



## Social Services - Achievement and Challenge

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# *Social Services - Achievement and Challenge*

## **1 Introduction**

**1.1** Social services departments meet a wide variety of different social care needs. They support older people who are no longer able to care for themselves without help. They support people with physical or learning disabilities, and those with sensory impairment, to allow them to live as full a life as possible. They play a key role in the delivery of the spectrum of care needed by mentally ill people. They provide essential services to children who would otherwise be at risk of neglect or abuse. They have an important role bringing together the wider range of services, such as health and housing, on which their users also depend. And in their regulatory role they have provided protection to the most vulnerable.

**1.2** The growth of those services since they were founded in modern form in 1971 has been substantial. The combination at the same time of increased family breakdown, an increasing tendency for the extended family to be widely spread, and a rise in the population of older dependent people, has led to sharp increases in demand. Over a relatively short period, social services have emerged to become the fourth arm of the Welfare State.

**1.3** This expansion of role is illustrated by the trend in the expenditure for which social services departments for England and Wales are responsible. In 1971-72 they spent just under £2 billion of public money at present price levels. In 1996-97 they are expected to spend over £8.4 billion - a four fold increase. In addition social security expenditure supporting elderly and other vulnerable people in residential and nursing homes, a responsibility which is being progressively transferred to social services, is still running at about £1.75 billion. As this transfer of responsibility is completed the budgets of social services departments will continue to rise. The social security programme continues to provide support on a large scale to many vulnerable people: expenditure on the main disability and carer benefits has trebled since 1990-91 and now stands for Great Britain at £7.5 billion.

**1.4** Two recent legislative changes have affected the work of social services:

- the NHS and Community Care Act 1990 paved the way for the major transfer of responsibility from social security to social services; and
- the Children Act 1989 provided a new framework for the care of children.

There have also been significant changes in the regulatory responsibilities of social services, and for example in the juvenile justice services to which they make a large contribution.

**1.5** Against this background of fast-moving social and legislative change, social services departments have many major achievements to their credit. Their work often involves difficult judgements particularly in the children's field. Much is done to high standards but all too often it is brought to public notice only when things go wrong.

**1.6** The Government believes that their work is and will remain an essential part of the Welfare State. The Government also believes that their growing size and the increasing public awareness of their work makes necessary a reassessment of the roles and structures of departments which were originally established in very different circumstances. The Government considers that there are some aspects in particular of the work of social services departments which need to be reviewed:

- a. Much of their work with adults is still based on powers first taken in the National Assistance Act 1948. The Government believes that the statutory basis for all their work should be modernised to provide a clear framework for delivering services which will enable them to determine sensible priorities within the overall local government spending levels set by Parliament and the social services budgets set locally. The Government will equally ensure that the relative roles of social services and social security, including housing benefit, remain clear.

- b. Social services departments currently combine three responsibilities which sit uneasily together:
  - they assess care needs and use public money to commission care;
  - they operate as care providers; and
  - they regulate care provision in the private and voluntary sectors.

The Government believes that these three functions should be separated clearly from each other.

- c. The accountability framework for social services does not provide local authority members and managers or the public with sufficient information to allow the quality, suitability and efficiency of social services to be properly monitored and assessed. The Government believes that Parliament should establish such a framework.
- d. The arrangements for the transfer of responsibility from social security to social services starting in 1993 make provision in England for 85% of the transferred budget to be used to commission care from the independent sectors. These arrangements were explicitly transitional. The Government believes that permanent arrangements are now needed to focus the social service department's role on assessment and commissioning and to promote the development of the independent sector in providing care in care homes and domiciliary services.
- e. The community care arrangements also included the Direction on Choice which gave force to the Government's view that users should have an effective voice in determining how and where their care needs are met. This policy is being taken further forward by the Community Care (Direct Payments) Act 1996 which will enable many disabled people to choose and manage their own care. The Government believes that social services legislation needs to consolidate and extend this important principle.
- f. Using powers in the Children Act 1989 the Government required social services departments to prepare Children's Services Plans identifying priority areas for the protection and support of children in their own field of responsibilities and in those of other services. The Government believes that this is too narrowly based and that the requirement should be refocused at the local authority collectively and involve the full participation of all the other public agencies able to detect and react to warning signals from potential problem families.
- g. The delivery of social care to children often requires particularly difficult judgments. The Government proposes to work towards an extra training commitment for those who undertake it.
- h. Regulation of social care should be conducted in close conjunction with the regulation of health care for the same clientele. The Government proposes a new regulatory framework which will improve safeguards to vulnerable people and will encourage more flexibility, innovation and cost effectiveness in the development of care.

**1.7** As well as addressing these key structural issues, the Government believes that it is important to set out clearly the role which social services should be expected to fulfil in modern society. In the Government's view the guiding principles are simply stated:

- a. Social care is the care which the very large majority of people are able to provide for themselves or for their family, friends and neighbours. The principal responsibility for social care rests on individual members of society and society's own networks of mutual support. It believes that responsible individuals should plan to meet their own needs, and that every encouragement should be given to family and friends who are willing to act as carers of those who are unable to provide for themselves.
- b. The role of statutory social services is to act as a support to those who are meeting social care needs in these ways, and as a commissioner of care to support those for whom these networks fail. Statutory social services have been and should remain a service whose resources are targeted at those whose needs cannot be met through these networks. They include the highly dependent and vulnerable and those who are socially isolated.
- c. High quality social care requires dedicated professional staff. It is important that proper training is provided to those who undertake this work and that the structures within which they work are not allowed to become isolated from the rest of the community. The Government believes that it is important that both the training of social workers and the accountability framework of social services departments must ensure that professional attitudes reflect the values of society generally.

**1.8** This White Paper sets out how the Government intends to address these issues. After full consultation on the details the Government will introduce a Social Services Reform Bill as soon as the timetable of the next Parliament allows. This Bill will set out a new statutory framework reflecting the value of the role which social services departments now fulfil. It will set the foundations in place for the next 25 years of this important public service.



# *Social Services - Achievement and Challenge*

## ***Foreword***

For the many vulnerable people who need the support of social services their expansion and improvement in recent years has been one of the most important developments in the Welfare State. Central government and local authorities have together put great effort into bringing about these changes. And central and local tax payers have seen a large increase in their cost.

The Government considers that if social services are to build on their past record it is desirable to make a number of changes and improvements in the structures and roles of social services departments so that they can focus more clearly on their essential tasks. These changes, along with very important improvements to the arrangements for safeguarding vulnerable people through regulation, are explained in this White Paper. We hope that it will be widely discussed and supported inside and outside local government.

