

<b>Title of Report:</b>	<b>Scrutiny review into the Adult Social Care eligibility criteria</b>
<b>Report to be considered by:</b>	Overview and Scrutiny Management Commission
<b>Date of Meeting:</b>	10 December 2013

**Purpose of Report:**                      **To outline the results of the investigation into the operation of the Adult Social Care eligibility criteria.**

**Recommended Action:**                **That the Overview and Scrutiny Management Commission endorses the recommendations of the Task Group prior to their consideration by the Executive.**

**Key background documentation:**                      The minutes of and papers provided to the task group (available from Strategic Support).

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## Executive Report

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### 1. Introduction

- 1.1 At its meeting of 11 December 2012, the Overview and Scrutiny Management Commission (OSMC) agreed to conduct a review into Adult Social Care eligibility criteria.
- 1.2 This report sets out:
- (1) The Terms of Reference for the review
  - (2) The methodology used to gain evidence in support of the review
  - (3) The rationale for undertaking the review
  - (4) The Council's statutory duties
  - (5) The current operating model
  - (6) Assessment of statutory compliance
  - (7) Other matters of note
  - (8) Intended legislative changes
  - (9) Analysis and conclusions
  - (10) Recommendations.

### 2. Terms of Reference

- 2.1 The Terms of Reference were for a Task Group to conduct a review of the Council's Fair Access to Care Services policy and in particular:
- Understand the policy's context, scope and intent
  - Assess the effect of the policy's application in practice, particularly the extent to which it is statutorily compliant
  - Consider what might be done further to improve the policy
  - Report to the OSMC thence the Executive with recommendations as appropriate.

### 3. Methodology

- 3.1 The review has been conducted by a cross-party task group, working with Council officers and representatives of other organisations.
- 3.2 The members of the working group were Councillors Dominic Boeck, Gwen Mason and Quentin Webb. Councillor Webb was elected as the Chairman. In May 2013 Councillor Boeck was appointed as the Executive Member for Cleaner & Greener, Waste, Environmental Health, Trading Standards and Thatcham Vision. As such he was unable to continue with any involvement with scrutiny and therefore the review was concluded by the remaining two members of the task group.
- 3.3 The task group held the meetings outlined in the table below.

Meeting date	Meeting focus
Monday 14 January 2013	<ul style="list-style-type: none"> <li>• Election of the Chairman</li> <li>• Agreement of the Terms of Reference</li> <li>• Briefing on                             <ul style="list-style-type: none"> <li>○ The Legal position</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ The national framework</li> <li>○ Emerging policy developments (including Dilnot)</li> <li>○ West Berkshire's statistics</li> <li>○ Previous activity (policy development and review)</li> <li>● Agreement of the review activity and schedule</li> </ul>
Monday 21 January 2013	<ul style="list-style-type: none"> <li>● West Berkshire Fair Access to Care Services policy <ul style="list-style-type: none"> <li>○ Context (social care policy framework)</li> <li>○ Aim and intent</li> <li>○ Scope</li> <li>○ Exclusions and diversions</li> <li>○ Cost of operation</li> <li>○ Cost of a change of policy</li> </ul> </li> <li>● Practice elsewhere <ul style="list-style-type: none"> <li>○ Comparative data</li> </ul> </li> </ul>
Friday 25 January 2013	<ul style="list-style-type: none"> <li>● The requirements of the Equality Act 2010 <ul style="list-style-type: none"> <li>○ The equality duty</li> </ul> </li> <li>● Equality Impact Assessments <ul style="list-style-type: none"> <li>○ Purpose and content</li> <li>○ Methodology</li> </ul> </li> </ul>
Monday 4 March 2013	<ul style="list-style-type: none"> <li>● Further examination of performance information <ul style="list-style-type: none"> <li>○ Collected by the Council</li> <li>○ Comparator data from other Councils</li> </ul> </li> <li>● Agreement of the consultation process</li> </ul>
Friday 15 March 2013	<ul style="list-style-type: none"> <li>● Examination of performance information</li> <li>● Understanding of the application process</li> </ul>
Monday 25 March 2013	<ul style="list-style-type: none"> <li>● Judicial Review case studies</li> <li>● Sign off of the consultation plan</li> </ul>
Monday 24 June 2013	<ul style="list-style-type: none"> <li>● Access for All</li> </ul>
Monday 5 August 2013	<ul style="list-style-type: none"> <li>● Receipt of the consultation report</li> </ul>
Wednesday 11 September 2013	<ul style="list-style-type: none"> <li>● In depth analysis of consultation results</li> </ul>
Tuesday 26 November 2013	<ul style="list-style-type: none"> <li>● Formulation of the recommendations</li> </ul>

3.4 The review also included a significant public consultation which employed a broad range of engagement techniques. Publicity was widespread and much use was made of the networks available to the local voluntary sector. Over 4000 people were contacted directly.

