language used by WBC in the last sentence of this proposal 'collect', 'further', 'income' that the Council considers disabled people as an income stream. This is no more than a tax on disability with local disabled people being asked to fund a freeze in Council Tax relating to approx. 1%. It is surely unfair and discriminatory that, while the general public has no financial burden imposed on them 756 will have to pay an average of £925 to maintain a freeze on Council Tax.

WBDA/WBNA – there are no details of how WBC proposes to change its Disability Related Expenses criteria/rules e.g. what areas WBC currently allows, how much and what evidence is required and what areas WBC proposes to not allow or reduce

(and by what amount) and what impact this will have on people's health and well-being that are likely to be affected.

On this issue WBDA & WBNA jointly submitted (along with other questions on other issues) 2 questions to WBC on 22nd December 2011 via WBC Disability Equality Scheme Scrutiny Board:

1. Will the Council engage with the local voluntary sector to look into the hidden costs of disability in a meaningful way before WBC revises its charging criteria?
2. Will WBC issue a detailed analysis of how the proposed £700,000 extra income from charging is made up, to help identify whether the basis is fair and justified?

WBC provided the following answers to the questions on 10th January 2012:

1. We encourage, and will respond to, any submissions from local voluntary sector organisations about the costs of disability, as part of this consultation.
2. £100k from the charging for double-up care.
£200k from no longer allowing for extra expenditure on items which have been added locally to the list of allowances (water rates and building maintenance). This local position was in addition to the guidance issued nationally.
£400k from removing allowances currently included as Disability Related Expenditure where the local position is more generous than the minimum national guidance.

These answers do not describe what mechanism will be used to consider any submissions from VSO's about the costs of disability or provide any relevant details i.e. items of expenditure currently taken into consideration and proposed changes. WBC has sent letters to individual service users that are likely to be affected but those only detail the areas affected/cost regards that individual and give no clear overall picture to their representative organisations and groups.

WBDA/WBNA believes that the proposed changes to WBC's charging policy needs a more in depth consultation and the

Council needs to recognise that service users and their representative organisations and groups need adequate time to gather information and assess the cost of disability and the impact on those affected by the proposals.

This is quite clearly a policy change that will affect the lives of many local disabled people and in not engaging and properly consulting with those affected and organisations and groups representing them, WBC has not fulfilled its Duty as required for Public Bodies under the Equality Act 2010.

Charging for double up care also represents a policy change and requires a more in depth consultation.

WBDA & WBNA therefore calls on WBC to suspend proposal 2 until a full and detailed consultation is undertaken as laid out in the Equality Act 2010.

WBC Proposal 3 – Personal Budgets – Projected savings £150k

Using the new purchasing opportunities for innovation and improving the cost effective ways of delivering services through Personal Budgets, to achieve savings of £150,000. This is a small proportion of the total budget for purchasing care, of £34million. Nationally, evidence suggests that many service users can creatively meet their needs at a lower cost using a Personal Budget (PB).

WBDA/WBNA – WBC says it expects the proposed savings to come from individuals requiring less money because they have found a way of using their PB in a different, more cost effective way than commissioning more expensive traditional services.

WBDA/WBNA – believes this claim is over optimistic and has not seen any evidence from WBC to back up the claim. It is more likely that individuals who are inventive enough to find these alternatives will also find inventive ways up using up their PB to increase their horizons and personal development. With the historical evidence of the slow voluntary take of PB's it is also likely that this inventive group have already come forward and taken up a PB.

It is more likely that savings will be made when more people who are able/willing to take control of managing their budgets and commissioning their own care and support, embrace the concept of what a PB can do for them and take control of these areas. Substantial savings could then be achieved as the need for expensive in house administration systems are greatly lessened i.e. less need for commissioners, care managers, back office accountancy staff and higher layers of management.

However, these savings can only be achieved if people are properly supported at the outset when they are willing to take more control over managing their own PB, via advocacy, training, peer support and provision of brokerage/advice services if required.

IT SHOULD NEVER BE THE CASE THAT PEOPLE THAT ARE NOT ABLE OR WILLING TO TAKE CONTROL OF MANAGING THEIR PB ARE FORCED INTO DOING SO.

WBDA & WBNA will only support WBC in its current programme of rolling out PB's if the above two conditions are met. WBDA & WBNA will NOT support the current programme of rolling out PB's if these two conditions are not met and/or the burden falls to manage PB's on already hard pressed family carers.