**Stephen Dorrell**  
**Secretary of State for Health**

**William Hague**  
**Secretary of State for Wales**



# *Social Services - Achievement and Challenge*

## *2 Service for Adults*



*The role of the individual*



*Families, carers and wider community resources*



*Individual choice*



*Partnerships with other agencies*



*A more focused role and better value for money: a new legal framework*



*Residential care*



*Care in people's homes*

**2.1** The community care reforms of 1993 caused a transformation in social care for adults. There is greater individual choice, and a wider range of provision available for residential and domiciliary care. The majority of residential care is now provided in the independent sector and the proportion of independently provided domiciliary care is growing rapidly. Local authorities have been developing their role as purchasers of services. The importance of assessment - both of users and of carers - as a means of ensuring that services are appropriate to need has become firmly bedded into the system.

**2.2** In central government and locally there is a new emphasis on close cooperation and joint working between all the agencies involved in community care, and in particular between social services authorities and health and housing authorities. Significant effort has been put into this area and important advances have been made.

**2.3** The various different strands of public finance have been rationalised - the large and rising social security expenditure that had been available only to support people in residential and nursing homes has been brought together with local government expenditure on community care. The resources available for social care are now being used more flexibly to meet both domiciliary and residential care needs. Local government spending on community care, including the money transferred from social security since 1993, rose in England and Wales from £2.9 billion in 1990-91 to £6.3 billion in 1996-97.

### **The role of the individual**

**2.4** The Government's approach to the delivery of social care has already been made clear in Chapter 1. The function of social services departments is to underwrite individual responsibility rather than substitute for it. Since the foundation of the welfare state in 1948 individuals with the means have always been expected to contribute to the cost of their social care needs.

**2.5** The biggest single social care cost which individuals are expected to meet themselves is the cost of residential and nursing home care if they need it. The Government has already announced a number of measures which are designed to reinforce the capacity of the majority of citizens to contribute to the cost of this type of care.

**2.6** In April 1996 the Government more than trebled - from £3,000 to £10,000 - the personal savings wholly disregarded in the means-test for residential and nursing home charges. At the same time it doubled from £8,000 to £16,000 the capital assets which are partly protected from the means-test because the local authority and the individual share the cost of meeting the charges. These changes are of immediate benefit to everyone in care homes with assets of more than £3,000. They will equally benefit those with such means who enter care homes in the future.

**2.7** The Government is also planning to introduce new incentives to help people insure against their care costs. In the recent policy statement "A New Partnership for Care in Old Age" (CM 3563) the Government announced its plans to establish a partnership scheme which will help people to make better provision for their care costs through such insurance. These proposals involve easing the means test for the benefit of those who take it out. The Government has decided that the marketing of all long-term care insurance should be regulated. The Government also plans to allow people to "top up" the residential care arranged by their local authority from resources disregarded by the means test.

**2.8** These important proposals will be introduced at the earliest opportunity. In the meantime, to ensure that the legislation is as well prepared as possible, it has issued for consultation a draft Statutory Instrument to regulate the selling and marketing of long-term care insurance under the Financial Services Act, and a draft Bill to establish the partnership scheme and allow "topping up".

### **Families, carers and wider community resources**

**2.9** Many people with disabilities living in the community manage with the support of family and friends, and the majority of older people do not call on statutory social services. There are at least 6.8 million carers in Great Britain, providing informal care to sick, disabled or otherwise vulnerable people. This figure is evidence of the degree to which family and community support for elderly and disabled people continues.

**2.10** The Government's policy has been to improve support for carers. The Carers (Recognition and Services) Act 1995 gives carers a legal right to recognition in their own right in the assessment process. Many social services departments have used their growing budgets since 1993 to improve support for carers.

**2.11** There is also an enormous range of local and national voluntary bodies and self-help groups which provide old, disabled or otherwise vulnerable people with direct support and advice, and which can do a great deal to reduce their social isolation. The Government has fostered these important areas of activity through, for example, the "Make a Difference" initiative on volunteering, the support of local volunteer partnerships and through a wide range of grants.

**2.12** Many people who need such support know or can relatively easily find out how to access it. But others are less aware. The Government sees essential roles for social services departments in reflecting this wider community support in their assessments of local need and resources, in supporting and stimulating voluntary

activity as many already do and in helping individuals to benefit from it.

**2.13** Where a social services department performs these functions well, it will help itself to target most of its own substantial resources on those with high dependency needs because they are particularly frail or disabled or because (like many of those who suffer from mental health, or drug and alcohol abuse problems and have an unsettled way of life) they are socially isolated to a degree that may make it difficult for normal community resources to help them.

### **Individual choice**

**2.14** Giving users a much greater influence in choice of provision of local authority financed services, and the way care is arranged, has become an increasingly important priority of social services management in recent years. The Government intends to reinforce and extend this principle.

**2.15** The Community Care (Direct Payments) Act 1996, which will be implemented in April 1997, enables authorities to give younger disabled people money to purchase the support in their own homes that the local authority would otherwise have arranged for them after a normal community care assessment. Where local authorities establish a direct payments scheme, disabled people who so wish will be able to make and manage their own support arrangements.

**2.16** The Government believes that the introduction of direct payments will significantly reinforce users' ability to choose services of most direct benefit to themselves. Clearly it will be important to monitor the scheme's implementation, and ensure that it proves manageable, cost effective and delivers the benefits expected from it. The Government will be reviewing the scheme a year after its introduction, and provided it is shown to be successful in all these objectives, the Government will extend it to cover other categories of service user.

**2.17** The Government also wishes to encourage experimentation with other ways of reinforcing the individual's right to influence their choice of residential or nursing home. The Direction on Choice gave people receiving publicly funded care in a residential or nursing home the right to indicate the home of their choice from the range of suitable and affordable alternatives. Some authorities are looking at voucher schemes as a way of extending and facilitating this right to choice. The Government intends to ensure that there are no legal obstacles to the use of vouchers in this way.

**2.18** Finally, the Government considers that some service users would welcome more choice in the sources of advice available to them in the selection of the support which their local authority has assessed them as needing and is willing to finance. There are already some examples of local authorities encouraging some service users, once their needs have been assessed, to rely on specialist voluntary bodies or service user groups for advice on how those needs can best be met. It may well be that disabled people who choose to receive cash payments instead of services under the new legislation will also wish to choose their own sources of advice about how they might best use the money. It is more likely that such choices will be sensibly made where the user's needs are likely to remain fairly stable and the call for regular reassessment of basic needs is thus infrequent. But the Government would like to encourage a wider variety of choice in sources of advice available to users and will ensure that the legal framework within which social services operate does not place obstacles in the way of this objective.