3.5 The following methods were used for gathering information:

- Questionnaire (paper and online)
- Focus groups
- Attendance at meetings
- Workshops with the voluntary sector and with social care staff
- Written responses

3.6 The review has also considered data drawn from annual user satisfaction surveys undertaken by the Adult Social Care Service.

#### **4. Acknowledgements and thanks**

4.1 The Chairman and Members of the task group would like to acknowledge and thank all those who supported and gave evidence to the review.

#### **5. The rationale for undertaking the review**

5.1 On 14 May 2012 an application for a Judicial Review of the Council's Fair Access to Care Services (FACS) policy was brought, via litigation friends, on behalf of 5 learning disabled clients.

5.2 The case was considered twice by the High Court and rejected. On 3 July 2012 the High Court heard an application from the claimants on appeal at an oral hearing but again this was refused.

5.3 The claimants then lodged an appeal against this decision but the Court of Appeal similarly rejected their claim.

5.4 Importantly, the Judge considered the Department of Health FACS guidance and rejected the argument made by the Claimants that it was not permissible to have a critical only policy, stating this was 'unarguable.' The Local Authority was entitled to choose critical, rather than any lower category.

5.5 Whilst the judgment was very clearly in the Council's favour, it has highlighted the importance of undertaking regular and robust reviews of the policy in respect of the eligibility criteria.

5.6 As the policy was last subject to a full review in 2008, the Executive Member for Community Care and the Head of Adult Social Care had agreed throughout the legal proceedings that it would be prudent for another review to take place. Subsequent to the legal proceedings being finalised therefore, a review took place. This is the report of that review.

#### **6. The Council's statutory duties**

6.1 The review has been undertaken with cognisance of the Council's responsibilities in law. These fall into two broad areas, both of which have responsibilities that the Council must meet. The requirements for each are set out in the sub-sections below.

## Social care duties

- 6.2 The requirement for local authorities to provide social care services is well established in statute. The legislative provisions and their requirements are in broad terms:
- National Assistance Act 1948 (Part III)
    - Accommodation to those over 18 who by reason of age, illness, disability or other circumstances are in need of care and attention not otherwise available
    - Welfare arrangements for blind, deaf, dumb and crippled persons
  - Health Services and Public Health Act 1968 (Section 45)
    - Promoting the welfare of older people
  - Chronically Sick and Disabled Persons Act 1970 (Section 2)
    - Practical assistance, recreational facilities, meals etc.
  - Mental Health Act 1983 (Section 117)
    - After-care services
  - NHS and Community Care Act 1990
    - Assessment of needs
  - National Health Service Act 2006
    - Prevention, care, after-care, home help and laundry facilities
- 6.3 A key piece of legislation for this review is Section 47 of the NHS and Community Care Act 1990, which states that where it appears to a LA that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority has a duty to carry out an assessment of that need. If a need is demonstrated, councils must then decide whether they should put in place services to meet it with reference to their eligibility criteria (see below).
- 6.4 Direction on the discharge of social care duties under Section 47 has been provided by the 2002 Department of Health's Fair Access to Care Services (FACS) guidance to local authorities and its successor the 2010 Prioritising Need guidance, both of which are mandatory. The guidance states that councils can independently determine at what level – or band – of need they will provide services. This is termed eligibility criteria. The bands describe the seriousness of the risk to independence and well-being or other consequences if needs are not addressed. They are
- Critical - where life is in danger, or serious abuse or neglect has occurred or might occur;
  - Substantial - where abuse or neglect has occurred or might occur, or the individual is unable to carry out the majority of personal care (i.e. activities such as washing, dressing, going to the toilet, eating, etc.) or domestic routines and there is no-one available to assist;
  - Moderate - where the individual is unable to carry out several personal care or domestic routines, or several of their family and social roles;
  - Low - where the individual is unable to carry out one or two personal care or domestic tasks, or one or two of their family and social roles
- 6.5 In setting their local level, local authorities should take account of their resources, local expectation and local costs and any agreements they may have in place with

partner agencies. Decisions taken on banding levels must be kept under annual review.

6.6 In 2003 West Berkshire Council set a policy of 'critical' only. There are just two other councils operating at critical only: Northumberland County and Wokingham Borough.

6.7 The qualifying criteria for critical are that

- life is, or will be, threatened; and/or
- significant health problems have developed or will develop; and/or
- there is, or will be, little or no choice and control over vital aspects of the immediate environment; and/or
- serious abuse or neglect has occurred or will occur, and/or
- there is, or will be, an inability to carry out vital personal care or domestic routines; and/or
- vital involvement in work, education or learning cannot, or will not, be sustained; and/or
- vital social support systems and relationships cannot or will not be sustained; and/or
- vital family and other social roles and responsibilities cannot or will not be undertaken.