WBC Proposal 4 – Community meals – Projective savings £92k

The Council currently pays £92,000 subsidy for approximately 54,000 hot meals delivered each year. On the basis that there are realistic alternative ways for people to get hot meals, we will no longer subsidise or order hot meals for people as part of a care package. Information will be provided to all people in the District currently receiving hot meals about options for continuing this provision in future. Currently, people are charged £4.20 per meal, towards a cost to the Council which is over £6 per meal.

WBDA/WBDA – We are greatly concerned that this proposal which will require people have to pay an extra £1.80 per meal (full cost £6) could mean:

- Some people who requiring this service because they have no other access to acquiring a daily hot meal will simply not be able to afford the increase, will opt out of the service and not have any access to a daily hot meal.
- That those opting out of service because of the increase may not have any other check calls, which is a hidden value of the current regulated WBC approved regulated delivery service.
- Some people may face the 'double whammy' of having to pay extra for a hot meal and social care.

NB – It is also not clear if people experiencing this 'double whammy' will be allowed to offset the extra cost of purchasing meals as Disability Related Expenditure.

WBC Proposal 5 – Purchasing Learning Disability supported living services Projected savings £80k

We currently pay a range of rates for the provision of supported living services for adults with a Learning Disability, and are looking to achieve a single rate for a comparable service across all our providers. By improving the effectiveness of purchasing in this area we propose to make savings of £80,000. People will continue to get support, based on their needs assessment, however, we foresee that for some people, there could be a change of carer and/or care provider.

WBDA/WBNA – This could mean more disruption for people with a Learning Disability (LD) if their care assistant(s) and/or care provider is changed which will come on the back of the 2010-11 round of WBC cuts which saw the Phoenix Centre in Newbury (specially designed to support and provide services for people with a LD) forced to undergo a change of use to a pan-disability day service centre which has proved very distressing for people with a LD.

WBC must fully understand that for many people with a LD it is vital that they have a settled a familiar routine and continuity in their lives to enable them to cope with their condition and part-take as fully as possible in society.

WBDA/WBNA also is concerned that by having a flat rate for service providers will stifle initiative and lead to cost cutting to maintain service provision under a lower rate which will drive down standards e.g. staff training and development could be compromised.

**WBC Proposal 6 - Cost ceiling for care homes and home care –
Projected saving £50k**

i) Care Homes: Locally, we pay a range of prices for similar care home provision. We will introduce a guide price for Council purchasing of places at a care home, dependent on the care service provided. This will generate a more consistent approach to our purchasing across the District. There is a possibility that this may limit our purchasing options locally, which may mean that people whose place is solely funded by the Council could be placed outside of West Berkshire.

ii) Home Care: In some circumstances the total cost of a package of care for someone to remain in their own home can significantly exceed the cost of an appropriate care home. This is not affordable or equitable. The Council will no longer be able to support people in their own home if this is the case.

WBDA/WBNA – This proposal could see people, deemed too expensive to be supported in their own home, forced into residential care which goes against the whole ethos/principal of Independent Living to which the UK Government says it is committed to.

Joe Mooney, WBC Lead Member for Social Care has stated in a letter to the Newbury Weekly News (12/01/2012) that:

'In last week's article on council savings ('Home care could end if cost is too high') you report the council will 'axe' home care services where an individual can be looked after less expensively in a care home. This is not quite accurate. The council will have to place an overall limit on the amount of home care it can offer individuals – but everyone has the option of

further contributing to their own care if they would like and this would enable them to remain in their own home.'

Joe Mooney also re-iterated this on Newbury Sound Radio on 18/01/2012 which begs the question – what if people have no means with which to top up their care?

This proposal could also mean that people needing residential care will have to move out of area if cheaper providers are found in another area.

WBC conducted a consultation in 2011 that concluded on 30/09/2011 re: A Proposal on Funding Arrangements for Domiciliary Care and Non Residential Services – which proposed:

'The Council now proposes to add an amendment to its Fair Access to Care Policy that enables Adult Social Care to introduce an upper cost parameter for the cost of domiciliary care and non-residential care services that can be used as a guide for the cost of care packages.

This would mean that where an individual is assessed as requiring a domiciliary care package in excess of the upper-cost parameter and there is an alternative care home placement which meets the individual's assessed needs, the Council may take into account the issue of resources in determining the care provision. The cost of the care home will vary with the individuals age and needs.

However, decisions on placement will always be specific to the individual, taking account of the individual's needs and whether they can be better met in a care home.'

To date WBC has produced no report or response to this consultation or has mentioned it in this current consultation which WBDA & WBNA believes again sees WBC not fulfilling its Duty as required for Public Bodies under the Equality Act 2010.

WBDA stands by its response given to the WBC 2011 consultation on Care Package Capping and WBNA supports the response fully (see appendix 1).