### **Partnerships with other agencies**

**2.19** The Government has given the National Health Service and local authorities the strategic objective of providing a seamless service, working across boundaries. Over the last three years the Government has taken steps to assist inter-agency working, and to address problems that have arisen. There has been a wide range of central initiatives from the Health Departments, and other Government Departments working together to support the development of local corporate approaches, and to ensure consistency of overall policy. The Government will maintain this emphasis. A current example of such work within Government, involving also consultation with local government, is the Department of Social Security's review of the use of Housing Benefit in financing supported housing.

**2.20** In the field of mental health, where successive reports and inquiries have shown that many local and health authorities find reliable partnership arrangements difficult to maintain, the Government has identified

and is consulting on options for structural change to improve performance ("Developing Partnerships in Mental Health" (CM3555)).

### **A more focused role and better value for money: a new legal framework**

**2.21** The primary function of a social services department should be to assess the social care needs of its population; to plan the provision required to meet those needs over a period of years; and, in the light of the resources likely to be available in the community as a whole, to decide how to deploy its own resources most effectively to contribute towards that plan. Social services departments are uniquely placed to carry out this strategic function not least because of the links they can forge with other agencies sharing responsibilities for the groups of people concerned.

**2.22** Local authorities are also currently direct providers of care services. The Government does not however believe that this is a function for which they are well-suited, and indeed the evidence suggests this may not be a cost effective use of their resources. There is clear evidence, shown in detail in the Department of Health's recently published review "Better Value for Money in Social Services: A Review of Performance Trends in Social Services in England", that services from the private and voluntary sectors often offer better value for money.

**2.23** Local authorities have never directly provided nursing home care, and are increasingly relying on the private and voluntary sector for residential care; in recent years they have also started to rely increasingly on external providers for care in the home though they still provide the majority directly.

**2.24** The trends in favour of external supply have clear advantages, in value for money, and user choice, and in enabling authorities themselves to focus more fully on their most essential role of defining the overall needs of their communities, liaising with the other agencies (notably health and housing) which also support users, setting priorities, and assessing individual need within those priorities and deciding which should receive public support.

**2.25** The Government therefore wishes to entrench the trend towards more external supply of residential and home care.

### **Residential care**

**2.26** From 1993, when local authorities started to receive the large transfer of money from the social security budget for their new community care responsibilities, the Government ring-fenced each new annual tranche of finance in England through a special transitional community care grant, and made it a condition that 85% of this money should be spent in the private or voluntary sectors.

**2.27** This was a natural approach because the higher levels of social security income support had been available only to people going into independent sector care homes. It has been successful. In the year to March 1993, local authorities in England placed in homes which they directly owned and managed nearly 80% of the 97,000 people they were supporting in residential care. By 1995 they were supporting more people in independent sector homes than in directly managed homes out of the much increased total of 140,000.

**2.28** The special grant and its 85% condition were never intended to be permanent, and the Government does not wish to continue to hypothecate local government finance in this way. It therefore intends instead to legislate for some changes in the framework of powers through which local authorities provide or arrange residential care.

**2.29** It proposes to alter authorities' power directly to provide residential care. At present, this is a neutral power which neither encourages nor inhibits direct provision. The Government intends that the power should remain, but that it should be qualified to make clear that it may be used only where an authority can show the need to use it after a rigorous and objective review of independent sector alternatives.

**2.30** The need to retain directly managed residential homes is likely to become increasingly rare. The law will therefore place a strong and clear onus of proof on authorities wishing to retain existing residential homes or to open or acquire new care homes. It will require formal reviews of existing direct provision to be conducted periodically by each authority. In these reviews, authorities must be able to demonstrate that on



planning projections of the expected need for services and the predicted available supply, there will be insufficient independent sector provision (either currently in existence or which could be developed in time) to meet projected service needs competitively in terms of cost and quality.

**2.31** Such reviews would need to be carried out in a transparent way. Planning projections and relative costings must be made public to enable local users, carers and independent sector providers to challenge inaccurate information or assumptions before any decision is made to retain local authority provision. An open review will also ensure that the local authority can clearly be held accountable for its decisions. The District Auditor will check in the normal way that the authority had performed the review properly in accordance with their statutory duty.

**2.32** The criteria against which the review must be carried out will be set out in regulations and so will be binding on local authorities. The Government intends that the statutory default powers, which enable the Secretary of State in the last resort to apply to the courts for orders requiring authorities to perform their social services duties, will cover this review process.

**2.33** Since the reviews will not directly result in the letting of specific contracts, it will not be necessary for independent sector providers to tender bids. And since they will be strategic, there will be no need to move existing residents out of existing care homes against their will. Nor will it affect the authorities' continuing responsibilities for the financial support they give them at the moment. The Government will ensure, by amending powers if necessary, that local authorities continue financial support for residents who are properly their responsibility.

**2.34** Some local authorities have tackled the issue of removing the conflict of interest inherent in being both purchaser and provider by turning their in-house provision into independent trusts. Local authorities must show that this approach represents good value for money for the taxpayer, and does not result in unfair competition between former local authority homes and other independent providers. The review process will therefore include a requirement for local authorities openly to examine the arrangements they have with such independent trusts, and any future proposals for reducing their in-house provision in this way, to ensure that arrangements are cost effective, and proper in terms of the use of publicly financed assets; and that they do not infringe fair competition principles. The new statutory accounting framework described in Chapter 5 will also reinforce the distinction between the social services department's commissioning and providing roles, and their duty to obtain good value for money.

**2.35** In conducting their reviews, local authority social services departments should work closely with health authorities, and should also consider, in close collaboration with housing departments, the extent to which existing patterns of residential provision actually best meet the range of needs that people have. Social services departments will be encouraged to involve local planning services in the review process. There may, for example, be room for a shift of balance between different forms of sheltered housing and residential care; and scope for greater flexibility in linking different kinds of provision to offer a spectrum of support or care for people as their needs change. When authorities are divesting themselves of directly run residential care, they could for example consider whether there was scope to harness private finance to improve the availability of more suitable provision, for example sheltered housing and very sheltered housing.