6.8 The FACS guidance also articulates that local authorities must

- ascertain the individual's presenting needs
- evaluate how the needs might pose a risk to independence and well-being if the need is not met
- grade the need against the band used by the authority.

6.9 If it is assessed that there is an eligible need (ie for West Berkshire Council a critical need) then it must be met. The council can however take account of its own resources as to how to meet the need if there are two or more objectively real alternatives and can also take account of whether needs are being met by others (and can continue to be so). Councils charge for the provision of care services where the applicant is able to afford it. Currently if their means exceed a financial threshold of £23,250 then they will pay full cost. If they are below £23,250 there is a financial assessment conducted on the individual.

### **Equality duty**

6.10 The 2010 Equality Act harmonises and enhances the requirements of previous equality legislation (such as the Sex Discrimination Act, the Race Relations Acts and the Disability Discrimination Act).

6.11 Chapter 1 of the Act articulates 9 'protected characteristics' as set out below. Public authorities must, through an 'equality duty' (s.149 Equality Act 2010) have due regard to the need to eliminate unlawful discrimination; advance equality of opportunity; and foster good relations between those with protected characteristics in the exercise of their functions. The protected characteristics are

- Age
- Disability
- Gender re-assignment
- Marriage and civil partnerships
- Pregnancy and maternity
- Race
- Religion
- Sex
- Sexual orientation.

6.12 In fulfilling the Equality Duty, guidance produced by the Government stresses adherence to the following principles

- Knowledge
  - Compliance with the Equality Duty involves a conscious approach and state of mind.
- Timeliness
  - The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken.
- Real consideration
  - Consideration of the aims of the Equality Duty must form an integral part of the decision-making process. The Equality Duty is not a matter of box-ticking; it must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- Sufficient information
  - The decision maker must consider what information they have and what further information may be needed in order to give proper consideration to the Equality Duty.

These principles have been drawn from case law.

6.13 This means that when developing proposals and making or reviewing policy decisions, including those about finance and service provision, public authorities must comply with their statutory equality duties. Public authorities must ensure that decisions are made in such a way as to minimise unfairness and any disproportionate negative effect on people who have a protected characteristic.

6.14 Cases on the meaning of the public sector equality duty have shown that there should be a clear process of equality impact assessment (EIA) being undertaken in order to demonstrate 'due regard' before making the relevant policy decision. This must include consideration as to whether any identified detrimental impact can be mitigated.

6.15 A written record to demonstrate that due regard had been taken is also expected.

6.16 The EIA is the primary tool for identifying the actual or potential impact of a policy, service and function on service users, staff and other stakeholders. It should be used to help provide excellent services by making sure that they reflect the needs of local communities

## **7. The current operating model**

7.1 As articulated in para 6.6, the Council provides social care for critical needs only as set out in its own Fair Access to Care Services policy. The policy was last updated in March 2012.

7.2 The local FACS policy sits in the context of a wider adult social care service model. The elements of this model are

- Prevention
  - provision of information, advice and support
  - early interventions
  - voluntary sector commissioning
  - universal community services
  - financial assessment and means testing
- Recovery
  - reablement with the NHS
  - therapeutic and time limited interventions
- Long term support
  - assessment of need and eligibility for services
  - control through personal budgets
  - through specialist teams –
    - adults with physical disabilities (PD)
    - older People (OP)
    - adults with learning disabilities (LD)
    - adults with mental health problems (MH).

7.3 Underpinning all three elements of the model is the need to safeguard vulnerable adults and the provision of support to carers.

7.4 The annual adult social care net budget for 2013/14 is £37.6m. This figure will be reduced by £1.85m for 2014/15, although front line services should not be affected.

7.5 In broad outline, the Council operates a process for the determination of needs that can be defined as 'referral and assessment'.

7.6 For those adults with mental health problems the NHS operates a Common Point of Entry, which can be accessed on the internet, by e-mail, phone and post.

7.7 For all other adults in potential need of social care services (those with physical or learning disabilities, or older people), the Council provides a single point of contact through a team called 'Access for All' (AfA).

7.8 AfA receives referrals from health and social care professionals and directly from members of the public, either on their own behalf or on that of others. Referrals can be made through an 'online hub' website, for which processes and personnel are in place to ensure that its content remains current, by phone and e-mail. Information



and Signposting specialists, each of whom have received extensive training on the diverse range of enquiries that they may receive, handle requests received by these media.