WBDA & WBDA TOTALLY REJECTS PROPOSAL 6

WBC Proposal 7 – Review of Home Care contracts – Projected Savings £50k

We currently pay a range of rates for the provision of home care services for adults, and are looking to achieve a single rate for a comparable service across all our providers. We propose to set a standard rate for home care services that the Council will pay to care providers. This proposal will save £50,000.

WBDA/WBNA – This area of service provision provided by a mish-mash of private sector domiciliary contracted/commissioned provider agencies in West Berkshire has already been well documented for failing in many areas, not least giving choice and a person centered service e.g. calls missed, care delivered late, users having to go to bed at ridiculously early times, etc.

WBDA/WBNA are also concerned here that by having a flat rate for home care service providers will stifle initiatives to overcome the examples of poor service given above and lead to cost cutting to maintain service provision under a lower rate which will drive down standards e.g. staff training and development could be compromised in what is a depressed industry re: poor motivation and high turnover of staff.

WBDA/WBNA - WBC should be rewarding good providers and penalising bad providers.

WBC Proposal 8 – Transport – Projected savings £40k

We are reviewing how the Council provides transport services for adult social care clients. We propose to further integrate with the Council's other transport services: needing fewer vehicles, reducing the number of journeys and driver hours. This may have an impact on service users regarding timings of transport and change of drivers. This proposal will save £40,000.

WBDA/WBNA understands that savings here are being made by combining journeys for their adult social care clients. If that is the case the concern is this could mean longer and inappropriate journey times for some clients which could prove stressful, uncomfortable or painful if they have certain medical conditions i.e. a person who finds themselves first on the bus in the morning and last off at the end of the day.

WBDA & WBNA recommends that WBC works with staff to overcome this potential problem e.g. by varying routes and identifying people who might suffer because of a long journey time.

WBC Proposal 9 – Support in sheltered housing – Projected saving £500k

A review of support into sheltered housing schemes (The Supporting People Strategic Review), highlighted that the way housing related support was delivered to older people was not fair. This inequity is due to people receiving a service because they live in a sheltered scheme, rather than because they need it. The Council will change the service so that people who access the service do so on the basis of need, rather than where they live. This proposal will save £500,000.

WBDA/WBNA – At first look this seems an anomaly which has seen money spent on support for people who didn't need it which has come about because of a poor contract arrangement and has wasted at least £0.5M. However, at a WBNA Open meeting held on 12/01/2012 Nigel Owen, WBC Adult Social Care Project Manager, explained it was a complex issue involving Social Landlords.

WBDA & WBNA have not had enough time or detail to research this area thoroughly, however in replying to a jointly submitted question (along with other questions on other issues) to WBC on 22nd December 2011 via WBC Disability Equality Scheme Scrutiny Board on this proposal, WBC said '*Reducing the*

Council's payment towards this service will impact on those who benefit from support, but do not meet our eligibility'.

The fact that this group of people will be left with no support is a concern and could impact on the Voluntary Sector who might be required to fill the gaps.

Therefore WBDA & WBNA recommends that WBC works closely with the Social Landlords concerned to ensure this potential gap in support is filled.

WBC Proposal 10 – Women's refuge – projected savings £50k

WBDA/WBDA – This is an area where neither Alliance has any expertise so we leave comments here for those better placed to understand the issues associated with this proposal.

Accumulated Affect of proposed cuts on Individuals

WBDA/WBNA is very concerned the WBC seems to have done nothing to assess the accumulated effect the proposed cuts could have on individuals i.e. someone who is affect by more the one of the 10 proposals and/or other cuts e.g. having their travel tokens stopped (WBDA/WBNA have replied separately to this issue).

Unnecessary Pressure placed on WBC Social Care Budget

WBDA/WBNA – believes that WBC has exacerated the pressure on the Social Care Budget by not doing enough to raise awareness of Continuing Healthcare Funding (CHF) and work together with and press Berkshire West PCT to share the responsibility to fund high end cost care packages via this funding.

This concern is born out by figures given at the WBC Health Scrutiny meeting on 17th January 2012 which read the number of people currently receiving CHF in West Berkshire is 3.3 per 10,000 while the national average is 10.5 per 10,000

The fact that WBC has only recognised this issue now and has only started to attempt to investigate and improve the situation (starting 17/01/2012) smacks of at best a missed opportunity over many years and at worse a severe management failure

Alarm bells should have at least rung for the officers and elected members of WBC responsible for overseeing Social Care delivery when it was announced on 15th March 2010 that the Independent Living Fund would be closed to new applicants on 1st May 2011 putting extra pressure on high end costing care packages.