## **Care in people's homes**

**2.36** In non-residential care, the independent sector is not yet so well developed, although the Government has been pleased to see increasing use of independent sector providers, particularly in the provision of home help and home care, and evidence that this has led to more flexible care arrangements, notably providing help at times that suit the user best.

**2.37** The Government wishes to encourage and facilitate this trend. It therefore intends that the new statutory framework described above for care homes should cover domiciliary and day care services as well.

**2.38** In order to create the necessary confidence to allow the domiciliary and day care market to flourish, and to help ensure a level playing field between independent sector and local authority providers, the Government accepts the need for the effective and economical regulation of domiciliary and day care provision (whoever provides it), and will include the necessary legal provision in its Social Services Reform Bill as explained in Chapter 4.





# *Social Services - Achievement and Challenge*

## **3 *Service for Children***



*The legal framework for the care of children*



*Priorities in children's services*



*Organisation of children's services*



*The training of social workers in child care*



*The public interest in social services for children*

**3.1** There is no aspect of the work of social services departments that is more sensitive than their work with children. Among other services they provide:

- protection for children who are neglected by their parents or who are at risk from their parents or others,
- support for disabled children and others needing special help and for their families, and
- services in respect of young offenders, including residential care and supervision and support for criminal justice agencies.

The needs of these groups of children require social services departments to commission residential and foster care services and other facilities, as well as playing a key role in the adoption system. The responsibilities of social services departments for individual children often last over many years, including helping young people into stable lives as young adults when they have no families to rely on.

**3.2** In addition to these care services social services departments are often responsible for the regulation of private children's homes, as well as day nurseries and child minders used by very young children. The Government's proposals for the reform of regulation are set out in Chapter 4 of this White Paper.

### **The legal framework for the care of children**

**3.3** The sensitive nature of social services' work with children makes it essential to provide staff with a clear framework for their decisions. Under the Children Act, where the court is making a decision relating to the upbringing of a child, the child's welfare is of paramount consideration and the court is therefore required to consider his interests and wishes; decisions made by local authorities affecting the welfare of children must also focus on the interests and wishes of the individual child. The Government believes this to be the correct focus. It does not believe, however, that emphasising the interests of the individual child should be allowed to become an excuse for distorting the proper relationship between children and adults. When decisions about the care of children are being made, it is important to listen to their views according to their age and capacity, but it is equally important not to ascribe to children the capacity to make the mature judgements about their interests which are the proper responsibility of adults. To do so is not to protect their interests but to prejudice them.

**3.4** The Government will continue to monitor the influence of the Children Act on social services departments. It stands ready to act either through revised guidance or clarifying legislative change if it can be demonstrated that there is a need to re-assert a proper balance between the rights of the individual child and the responsibilities of parents and other adults. The Government will equally watch for any evidence that vulnerable children are being left in unsuitable or unsafe family settings.

**3.5** The revised guidance issued recently by the Chief Inspector of Social Services in England to local authorities and others responsible for the management of children's homes emphasises their responsibility to influence the children in their care. The care and control of children especially in residential homes has in recent years become a good deal more difficult. As the number of children in the public care falls, and the proportion of them placed in residential homes rather than in foster care also falls, children in residential homes are likely to include a larger proportion who have previously suffered gross abuse or neglect or who may have entered the home with behavioural characteristics which present serious challenges to the staff looking after them. The climate of public expectation within which residential homes are managed has also become less consistent. On the one hand there is public abhorrence of excessively punitive or humiliating treatment of children. On the other, there are complaints of lack of firm control.

**3.6** The Government does not intend to relax the regulatory and other controls introduced to safeguard against the mistreatment of children in residential homes; nor does it intend to encourage habitual reliance on physical coercion. The new guidance does however emphasise that care authorities and home managers have a responsibility to ensure that children for whom they are responsible should be given the safety and clear guidance that characterises effective parenting, and that it is permissible and can be essential to exert firm influence on children and young people who need control as well as care in their own interests and to protect local communities from harm.

### **Priorities in children's services**

**3.7** The Department of Health and the Welsh Office are already working closely with social services on one important shift of focus for which the need has become clear since implementation of the Children Act started. In 1994, an Audit Commission report "Seen But Not Heard" suggested that a shift in the balance of social services work with children from child protection to family support might promote children's welfare more effectively and represent better value for money. This approach requires social services, where possible, to receive early warning about children who may be at risk so that preventative action can be taken.

**3.8** This increasing focus on the need to identify children who are potentially at risk led to the requirement which was introduced in 1996 for all social services departments to prepare Children's Services Plans. These plans are intended to ensure that arrangements are put in place across all the services responsible for children to recognize and act on warning signals that may be available, and to make all local services for children coherent. The requirement to prepare service plans takes the form of a direction on social services authorities who are required not only to cover their own services but also to reflect consultation with other departments within local government and from the other public agencies.

**3.9** The requirement to prepare Children's Services Plans is directed at social service departments because it is only in the social services field that the necessary legal power exists. If the maximum effect is to be achieved, however, the planning process must be seen as the corporate responsibility of the local authority as a whole and fully involve other statutory services including health, education, probation, other juvenile justice

services and housing. The Government therefore proposes to widen the statutory framework accordingly.

**3.10** The Education Bill currently before Parliament presages further useful developments. In particular the new requirement on education authorities to prepare and publish behaviour support plans will be an important opportunity to involve social services departments, voluntary bodies and other local agencies in the arrangements for dealing with disruptive children and children who are excluded from school. The Government will also encourage close cooperation between the Schools Inspectorates and the Social Services Inspectorates in their reviews of services in these areas.

**3.11** Close cooperation between social services departments and other local agencies is also an important theme in the Green Paper on preventing children offending which the Government published recently. The Green Paper proposes the establishment of new Child Crime Teams whose main function would be to identify children at risk of offending and refer them to local programmes which might reduce that risk. The responsibility for establishing these groups would lie with the local authority (although it need not take the lead in the work of the groups; that would be a matter for local agreement). Widening the base of Children's Services Plans will reinforce the developments proposed in the Green Paper.

### **Organisation of children's services**

**3.12** Planning children's services against this new background may prompt some authorities to consider the organisational structures within which their child care functions are carried out, and in particular the effectiveness of the links between education and children's social services, and other relevant local authority responsibilities for example those for housing, youth and leisure. Authorities are recommended to ensure that there are strong links, at member and officer level, which will help them to create proper coherence across all their relevant functions for children and young people. That principle, and the equally important requirement for a clear accountability within the authority for the effective delivery of responsibilities under children's legislation, are more important than any particular patterns of organisation that they have inherited.