- 7.9 In addition to the Information and Signposting staff, AfA has Surgery Link Workers who are able to conduct assessments to provide simple pieces of assistive equipment such as toilet seats and grab rails, provide advice and information or arrange care services. Occupational Therapists conduct assessments when equipment needs are more complex.
- 7.10 Social Workers carry out the statutory community care assessments in accordance with the requirements of s.47 of the NHS and Community Care Act 1990. Those whose needs are not assessed as being critical are provided with advice and guidance then directed to other organisations, such as Citizens Advice and the Department for Work and Pensions.
- 7.11 On receipt of a valid referral, AfA will undertake an assessment to determine eligibility. Two broad factors are assessed
- Needs
    - Through discussion and asking appropriate questions, the Information staff are able to determine whether or not the individual should be considered for an assessment. Where it is clear that it is not appropriate then staff offer information and advice. Those who may be eligible for an assessment are passed to a manager to allocate to the most appropriate worker to visit and complete an assessment.
    - Community Care Assessments are then conducted to identify an individual's presenting needs and to determine whether, under FACS, they would be eligible for a service. The assessment also identifies whether any of the needs are being met by informal carers and whether these arrangements can realistically continue.
  - Financial circumstances
    - Anyone entitled to a community care assessment will be assessed regardless of their financial situation. However, financial circumstances are discussed early on in the process with the service user so that they are fully aware and able to take a decision as regards progressing involvement with the Council. If they decide not to continue with assessment and Council assistance then Information staff will ask appropriate questions to direct them to the right information or services (perhaps in the voluntary sector) so that they can self-fund.
    - Although the Council has a duty to meet all assessed unmet social care needs, there may be alternative routes of funding available to meet need. For example, if someone needed a wheelchair this would be funded by the Wheelchair Service, which is part of the NHS. Adaptations to properties are funded through the Disabled Facilities Grant, administered by the Council's Housing Service.
- 7.12 All people over the age of 65 who have a disability or are perceived by themselves or others to be vulnerable are eligible for an assessment.

- 7.13 Should the applicant be eligible for a Council intervention, a care (or support) plan will be produced. The care/support plan outlines expected outcomes, how they will be achieved and the cost of the services to be provided. The care plan can be commissioned either directly by the Council or by the person concerned (or their carer) through a 'personal budget', which for some people offers more flexibility and control.
- 7.14 The consideration of all care plans and the allocation of resources to meet them is carried out by the Resource Panel. The Panel comprises senior management from Adult Social Care (including the Head of Service) and provides for consistency between cases. It meets weekly but in very urgent cases, an immediate decision can be taken by the Head of Service or a service manager in Adult Social Care.
- 7.15 Annual reviews are conducted for all those in receipt of a service.
- 7.16 Results for both initial assessments and annual reviews are recorded on the Multifunctional Assessment/Review Document (MARD).
- 7.17 If an applicant does not wish to receive direct Council support or does not qualify for direct Council support, either on initial receipt of the referral or following a formal assessment, they are redirected to appropriate support services in the health or voluntary sectors. Many of the voluntary sector organisations receive funding from the Council for the delivery of the services they provide. Each year AfA conducts a sampled review of those directed to support services to establish if their needs were met effectively.

## **8. Assessment of statutory compliance**

- 8.1 The task group obtained evidence to test the concept that in setting its Fair Access to Care Services threshold at 'critical' only:
- (1) the requirements of Section 47 of the NHS and Community Care Act 1990 (as outlined in para 6.3) are being met; and
  - (2) that they are being done so in line with the requirements of the Equality Act 2010 (as set out in para 6.13).
- 8.2 The findings are set out below. Additional, significant, observations on the Council's operations, if relevant, are included.

### **Social care assessments are being carried out and, if unmet needs are identified, services are put into place**

- (1) For 2011/12 (the most recent period for which results were available), the Council received 4940 contacts, 69% of which were through Access for All, the remainder being through the Common Point of Entry. Of these, 1625 went on to complete an assessment (32%).
- (2) Of the 1625 people who had an assessment, 1440 (89%) then went on to receive a service. These figures are comparable to those of the other Berkshire unitaries (all of which, with the exception of Wokingham, are providing services for both 'substantial' and 'critical' need), as set out in the table below, and might indicate that West Berkshire Council is

applying a liberal interpretation to the requirements of the 'critical' eligibility threshold.