WBDA & WBNA – Local disabled people and their families should not suffer because of the ineptitude shown from WBC senior management re: NHS Continuing Healthcare Funding.

WBDA/WBNA Alternative suggestions to making cuts Social Care Budget

- Cuts to other services – in a focus group meeting hosted by the West Berkshire Independent Living Network on 06/01/2012, ten service areas were suggested for which each 10% reduction in the total spend will save £312,801 as per 2010-11 spend (see appendix 2). If more areas were identified this could add up to a substantial saving
- The 20 senior management positions to be reduced equating to approx. £161,229 for every 10% spent on salaries alone as per recorded October 2010 levels
- WBC to work swiftly to ensure the PCT/NHS makes a fair and proper contribution to high end cost care packages in the 2012-13 budget
- WBC to invest to save for example via:
 - Investing more not less in the Voluntary Sector to unlock the hidden value which this sector is able to deliver
 - Supporting people who are willing and able to manage their Personal Budgets (as previously described)

- **Raise Council Tax to an appropriate level to maintain services at the current level – It is clear, that come the requirement to cut the 2013-14 & 2014-5 budgets WBC will have little room for manoeuvre except to take more and more draconian measures. These will diminish the services disabled people and their families rely on back to pre 1980's levels (the dark ages for Independent Living) if the Council fails to stand up to the Government and force a Council Tax referendum and a much wider debate amongst all citizens.**
- **West Berkshire Council to work with other local authorities to convince central government that its capping policy on Council Tax is not acceptable.**

APPENDIX 1

West Berkshire Disability Alliance (WBDA)

Response to:

**West Berkshire Council (WBC) Consultation on
Proposal on Funding Arrangements for Domiciliary Care and
Non Residential Services**

Deadline:

30/09/2011

Sent:

30/09/2011

Sent by:

Mick Hutchins, WBDA Chairman

On behalf of:

West Berkshire Disability Alliance (WBDA)

Sent to (by email): **Jan Evans, WBC Head of Social Care**

Via: **Sharon Jones, wbin Development Worker**

Email address: sharon.jvjones@ntlworld.com

Copies sent to: **WBDA Executive Committee & Nigel Owen, WBC Adult Social Care Project Manager**

WBDA believes as a fundamental principal that:

- 'Individuals who qualify for care and support via a Local Authorities (or other public bodies) eligibility criteria(s) i.e. in WBC's case be deemed to be in 'critical need' and have inadequate financial resources to provide (pay for) their own care and support, should then be solely assessed on their needs which should NOT be compromised by any finance constraint.'

WBDA also believes that any compromising on that principal could/will lead to a scaling down of care and support packages which in a worse case scenario could/will see disabled people in the greatest need being given limited assistance to manage their condition, leading to:

- Increased/intolerable pressure being placed on family carers
- Increased health problems for disabled people (and their family carers)
- Increased hospital admissions
- Delays in hospital discharges
- People being forced to leave their homes to be placed in residential care homes
- Greater social isolation

WBDA would like to take this opportunity to point out to WBC that its members have already chosen to set its eligibility criteria for accessing social care services at 'critical need only' and is only one of a handful of Local Authorities in the UK doing so which in itself is a 'cap' on care and support provision for disabled people and their carers who live in West Berkshire.

WBDA believes that the legal case presented by WBC re: Khana 2001 is not a valid one.

The Court of Appeal judgment, Khana v London Borough Of Southwark was not concerned with affordability issues and makes no

judgment as such on the relative affordability of anything in connection with the case in question. The judgement includes a few references, in a broad context on affordability but the judges write that submissions on affordability were not submitted to them, hence the case cannot be regarded as an affordability review. This is made this clear in Para 58 which states:

If this had been a case where Mrs Khana's assessed needs could be met in different ways, then, on the authorities already cited, Southwark would have been entitled to take into account its resources in deciding which way to adopt. Mrs Justice Hallett in her judgment seems at certain points to have taken the view that a question of resources did arise in this case. For my part, I would agree with Mr Drabble that any problem of resources would require to be made out by evidence, and cannot be assumed to be present. There is no material enabling comparison between the cost of a two bedroom ground floor flat provided by the authority - with or without further community care services - and the costs of living in a residential home.

The reasoning why Southwark Council would have been permitted to take resources into account is given elsewhere in the judgment, based on a now obsolete White Paper, not statute. The judgment text states:

The statutory guidance emphasises at paras.3.16 and 31.8 that those in need and carers should feel that the process of assessment is aimed at meeting their wishes, and aims to encourage them "to exercise genuine choice and participate in the assessment of their care needs and in the making of arrangements for meeting those needs"; at para. 3.24 it identifies an order of preference in constructing care packages, that puts support in the home first, followed by "a move to more suitable accommodation, which might be sheltered or very sheltered housing, together with social services support" second, and then "a move to another private household" third, followed by residential care fourth, nursing home fifth and long-stay in hospital sixth. The aim, it says in para. 3.25, "should be to secure the most cost-effective package of services that meets the user's care needs, taking account of the user's and carers' own preferences".