**3.13** In adult services, following the community care reforms in 1993, most authorities took special steps to separate the identification of the needs of their local communities for community care services and the assessment of the needs of individuals from the provision of services. Where the community care reforms have worked best there are usually clear structures for these different purposes, and a financial information base which enables the authority to make rational and considered decisions on the deployment between competing needs and priorities of the resources available to them.

**3.14** Generally speaking, however, the management arrangements for children's services have not developed to the same degree as those for adult services and the quality of information to underpin decision-making about costs and priorities in many authorities is poor. The Government considers that this is a major priority to be addressed in the management of children's services. The Department of Health and the Welsh Office will work with local government to help local authorities tackle these issues. Some local authorities have already made good progress with them, and their examples will contribute valuably. The new accounting framework for all social services described in Chapter 5 will be an important reinforcement for this process.

**3.15** In children's services there has for many years been a trend away from the direct provision by the authority of many services for children. Foster carers now look after some 60% of children in the public care, whereas in the past much higher proportions were placed in local authority residential homes. And where residential care is regarded as the right placement, many authorities make arrangements for children in homes managed by other authorities, voluntary bodies or privately. The Government welcomes these developments and will continue to encourage greater diversity in sources of services for children.

### **The training of social workers in child care**

**3.16** Much work in children's services places intense demands on the skills and experience of those who do it. Few if any public authorities have more difficult decisions to take than whether to leave a child at risk in its existing family and environment or to remove it into care. The Government is concerned to establish a framework of training and qualification which recognises the skills and experience necessary in this work.

**3.17** The Government therefore proposes to improve the training provided for child care staff following their basic qualification. This improved training will provide tangible support to staff in the challenges which

they face, and make a qualitative improvement in child care practice. It will be underpinned by a national curriculum and competency framework and lead to a formal award. The Government intends to work within existing resources towards a statutory requirement that social services staff specialising in the care of children should possess an appropriate qualification in child care before carrying out the more difficult and demanding duties in this field. The new training framework would initially be developed and launched not as a formal licence to practice but as a means through which the skills of the existing work force are strengthened and developed. It will have a strong practical orientation.

**3.18** It is the Government's longer term intention to require such qualifications in child care as they are already required for approved social workers who are entrusted with powers under mental health legislation. The pace of progress will need to depend on the resources available and the availability of suitable courses.

**3.19** The Government will consult local government and other interests in social services and the other professions which share responsibility for children's welfare and health on the best way forward, including a suitable degree of priority in the resources that it allocates centrally in the support of training.

### **The public interest in social services for children**

**3.20** Much public comment on child care issues, locally and nationally, is influenced, perhaps to an unfair degree, by things which go badly. Cases in which social services or other agencies have failed to protect children who have been the victims of sexual or other crimes of violence within their families or in the care system, and cases where it is judged that local authorities or other social services providers have shown an apparent over indulgence towards young offenders tend to dominate public reports and debates.

**3.21** The Government has acted to have the evidence of abuse in children's homes in North Wales properly investigated by a judicial Tribunal of Inquiry, and to have the effectiveness of safeguards in children's homes and other settings where children are looked after away from home assessed afresh by Sir William Utting.

**3.22** Nevertheless there are wider issues in the children's welfare services that would benefit from more public debate and understanding. Local authority social services provide direct help to a small proportion of the children in their localities. There is not the same degree of continuing public interest in them and knowledge of them as there is, for example, in social services for older people or education services for children. There is therefore a risk that in the children's field democratic influences and accountability may be less strong, and that the services themselves may suffer from professional isolation. It is for local authorities to decide how best to make arrangements to enable the wider public as well as users in their localities to understand and influence their policies for children. Providing a new and more collective approach by the authority as a whole may make Children's Services Plans a more suitable focus for public discussion and understanding of local policy.



# *Social Services - Achievement and Challenge*

## **4 *Protecting the Public Through Regulation***



*The objectives of regulation*

*The regulation of home and day care services*

*Regulatory independence*

*Comprehensiveness, focus and flexibility*

*The national role*

**4.1** The regulatory safeguards now established around social and other care services are wider in scope and more effective than they were but the regulatory system overall has grown up piecemeal over many years and the care services and the needs of the people who use them have changed significantly during that time. In 1995 the Government therefore set up a wide-ranging review of the registration and inspection of social services and nursing homes. The report of Tom Burgner, the independent assessor, was published in October 1996 and the Government then announced some decisions on his recommendations. After further consideration of the issues, the Government is now setting out a more detailed outline of its objectives for the development of care regulation in the future.

### **The objectives of regulation**

**4.2** The Government believes that the regulatory framework for protecting people with care needs should meet a number of key objectives:

- a. it should cover all the main services where vulnerable and highly dependent people spend significant amounts of time and there are significant risks of poor care standards or mistreatment;
- b. it should be flexibly applied so that most regulatory effort is focused carefully and rationally on facilities where care and mistreatment risks are highest;
- c. the costs of compliance with regulatory standards should be assessed along with the risks which they safeguard against; and the cost of the regulatory process should generally speaking be met through fees paid by the providers of services;
- d. the prime purpose of regulation should continue to be the establishment of basic safeguards and humane standards of provision which all providers must meet before being allowed to offer any service; those wishing for higher standards, as many will do, will continue to be able to choose care at the standard they want and can afford;

- e. the regulatory framework should reflect but not determine the shape and development of the patterns of care as they evolve to meet changing patterns of need;
- f. regulators should be clearly and fully separate from and independent of service providers and their management; and enforcement powers should apply equally to the independent and local authority sectors;
- g. the regulatory process should be open and transparent to users, potential users and the wider public;
- h. the responsibility for regulation should remain local and should not be centralised, but the Government through the Health Departments should ensure that over a period of time there are national benchmarks for the main areas of care to encourage reasonable consistency and provide local regulatory authorities with a starting point for their own standards; and that through monitoring and guidance the regulatory system is operating fairly and effectively; and
- i. the regulatory framework and regulatory process should to the degree necessary cover both social and health care standards and safeguards for the same clientele, and duplication of care regulation should be avoided.

### **The regulation of home and day care services**

**4.3** It was one of the main objectives of the Community Care reforms of 1993 to help people to remain in their own homes for as long as possible. Since the reforms were implemented this policy has led to a large increase in the arrangement of home and day care services by social services departments. Many of these services have been provided by social service staff, but there has been a substantial growth in the proportion that is provided by the independent sector. Chapter 2 of this White Paper makes clear the Government's view that this development is welcome.