	Bracknell Forest	Reading	Slough	West Berkshire	RBWM	Wokingham
<b>Number of contacts received</b>	3730	4000	2430	4940	4285	7290
<b>Of which, number of assessments completed</b>	1330 (36%)	1925 (48%)	1530 (62%)	1625 (32%)	960 (22%)	1195 (16%)
<b>Of which, number of services received as a result of assessment</b>	1090 (82%)	1375 (71%)	685 (45%)	1440 (89%)	695 (72%)	940 (79%)
<b>Percentage of assessments per first contact</b>	29%	34%	28%	29%	16%	12%

- (3) For those people who do not receive an assessment, around a third receive a short term intervention with the remainder receiving information, advice or direction to other organisations. The organisations to which callers may be signposted are many and varied. The Council provides £700,000 per year in grant funding in support of many of these services.
- (4) Although the number of contacts that AfA received in 2012/13 increased by 10% over the previous year, the amount of resources allocated to it did not. In some part this increase is due to AfA fielding telephone calls for other parts of Adult Social Care.
- (5) Although the effectiveness of the AfA organisational model, with the team being managed through Adult Social Care, is assessed by managers to be working well, its effectiveness relative to other organisational models, for example the public point of access being handled by the contact centre, has not been formally evaluated.
- (6) At the time at which the review was undertaken, a snapshot showed that 541 cases (new assessments or reviews due to changes in circumstances) were awaiting consideration by the AfA team. Although down from the 864 cases awaiting assessment when AfA was established in June 2011, this backlog continues to affect the Council's ability to meet its target of conducting assessments within 28 days of referral. The table below shows the length of wait between referral and assessment, by age, for the second quarter of 2013/14. Additional staffing resources have recently been directed to this service to reduce the waiting times for assessment by 31 March 2014.

	<b>Under 18 / unknown</b>	<b>18 – 64</b>	<b>65 and Over</b>	<b>Total</b>	<b>%</b>
<b>Less than or equal to 2 days</b>	0	17	41	58	6%
<b>More than 2 days and up to 2 weeks</b>	0	70	65	135	13%
<b>More than 2 weeks and up to 4 weeks</b>	0	52	53	105	10%
<b>More than 4 weeks and up to 3 months</b>	1	89	226	316	30%
<b>More than 3 months</b>	0	129	309	438	42%
<b>Total</b>	<b>1</b>	<b>357</b>	<b>694</b>	<b>1052</b>	

- (7) Individual circumstances are taken into account when determining the urgency with which assessments need to be carried out but the waiting time does create a risk that independence might deteriorate between referral and assessment, with a resultant further demand on care resources.
- (8) The documentation through which assessments are conducted and recorded (the MARD) has been recently reviewed. Although, practitioners report that the form is more fit for purpose than previously, the process overall remains paperwork heavy, primarily to provide evidence of statutory compliance, and some staff find it difficult to complete. Previous attempts to use electronic methods of record keeping in the service user's home were perceived as being impersonal and unsympathetic to those undergoing assessment.
- (9) Many of those undergoing assessments find the process complex and lengthy and perceive that this can create a risk of individuals' circumstances deteriorating. There are reports that those seeking care are not kept fully informed of timelines, particularly during the early phases.
- (10) Practitioners report that the operation of the Resource Panel can sometimes be inflexible to challenge and that delays in the making of decisions about care packages could be avoided if case officers were to be present when they were made.
- (11) To ensure that service levels are appropriate and that needs are being met, the Adult Social Care service conducts periodic surveys. The use of the survey provides an effective tool for measuring satisfaction. None of the surveys have indicated that there are undue problems or biases with the provision of the service, including the use or appropriateness of re-directions away from services delivered directly by the Council.
- (12) A complaints system that is compliant with statutory requirements is in operation and provides an effective form of redress, including if necessary by the Local Government Ombudsman, for dissatisfaction with any aspect of care services.

- (13) The provision of services to prevent the necessity for the provision of full social care intervention is an essential part of the current operating model. If this were not to be in place then more assessments – which incur cost and are time consuming – would be likely to be required.
- (14) Although most people who do not go on to receive a full assessment agree with the Council's decision that they should not have had one, a sizeable minority either believe that they should have had or do not know whether they should.
- (15) Carers feel themselves to be at a disadvantage if they do not have the ability to challenge decisions made on care provision. This is particularly so if they are caring for people who are older or disabled and who may then be more likely to have carers who are themselves older.

**The operation of the FACS policy does not have a disproportionate effect on any of the 'protected characteristics' groups**

- (1) The Council has an established policy framework to assess the extent to which there might be a disproportionate impact on people with any of the protected equality characteristics. This includes the use of Equality Impact Assessments.
- (2) An EIA was conducted during the substantial examination of the Council's eligibility threshold, through the Healthier Communities and Older People Policy Development Commission in 2007/2008. No adverse or disproportionate equality effects have historically been identified.
- (3) Aside from cases referenced in the Judicial Review as referred to above, no complaints have been recorded about the overall setting of a 'critical' FACS threshold or that its application in practice is discriminatory.
- (4) As articulated in Section 5, the legality of the Council's FACS policy has been tested through the courts. As part of the legal process, the Council offered reassessments for those bringing the legal action. Of the three case studies presented to the Task Group, in only one case was a further need identified.
- (5) Although almost 30% of people, when asked, thought that they had been disadvantaged by the Council's decision to offer care to those in critical need only, research appears to indicate that this is because they did not meet the criteria rather than because of any bias against their having one or more protected characteristic.

