

Title of Report:	Review into Adult Social Care eligibility criteria
Report to be considered by:	Overview and Scrutiny Management Commission
Date of Meeting:	11 December 2012

Purpose of Report: To outline to the Overview and Scrutiny Management Commission proposed Terms of Reference for a review into the Council's Fair Access to Social Care eligibility criteria.

Recommended Action: Amend, if necessary, and approve the Terms of Reference for the review.

HSP Chairman	
Name & Telephone No.:	Councillor Quentin Webb – Tel (01635) 202646
E-mail Address:	qwebb@westberks.gov.uk

Contact Officer Details	
Name:	David Lowe
Job Title:	Scrutiny and Partnerships Manager
Tel. No.:	01635 519817
E-mail Address:	dlowe@westberks.gov.uk

Executive Report

1. Introduction

- 1.1 Following a recent legal action, The Executive Member for Community Care and his officers have requested that the Health Scrutiny Panel conducts a review into the way that the Council provides adult care services, in order to ensure that they continue to be statutorily compliant and do not disadvantage the very vulnerable of West Berkshire.
- 1.2 In support of this request, this report provides background on the national adult social care framework, its application locally, a summarised briefing on the Council's legal position following the recent High Court hearing on the operation of its Fair Access to Care Services policy and sets out a proposed methodology and Terms of Reference.

2. The national framework

- 2.1 In 2003 the Department of Health issued Fair Access to Care Service (FACS) guidance to local authorities. This guidance allowed Councils to determine the level at which it would meet a person's assessed care needs. There are 4 levels:
 - Critical
 - Substantial
 - Moderate
 - Low

3. Fair Access to Care Services in West Berkshire

- 3.1 In 2003 the Council set a policy of 'critical' only. This policy was subject to a full review in 2008, by officers rather than through Scrutiny, with the outcome being a decision not to change the eligibility criteria. A recommendation was also made to review the criteria again in 2011.
- 3.2 The Dilnott Commission, looking at the future funding of adult social care, made its recommendations to the Government in 2011. On the basis that one of the recommendations was for a national minimum threshold, the Council did not proceed with its review. Whilst the Dilnott review will not become statute for 2-4 years, it is anticipated that the Government will accept this proposal.
- 3.3 West Berkshire is one of only 3 councils operating an eligibility criteria of 'critical', Northumberland and WBC chose critical in 2003, Wokingham moved to 'critical' 4 years ago. Other Councils have tried to move to critical only but have failed after legal challenge on their consultation process.

4. Legal challenge

- 4.1 On 14 May 2012 an application for a Judicial Review of the Council's policy was brought, via litigation friends, on behalf of 5 learning disabled clients.

- 4.2 The case was heard by the High Court on 1 June 2012 and the court rejected the application for a Judicial Review. On 3 July 2012 the High Court heard an application from the claimants for an oral hearing but again this was refused.
- 4.3 The claimants then lodged an appeal against this decision but the Court of Appeal rejected their claim.
- 4.4 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.
- 4.5 Whilst the judgement 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. Proposed activity in response

- 5.1 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 have agreed that it would be prudent for another review to take place, concluding before by 30 June 2013.
- 5.2 The Chairman of the Health Scrutiny Panel (HSP) has agreed that it would be desirable for the review to be carried out as Scrutiny by a three-Member task group. As the 2008 review paperwork appeared to stand up to scrutiny very well it would therefore seem to be appropriate to take a similar approach again, whilst also taking full account of the Council's duties under the Equality Act 2010.
- 5.3 The Terms of Reference would be for the Health Scrutiny Panel 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.
- 5.4 In order to ensure demonstrable rigour and objectivity to the review, it is proposed to engage the services of an external facilitator to support a number of consultation exercises with stakeholders. The funding for the facilitator has been identified.
- 5.5 More detail on the review is provided at Appendix A.

6. Recommendation

- 6.1 It is recommended that Members of the Commission amend, if necessary, and approve the Terms of Reference for the review.

Appendices

Appendix A – Review scoping matrix

Consultees

Local Stakeholders: None

Officers Consulted: Jan Evans, Andy Day, Leigh Hogan

Trade Union: None

Review Topic: Adult Social Care eligibility criteria

Timescale

Start: September 2012

Finish: June 2013

Review Rationale:

To assess whether in setting its eligibility criteria at 'critical' the Council's operation of the Fair Access to Care Services policy still allows it to meet its statutory duties.

Terms of Reference: 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.

Review Membership:

TBD

Chairman: Councillor Quentin Webb

Vice-Chairman:

Scrutiny Officer: David Lowe

Information Required:

- Context
- Statutory duties – what are they and are they being met
- Case law
- White paper
- Policy position and rationale
- Who is the client
- Process
- Organisational structure
- Accessibility
- Training
- Volume (applications/conversions/diversions as numbers and % of population)
- What happens to those who don't qualify? Is it discriminatory
- Cost
- Options for change
- Recommendations from the 2008 review and EIA changes

- Complaints
- Risk management
- Application of the policy in practice (including assessment through site visits)

Witnesses:

Joe Mooney

Jan Evans

Leigh Hogan

Belinda Schwehr

Melanie Ellis

Steve Duffin

Session 1

Scene setting and background

- The national framework
 - Policies
 - Strategies
- The legal position
 - Fair Access to Care Services
 - Equality Duty
 - Case law
 - Judicial Review
- Emerging policy developments (including Dilnot)
- West Berkshire volumetrics
- Previous activity (policy development and review)

Formulation and agreement of the review strategy

Evidence from Jan Evans, Leigh Hogan and Belinda Schwehr

Session 2

The West Berkshire FACS policy

- Context (social care policy framework)
- Aim and intent
- Scope
- Exclusions and diversions
- Cost of operation
- Cost of a change of policy

Practice elsewhere

- Comparative data
- Case studies from other authorities

Evidence from Jan Evans, Steve Duffin and Melanie Ellis, Jeannette Chappell, other authorities (?)

Session 3

Operational practice

- Training
- Application and interpretation
- Review of (anonymised) cases

Evidence from council staff and care workers. To also incorporate a site visit to Willows Care Home.

Session 4

Review of consultation exercises

- Disability Equality Scheme Board
- West Berkshire Independent Living Network
- Learning Disability Board
- Mental health users
- Older people
- Carers

Presentation of results from facilitator

Session 5

Formulation of recommendations