**4.4** These services have not hitherto been subject to regulation. This position has, however, become anomalous. The provision of such care to vulnerable people is an activity where high standards of individual competence and honesty are essential. The Burgner review recommended that the scope of social care regulation should be extended to cover these services. The Government agrees with that recommendation and will make the necessary provision for the regulation of both the public and the independent sectors in the Social Services Reform Bill. In framing the detailed proposals the Government will appraise and cost the options in the usual way so that the regulatory framework is appropriate, proportional and affordable.

### **Regulatory independence**

**4.5** The Government has already announced that it intends to bring all local authority directly managed care services of the kind which the regulatory system covers fully and legally within its scope, as regards inspection, licensing and enforcement. Local authorities' adults' and children's homes, their home care services, their children's homes and day care facilities would thus be put clearly in the same situation as comparable facilities provided by the voluntary and private sectors. To reinforce the independence of the regulatory function, the Government intends to legislate to ensure that social services' regulatory functions should not be performed by social services department.

### **Comprehensiveness, focus and flexibility**

**4.6** The Government accepts the analysis in the Burgner report that the regulatory framework should be adaptable to the development of care provision and care needs, and should not inhibit changes in their pattern as individuals' needs change, and care providers evolve new approaches to them. It is already clear that there is a significant overlap between the people who enter residential homes and those who enter nursing homes. Particularly in residential and nursing homes, residents are likely to have both health and social care needs and it is important that the home is able to assess and meet their needs flexibly and effectively. The regulatory system should not impede that objective.

**4.7** The regulatory effort should be properly focused according to the degree of vulnerability, social isolation and dependency of the people cared for. Where these characteristics are less pronounced the regulatory checks should be proportionately less onerous. It is also desirable that regulation and



inspection of facilities where people characteristically have a multiplicity of care needs should be coherent and that, for example, separate visits by different regulatory teams perhaps with different standards or approaches should be avoided.

**4.8** The Government regards the removal of duplicated or overlapping assessment of single facilities as an essential objective of new regulatory arrangements. Inspection teams should reflect all the necessary professional skills in social and health care. The Government has been encouraging partnership arrangements along these lines between health authorities and social services departments for some years but progress has been slow. The Government now considers it right to amend the regulatory machinery so as to make certain that duplicated regulation and differences of standards in the same locality would be avoided and that the necessary assessment expertise and regulatory authority is brought together within one body for each locality. It therefore intends that all regulatory responsibilities now exercised by social services departments (including those for children's services) and the regulatory responsibility for nursing homes now exercised by health authorities should be brought together into new local statutory bodies vested in law with the necessary regulatory powers and formed by consortia of local and health authorities in the area, with small but suitably representative membership drawn from the participating authorities. A model on these lines was amongst the options for regulatory machinery in the Burgner report. It is the model the Government prefers.

**4.9** The creation of such a single regulatory authority for each locality raises the question whether it is right to maintain the legal division of adult care homes for regulatory purposes into residential homes and nursing homes. The Government sees attraction in moving towards a single category in which each care home would be assessed and licensed appropriately according to the nature of the clientele for which it offered services and the range of services they would characteristically need. The benefits of such an integrated framework could be greater flexibility for providers, and a wider range of services available to users as their needs changed over time. People in residential homes who start to need more intensive support characteristic of nursing homes could face an easier choice between remaining in a setting with barely sufficient care support or moving to another one with more suitable care but in a different location and with a wholly new set of carers and fellow residents.

**4.10** The details of such a change need full assessment. More carefully graded regulatory standards should enable some people with care needs between residential and nursing care as now defined to receive more suitable and less costly care at a level between the two; but in other cases a risk of drift to higher cost care might emerge. The Government will consult further on these issues with particular reference to the need to reassure existing and future residents that their interests would be better catered for within this more flexible structure and that neither they nor local authorities purchasing care on their behalf would be exposed to the risk of extra costs.

**4.11** The Government does not intend to alter the responsibilities of health authorities for regulating independent sector acute hospitals and other specialist health care facilities. It envisages that existing appeal mechanisms through the Registered Homes Tribunal should be retained and it will pursue the Burgner recommendations for improving its procedures. In bringing forward legislative proposals the Government will take the opportunity to ensure that appeals and enforcement systems are consistent with the model appeals mechanism and the principles of the Deregulation and Contracting Out Act 1994. It will also discuss the exemptions from regulation which currently apply, for example to bodies set up by private statute or royal charter, with the organisations involved. In advance of preparing in detail the necessary legislation the Government will publish and consult on more detailed proposals which will be discussed carefully with consumer, provider, local authority, NHS and professional interests. It does not intend to alter the regulatory framework for fire safety, environmental health and health and safety regulation which affects care facilities along with other types of business.

**4.12** The Government has already announced its intention to bring small private children's homes into the regulatory framework. The Government is also minded to accept the Burgner recommendation that voluntary children's homes at present regulated by the Secretary of State should come within the new local framework for regulating other care services. It will give an opportunity for comment on these proposals to Sir William Utting who is conducting a general review into safeguards in children's residential care and other settings where children live away from home. The Government will also bring the proposals to the attention of the Tribunal of Inquiry investigating allegations of child abuse

in North Wales.

### **The national role**

**4.13** In parallel with developing this new approach to the structure of regulation, the Health Departments will develop the machinery for setting national benchmarks for care standards. This machinery will include opportunities for participation in this work by local authorities, health authorities, Trusts and the primary health care sector, user interests, care providers and professional interests. The arrangements will include requirements for assessing the risks to people in different care settings, the most effective safeguards, and their likely costs.



# *Social Services - Achievement and Challenge*

## **5 *Spending and Value for Money Regulation***

*A new  
accounting  
framework*

**5.1** In the ten years to 1994-95 spending on social services by all local authorities in England and Wales rose by:

- nearly three times in cash, from £2.8 billion to £8.0 billion;
- 75% in real terms, after allowance for general price rises in the economy as a whole; and
- 62% in purchasing power after allowance for a somewhat higher rise in prices met by local authorities on social services staff and other services.

Social services is now the seventh biggest public spending programme. It is vital that the money spent on them is spent as efficiently and effectively as possible.

**5.2** The purchasing power increase has meant that the social services departments of local authorities have been able to spend a great deal more on each major area of services. Purchasing power rose in England and Wales:

- on children's services from £1,257 million in 1984-85 to £1,743 million in 1994-95, an increase of 39%;
- on services for mentally ill and learning disabled people from £515 million to £1,251 million, a factor of nearly 2 1/2; and
- on elderly and disabled people by two thirds from £2,326 million to £3,882 million, an increase of 67%.