Notwithstanding the statements made in (1) to (4) above, the following (specific) matters have been identified.

- (6) The transition from child social care to adult social care appears to be a period in the life of young people and their carers that present particular difficulties. The Council's policy position that young people moving from children's social care to adult social care should usually remain in the familial home does not appear to be widely understood. The service has established a Transitions Project that ends in March 2014 addressing a

range of issues associated with this transition from children's to adult services including access to services.

- (7) Third sector organisations providing care are aware that in some cases their focus is on people who fall into certain age brackets, for example the elderly or young adults. This creates a risk that some of those who should be in receipt of care but who are outside of these age brackets might not get appropriate support.
- (8) The desire to be independent and their stoicism may mask the needs of some older people.
- (9) Council staff are concerned that the age of the person seeking care is a significant factor in its provision. They perceive that under 65 year olds get a higher allocation of services than over 65s with identical needs. This leads to the perception by staff that service provision is dictated by age and that the level of service is better and more flexible for younger service users.
- (10) There is concern from a number of stakeholders, including Council staff, that those with remitting or relapsing conditions (both physical and mental) may have heightened safety and independence risks as they become alternatively eligible and ineligible for care. This may be to some degree due to the complexity of the process, the time taken for the assessment process to complete and the absence of follow up when care packages are removed after the condition has improved. This was particularly a concern in the area of Mental health services.
- (11) Whilst recognising that it may sometimes be impractical, people who have mental illness and those who care for them have expressed a desire to be more involved in the decisions taken about their support packages.
- (12) Because of their unique communication circumstances, people who are deaf or hearing impaired may have difficulty accessing care. This is particularly so if they are older or do not communicate in any way other than by use of British Sign Language. Council staff highlight that those with other sensory needs, particularly blind people, may experience similar difficulties.
- (13) There is a widely held view that those with conditions on the autistic spectrum may have difficulties obtaining appropriate levels of support.
- (14) Council staff report that male carers appear to be more likely to contact social services sooner for support and female carers are more likely to provide support for longer. This could indicate that male carers are less able to cope which could place those being cared for by them at risk. Women may therefore be disproportionately affected by this.
- (15) Council social care staff have expressed a view that although religious or cultural needs, for example washing routines, may be identified by the assessing social worker, they might not always be taken into account by the Resource Panel.

- (16) Whilst the risk of disproportionate adverse impact on those with any particular individual protected characteristic or condition is generally low, notwithstanding those highlighted above, some concern exists that when a person has two or more conditions then the needs of the person are not considered holistically. Examples might include those with a combination of both mental illness and physical disabilities, or those with a learning disability and who are pregnant.

## **9. Other noteworthy matters**

9.1 In addition to the findings and assessments made above, the Task Group conducting the review had a number of matters highlighted to it that, whilst not directly relevant, nonetheless required note and consideration for recommendation. This is particularly so for feedback given during consultation with focus groups. These matters are set out below.

- (1) There is a significant body of opinion that believes the needs of carers are not fully taken into account for or reflected in social care assessments. Unrecognised needs – whether temporary or more permanent – may diminish either the capacity of the carer to provide support or the effectiveness of individual care packages. This appears to be particularly so in the case of older carers.
- (2) When asked, carers have expressed a view that respite care could be used as a preventative as well as crisis intervention.
- (3) Formal and informal support for carers, for example through the provision of a copy of the Carer's Handbook, as soon as they are identified could have positive effects on those in receipt of care.
- (4) There appears to be some demand for periodic newsletters the content of which might signpost those in receipt of social care, regardless of provider, and their carers to the full range of services that are available to them.
- (5) There is a perception that communication ability and knowledge of 'the system' can allow some people to appear to be eligible and gain better access to services whilst others who are less able or willing to state their case but with identical needs may lose out. Council staff have further expressed a view that some workers are able to make more cogent arguments than others and that similar inequities can apparently therefore ensue from Resource Panel decisions.
- (6) Those in receipt of care services report frustration when, due to a change in their needs, on re-assessment they are no longer deemed to be 'critical' and a reduction or cessation in support follows. Staff on the other hand report frustration when – because of need initially having been over-assessed – they have to advise those previously in receipt of support that it is being withdrawn or otherwise reduced, again on the basis of need.
- (7) The role of health professionals and the interface between health care and social care does not appear to be managed to consistent levels. For

example, district nurses are reported to be very supportive and helpful whereas GPs could be more proactive in identifying need when they see those who are relying on carers for their support.