It is clear from this non-relevant-to-the-case part of the specific Supreme Court judgment that the Judges were of the view that cost effectiveness is something dependant on needs and preferences and is not an absolute. It does not review the idea of a rigid comparison of costs being required in decision making. It does not review or mention the setting of ceiling limits in domiciliary care costs or anything similar.

The case of Khana v Southwark is of no direct and of very little indirect relevance for WBC to cite as legal justification for setting a ceiling for domestic care costs, whereas the suitably flexible statements referred to in the judgment, as made in the White Paper may have some relevance, (likely to have been superseded).

Any legal justification should not out-weigh any duty of care or moral duty WBC has. In the Fair Access to Care Guidance (FACS) – 2003 quoted, the guidance clearly indicates that upper-cost parameters for care packages should only be used as a guide. The current national Fair Access to Care guidance states there is:

*a general duty (section 49A of the Disability **Discrimination** Act 1995) to have due regard to:*

- ° the need to eliminate **discrimination that is unlawful** under the Disability Discrimination Act 1995;*
 - ° the need to eliminate **harassment** of disabled persons that is related to their disabilities;*
 - ° the need to promote **equality of opportunity** between disabled persons and other persons;*
 - ° the need to take account of disabled persons' disabilities even where that involves **treating disabled people more favorably than other persons**;*
 - ° the need to **promote positive attitudes** towards disabled persons;*
- and*
- ° the need to encourage **participation** by disabled persons in public life;*

Therefore, anyone who is being encouraged to move into a care home against their will may be able to cite up to six legal reasons for

refusing and anyone who breaches the rights of the individual may be breaking the Disability Discrimination Act.

Section 60 in the national guidance states the main outcome criteria in assessing eligibility, as follows:

In particular councils should consider whether the individual's needs prevent the following outcomes from being achieved:

- Exercising **choice and control**;
- Health and well-being, including **mental and emotional as well as physical health and well-being**;
- Personal **dignity and respect**;
- **Quality of life**;
- Freedom from **discrimination**;
- Making a **positive contribution**;
- **Economic well-being**;
- Freedom from **harm, abuse and neglect**, taking wider issues of housing and community safety into account.

The core eligibility criteria are all set in the climate of what is generally likely to work better in the home setting than in institutional care. Once an individual has been assessed as meeting the criteria to be eligible for a service, in reviewing and contributing the choices an individual may have as to which services form a reasonable choice, surely it remains paramount that the assessor cannot ignore the eligibility criteria.

If an individual chooses, reasonably, not to go into institutional care for any of the reasons listed in the eligibility criteria list above, that should rule out that option and other options should be sought. The *Khana v Southwark* judgment makes reference to that.

Conclusion

WBDA therefore totally rejects any proposal from WBC to introduce 'an upper cost parameter for the cost of domiciliary care and non-residential care services'.

Concern

WBDA is Concerned that WBC is already operating an upper cost parameter for the cost of domiciliary care and non-residential care services:

During a focus group held by West Berkshire Independent Living Network on 07/09/11 designed to gather views and issues from local disabled people and their carers who have been assessed for a Personal Budget one person attending indicated that WBC had capped a care package because 'a care home would cost less'.

WBDA seeks a re-assurance from WBC that it is not already operating an upper cost parameter for the cost of domiciliary care and non-residential care services. Lack of any such re-assurance would lead WBDA to conclude that WBC **was** operating such a cap before this consultation was undertaken.

APPENDIX 2

WBC to Review and cut other areas of its annual spend

- Example of 10 areas of spend that could be cut:

| Cost Centre | 2011/12 est. spend |
|--|-------------------------------|
| Corn Exchange | £386,060.00 |
| Watermill Theatre | £40,750.00 |
| Newbury Cinema | £100,000.00 |
| Arts & Leisure | |
| Development | £82,630.00 |
| Archeology | £96,500.00 |
| Marketing & Info | £107,110.00 |
| Library Services (all) | £1,809,940.00 |
| Waste Consultants | £92,170.00 |
| Maintenance Services (WBC Properties) | £268,810.00 |
| Health & Safety | £144,040.00 |
| TOTAL = | £3,128,010.00 |

- ***NB - Each 10% reduction in this total spend will save £312,801***