**5.3** The changes in spending and costs in England are analysed more fully in the Department of Health's recent publication "Better Value for Money in Social Services: A Review of Performance Trends in Social Services in England". This review was based entirely on figures provided by local authorities through standard national returns.

**5.4** The review recognizes that during the decade to 1994/95 many social services authorities delivered important improvements in both the quality and the cost-effectiveness of their services. The review also, however, raises doubts about whether identifiable increases in demand and expectations account in full for all the rises in cost and in spending that occurred. One published attempt to reconcile the figures for the 1980s by the Personal Social Services Research Unit at Kent University suggested an adverse conclusion. After looking thoroughly at all the available figures, the researchers said of the substantial increase in spending over the period:

"This increase can only partly be explained by increased labour prices and increased client needs resulting from

implementation of community care. Explanations in terms of quality and efficiency changes are explored [in the research report] in relation to individual services, and there appears to be a prima facie case that efficiency reduced during the 1980s".

**5.5** The Government considers that it is very important for local authorities to adopt rigorous performance management principles, and to ask themselves the kind of questions about activity, unit costs and cost-effectiveness set out in the Department of Health's review.

**5.6** Local authorities need accurate and transparent costing of their own services to take objective decisions about value for money. They already have extensive guidance from CIPFA on accounting policies and practices, including the charging or apportionment of costs to in-house services. The Government considers that in many cases this should be applied more systematically.

**5.7** The local accountability of authorities for the quality of their financial and performance management and the cost effectiveness of their services is supported and reinforced by external scrutiny systems both at local and national level. The District Auditor scrutinises their spending and its effectiveness, reporting to the local authority but working to the code of audit practice set by the Audit Commission and approved by Parliament. And the Audit Commission nationally publishes periodic reports on aspects of social services and other local government spending and services which raise significant issues about patterns of service and their effectiveness which all authorities are likely to benefit from addressing in their own circumstances.

**5.8** The Audit Commission has in hand two further initiatives which will help local authorities to improve their effectiveness and efficiency and to probe the performance of their own services with more confidence and determination.

**5.9** First, to improve purchasing, the Commission, with support from the Department of Health, is developing a systematic framework of guidance for local community care commissioning. This will draw together best practice in arranging services for those who need them. It includes developing greater financial flexibility to meet users' needs, introducing more cost effective purchasing arrangements with suppliers of services, and stimulating the market to provide the right mix of services.

**5.10** Secondly, to improve cost control, the Commission will provide feedback to individual local authorities on recent trends in their unit costs. This will allow them to track their progress against that of similar authorities. There is already valuable material provided to all authorities comparing their costs, with other similar authorities, largely at a single point in time. The new approach will help them track their own costs over time, which is equally important in exerting proper management control over cost trends, and is linked to the Department of Health's recent review.

**5.11** In addition, following legislation in 1996 to create an appropriate framework, the Government has introduced a new system of joint reviews of individual social services departments by the Audit Commission and the Social Services Inspectorate. Each authority will be reviewed on a regular basis. The reviews will concentrate on issues of priorities, service delivery and quality and financial management. In particular they will help authorities to judge whether they are properly bringing together financial management, cost control and quality issues. This is a new departure in public services scrutiny and audit which should over time bring benefits to service users and to local and national tax-payers who finance the majority of social services' spending.

### **A new accounting framework**

**5.12** This combination of guidance, reviews, analysis and feedback will help reinforce the progress many local authorities have already made in strengthening the management of a major public service. However, the Government considers that the accountability framework needs further reform, to distinguish clearly between the assessment and commissioning functions of local social services' authorities on the one hand, and their direct provision on the other. It therefore proposes in the Social Services Reform Bill to require each social services authority to publish separate accounts for expenditure on:

- assessment, purchasing and commissioning of services, and
- direct provision of services.

**5.13** Both sets of accounts should show clearly the full resource costs, including cost of capital, of the

services provided. The provisions will require the production of specific, audited, performance indicators of quality and value for money. The direct provision accounts will be required to cover any services (such as residential homes) which the authority had previously run but had hived off into trusts, unless it can be shown that the local authority no longer owns the assets and has received a fair consideration for them and no longer carries any continuing financial or other operating risk.

**5.14** The direct provision accounts will also be required to audit that the placement of authority business with the service is consistent with the principles of fair competition.

**5.15** The Government intends that these accounting principles should apply to services for adults and, suitably adapted, to those for children. Expenditure and income on regulatory services performed through the new framework described in Chapter 4 will be accounted for separately. The Government will work closely with the Audit Commission and local government over the details of these new accounting arrangements.

**5.16** In advance of legislation on these matters, the Government expects to see significant and early progress in public accountability for social services' spending, and believes that local people, including service users and their carers, will welcome that. The Government expects all social services authorities to take early steps to:

- publish an objective analysis of the value for money they are currently achieving for the local community;
- set themselves demanding targets for improvements in efficiency and effectiveness; and
- ensure that they have robust systems of performance management supported by suitable information, to deliver these targets.

**5.17** The Government will continue to monitor developments in the efficiency and effectiveness of social services closely. Strengthening performance here will play a very important part in improving the services provided to clients and to the wider public.



## Social Services - Achievement and Challenge

### *Online Evaluation*

Your help in spending a few moments to fill in and return this questionnaire would be greatly appreciated. The Department of Health web team tries to make sure that our web pages meet genuine needs, are clearly structured and relevant. In order for us to monitor and improve our service please take a few minutes to fill in this short questionnaire and return it to us.

All information provided is strictly confidential and is for Department of Health use only. It will not be given to any other agency. The results will be presented in such a way that no individual's response can be identified.

Please select the answers which come closest to your views. Some questions leave a space for you to write in your answer in your own words.

### About the www pages

#### 1) How would you rate these www pages on the following:

Usefulness of information

Very good

Use of plain English

Very good

Layout

Very good

#### 2) Would any further information on this subject be useful?

Yes

If more information would be useful, please give brief details

#### 3) What did you do with the www pages?

Bookmarked for later

4) Overall how relevant are these www pages to your work?

5) Any further comments or suggestions about these www pages?

## About You

6) If you would like to receive further information from the Department of Health please provide the following:

Name:

Job Title:

Address:

Postcode:

EMail:

7) Which of the following expressions best describes your interest in the Department of Health web site?