## **10. Intended legislative changes**

- 10.1 With effect from April 2015 it is likely that a new, single, national eligibility threshold will be introduced that will remove the power for local authorities to set their own levels. It is likely that this new band will be broadly equivalent to the current level of 'substantial'.
- 10.2 The government has indicated that there may be some financial recognition that, for the three authorities operating at 'critical' only, there will be both a transitional cost for the conduct of re-assessment of cases in line with the revised criteria and for the annual provision of services for the increased numbers of people likely to qualify. As the Council does not record the level of need for those assessed as being below 'critical', the precise number of those who would currently be assessed as having 'substantial' needs and who would therefore qualify under the new system is not known.
- 10.3 Notwithstanding the absence of firm local figures, it is estimated (from government calculations) that the one-off transitional cost for West Berkshire will be around £1.2m, with the requirement to provide services to those whose needs would not currently make them eligible costing an addition around £1.97m annually.

## **11. Analysis and conclusions**

- 11.1 Analysis of the data shown in the table at 8.2(2) shows that although in West Berkshire the Council is operating a Fair Access to Care Services policy at the 'critical' level, the ability of people within the district to access social care assessments and services, when compared with the data from the other councils in Berkshire, is not apparently hampered. This comparison still stands even though West Berkshire Council is one of only two in the county operating at 'critical'.
- 11.2 Whilst a 'critical' eligibility criteria may on the face of it, indicate that less people might be able to access care than if it were to be set at 'substantial' it was found that Council funded preventative care is high and provides for a significant degree of mitigation of any disproportionate negative effect on people with any of the protected characteristics.
- 11.3 These two key findings (above) of this review lead then to the conclusion that there is no evidence that the Council's decision to set its eligibility criteria at 'critical' is having a disproportionately negative effect on any of the groups with protected characteristics.
- 11.4 Whilst some people with the protected characteristics perceive themselves to be being disadvantaged, it also appears that those disadvantages as they currently manifest themselves would probably be present regardless of the level at which the eligibility criteria operate. There does however appear to be a need for further investigation to be undertaken to assess the degree to which their perceptions are reality and, if necessary, measures identified and put into place to mitigate the effect.



- 11.5 Overall, support for carers also seems to be an area of some concern which requires further investigation.
- 11.6 There is therefore a number of additional specific actions that can and should be taken to move forward further the effectiveness of the work in this area. These are set out in section 12, below.

## **12. Recommendations**

12.1 The following recommendations are proposed:

- (1) The Head of Adult Social Care should keep the Council's Fair Access to Care Services eligibility criteria at 'critical' and continue to ensure that appropriate levels of funding remain for the provision of preventative services outside of that required for assessed care packages (currently £700,000 per year).
- (2) The Head of Adult Social care should ensure, through annual review, that in its operation of the Fair Access to Care Services Policy the Council continues to comply with its statutory duties. In addition to any required policy changes, the reviews should incorporate an assessment of equality impact.
- (3) The Head of Adult Social Care should monitor the effectiveness of the steps that have been taken to reduce both the time taken to complete Section 47 assessments and the backlog of those cases awaiting assessment. Additionally, a further action might be a cessation of the practise of the Access for All team fielding telephone calls for other social care teams and the allocation of more staff time for the completion of assessments.
- (4) The Head of Adult Social Care should evaluate the operation of the Access for All team to ensure that its position within the organisational structure provides the most effective operational environment. Any changes to the role, formation or positioning of it should ensure that staff in this crucial team are appropriately trained, resourced, focussed and supported.
- (5) The Head of Adult Social Care should continue to review and evaluate the effectiveness of the Multifunctional Assessment/Review Document to further improve its effectiveness and ensure that the administrative burden it necessarily imposes is kept to an absolute minimum.
- (6) The Head of Adult Social Care should ensure that those completing the Multifunctional Assessment/Review Document understand that the information it contains will be used by the Resource Panel to make decisions on the provision of care. If necessary, training should be provided to ensure that the delays caused by incomplete or poorly completed forms are reduced.
- (7) The Head of Adult Social Care should ensure that all staff undertaking social care assessments understand the need to keep those undergoing the process fully apprised of progress. This should ensure

that expectations are managed and that dissatisfaction is resultantly kept to a minimum.

- (8) The Head of Adult Social Care should ensure that the lessons drawn from the Transitions Project (which examined the period when people move from children's social care to adult social care) are widely communicated and fully understood both by those going through it and the staff supporting them.
- (9) The Head of Adult Social Care should undertake further work to test the perception of some stakeholders that some groups, regardless of the level at which the eligibility criteria are set, are being disadvantaged. Specifically on the grounds of their
- Age, particularly older people or those not receiving care from a particular and specific age-related service provider (eg Age UK)
  - Disability, particularly those with
    - remitting or relapsing conditions
    - sensory impairment
    - a condition on the autistic spectrum
  - Gender, particularly women who may have a societal expectation that they should act as a primary carer
  - Religion, particularly those with a cultural requirement for hygiene or washing routines.
- Should a disproportionate adverse effects be determined to be present then measures should be introduced to mitigate them.
- (10) The Head of Adult Social Care should review and then re-issue the guidance to staff about the necessity to ensure a holistic assessment is carried out in line with the 'Cross team working protocol'.
- (11) The Head of Adult Social Care should give consideration to the introduction of measures to meet the needs of carers, especially
- Their capacity to provide care and the impact that it may have on the effective delivery of support packages
  - The beneficial effects of preventative respite care
  - The widespread and early provision of the Carer's Handbook
  - The production of a newsletter or bulletin
- (12) The Head of Adult Social Care should strengthen the links between their service and GPs to ensure that the unique and trusted status of GPs is used to identify an early need for social care or the provision of support for carers.
- (13) The Head of Adult Social Care should disseminate widely to their service the report on the findings of the public consultation in order that improvements in operational systems, processes and practise might be further identified.

## Appendices

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There are no appendices to this report.

## Consultees

<b>Local Stakeholders:</b>	<p>A widespread consultation process was developed and delivered by an independent. In achieving a wide distribution of materials and developing the voluntary sector workshop and the focus groups, the consultant worked closely with West Berkshire Independent Living Network (WBILN) throughout.</p> <p><b>Publicity</b> Information about the consultation was sent out to approximately 40 different local organisations by the consultant, WBILN and Empowering West Berkshire (EWB). WBILN also sent the information out to all its members. This offered the option of a visit to a meeting and asked for information about the consultation to be sent out to users of services. West Berkshire Council sent out information to all those using social services currently and to members of its citizen’s panel. A link was included on the West Berkshire council website. Vodafone and West Berkshire Council distributed the information to all their staff via its internal system. In addition a newsletter was sent out to the members of the Community Council Berkshire (3,000 including many in West Berkshire) and WBILN featured the consultation in its newsletter. A news item was prepared, for media distribution, by West Berkshire Council.</p> <p><b>Number of contacts</b> During the consultation in excess of 4,000 people were directly contacted and a much larger number informed about the consultation. Over 150 had an opportunity to make comments direct to the consultation manager through the range of opportunities listed below and 199 responded to the paper questionnaire.</p> <p>The engagement took a range of forms:</p> <p><i>Supporting materials</i> Three supporting documents were prepared, giving a simple introduction to the consultation and to the way social care is delivered. These were:</p> <ul style="list-style-type: none"> <li>• ‘About the review’</li> <li>• ‘What is adult social care?’</li> <li>• and ‘What are the social care levels?’</li> </ul> <p><i>Questionnaire</i> This was developed over a period of time and it was decided to focus on the experience of services. Distribution was made widely and it was available for completion on paper and online. 199 full responses were received and this included 30 responses on paper.</p>
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	<p><i>Focus groups</i>                  There were four focus groups with mental health service users, physically disabled, carers and older people. These were designed to consider more deeply the primary question of Protected Characteristics under the Equalities Act (2010) and to consider the experience of services in more depth.</p> <p><i>Attendance at meetings</i>                  Meetings were attended by request and by invitation. The following meetings were attended:</p> <ul style="list-style-type: none"> <li>• Learning Disability Partnership Board</li> <li>• Patient Panel</li> <li>• Reading Deaf Centre</li> <li>• Healthwatch</li> <li>• Provider Forum (West Berkshire Council Social care providers)</li> <li>• Its My Life Group</li> </ul> <p><i>Workshops with the voluntary sector and with social care staff</i>                  There were three workshops, two with West Berkshire Council social care staff and one with representatives from the voluntary sector. These were designed to explore the Protected Characteristics in more detail and all looked closely at some of the issues about delivery of the critical care level.</p> <p><i>Newsletters/publicity</i>                  Newsletter articles were sent out via West Berkshire Independent Living Network and Community Council Berkshire. The Council also wrote directly to all local MEPs, MP, district, town and parish councillors.</p> <p><i>Written responses</i>                  Two organisations Healthwatch and West Berkshire Neurological Alliance sent in written responses.</p>
<p><b>Officers Consulted:</b></p>	<ul style="list-style-type: none"> <li>• Jan Evans, Head of Adult Social Care</li> <li>• Steve Duffin, Head of Adult Social Care Efficiency Programme</li> <li>• Melanie Ellis, Finance Manager</li> <li>• Leigh Hogan, Team Leader, Legal Services</li> <li>• Debbie Butland, Service Manager, Adult Social Care</li> <li>• Marion Angus, Team Manager, Adult Social Care</li> <li>• Staff attending consultation workshops as described above</li> </ul>
<p><b>Trade Union:</b></p>	<ul style="list-style-type: none"> <li>• None</li> </ul>