8) If you work for an NHS organisation, we would be grateful if you say which type of organisation?

9) What other Department of Health subject areas are you interested in? For some examples, see our pages on Department of Health Publications and Events

Thank you for completing our questionnaire





# *Social Services - Achievement and Challenge*

## **1 Introduction**

**1.1** Social services departments meet a wide variety of different social care needs. They support older people who are no longer able to care for themselves without help. They support people with physical or learning disabilities, and those with sensory impairment, to allow them to live as full a life as possible. They play a key role in the delivery of the spectrum of care needed by mentally ill people. They provide essential services to children who would otherwise be at risk of neglect or abuse. They have an important role bringing together the wider range of services, such as health and housing, on which their users also depend. And in their regulatory role they have provided protection to the most vulnerable.

**1.2** The growth of those services since they were founded in modern form in 1971 has been substantial. The combination at the same time of increased family breakdown, an increasing tendency for the extended family to be widely spread, and a rise in the population of older dependent people, has led to sharp increases in demand. Over a relatively short period, social services have emerged to become the fourth arm of the Welfare State.

**1.3** This expansion of role is illustrated by the trend in the expenditure for which social services departments for England and Wales are responsible. In 1971-72 they spent just under £2 billion of public money at present price levels. In 1996-97 they are expected to spend over £8.4 billion - a four fold increase. In addition social security expenditure supporting elderly and other vulnerable people in residential and nursing homes, a responsibility which is being progressively transferred to social services, is still running at about £1.75 billion. As this transfer of responsibility is completed the budgets of social services departments will continue to rise. The social security programme continues to provide support on a large scale to many vulnerable people: expenditure on the main disability and carer benefits has trebled since 1990-91 and now stands for Great Britain at £7.5 billion.

**1.4** Two recent legislative changes have affected the work of social services:

- the NHS and Community Care Act 1990 paved the way for the major transfer of responsibility from social security to social services; and
- the Children Act 1989 provided a new framework for the care of children.

There have also been significant changes in the regulatory responsibilities of social services, and for example in the juvenile justice services to which they make a large contribution.

**1.5** Against this background of fast-moving social and legislative change, social services departments have many major achievements to their credit. Their work often involves difficult judgements particularly in the children's field. Much is done to high standards but all too often it is brought to public notice only when things go wrong.

**1.6** The Government believes that their work is and will remain an essential part of the Welfare State. The Government also believes that their growing size and the increasing public awareness of their work makes necessary a reassessment of the roles and structures of departments which were originally established in very different circumstances. The Government considers that there are some aspects in particular of the work of social services departments which need to be reviewed:

- a. Much of their work with adults is still based on powers first taken in the National Assistance Act 1948. The Government believes that the statutory basis for all their work should be modernised to provide a clear framework for delivering services which will enable them to determine sensible priorities within the overall local government spending levels set by Parliament and the social services budgets set locally. The Government will equally ensure that the relative roles of social services and social security, including housing benefit, remain clear.

- b. Social services departments currently combine three responsibilities which sit uneasily together:
  - they assess care needs and use public money to commission care;
  - they operate as care providers; and
  - they regulate care provision in the private and voluntary sectors.

The Government believes that these three functions should be separated clearly from each other.

- c. The accountability framework for social services does not provide local authority members and managers or the public with sufficient information to allow the quality, suitability and efficiency of social services to be properly monitored and assessed. The Government believes that Parliament should establish such a framework.
- d. The arrangements for the transfer of responsibility from social security to social services starting in 1993 make provision in England for 85% of the transferred budget to be used to commission care from the independent sectors. These arrangements were explicitly transitional. The Government believes that permanent arrangements are now needed to focus the social service department's role on assessment and commissioning and to promote the development of the independent sector in providing care in care homes and domiciliary services.
- e. The community care arrangements also included the Direction on Choice which gave force to the Government's view that users should have an effective voice in determining how and where their care needs are met. This policy is being taken further forward by the Community Care (Direct Payments) Act 1996 which will enable many disabled people to choose and manage their own care. The Government believes that social services legislation needs to consolidate and extend this important principle.
- f. Using powers in the Children Act 1989 the Government required social services departments to prepare Children's Services Plans identifying priority areas for the protection and support of children in their own field of responsibilities and in those of other services. The Government believes that this is too narrowly based and that the requirement should be refocused at the local authority collectively and involve the full participation of all the other public agencies able to detect and react to warning signals from potential problem families.
- g. The delivery of social care to children often requires particularly difficult judgments. The Government proposes to work towards an extra training commitment for those who undertake it.
- h. Regulation of social care should be conducted in close conjunction with the regulation of health care for the same clientele. The Government proposes a new regulatory framework which will improve safeguards to vulnerable people and will encourage more flexibility, innovation and cost effectiveness in the development of care.

**1.7** As well as addressing these key structural issues, the Government believes that it is important to set out clearly the role which social services should be expected to fulfil in modern society. In the Government's view the guiding principles are simply stated:

- a. Social care is the care which the very large majority of people are able to provide for themselves or for their family, friends and neighbours. The principal responsibility for social care rests on individual members of society and society's own networks of mutual support. It believes that responsible individuals should plan to meet their own needs, and that every encouragement should be given to family and friends who are willing to act as carers of those who are unable to provide for themselves.
- b. The role of statutory social services is to act as a support to those who are meeting social care needs in these ways, and as a commissioner of care to support those for whom these networks fail. Statutory social services have been and should remain a service whose resources are targeted at those whose needs cannot be met through these networks. They include the highly dependent and vulnerable and those who are socially isolated.
- c. High quality social care requires dedicated professional staff. It is important that proper training is provided to those who undertake this work and that the structures within which they work are not allowed to become isolated from the rest of the community. The Government believes that it is important that both the training of social workers and the accountability framework of social services departments must ensure that professional attitudes reflect the values of society generally.

**1.8** This White Paper sets out how the Government intends to address these issues. After full consultation on the details the Government will introduce a Social Services Reform Bill as soon as the timetable of the next Parliament allows. This Bill will set out a new statutory framework reflecting the value of the role which social services departments now fulfil. It will set the foundations in place for the next 25 years of this important public service.



# *Social Services - Achievement and Challenge*

## **5 *Spending and Value for Money Regulation***

*A new  
accounting  
framework*

**5.1** In the ten years to 1994-95 spending on social services by all local authorities in England and Wales rose by:

- nearly three times in cash, from £2.8 billion to £8.0 billion;
- 75% in real terms, after allowance for general price rises in the economy as a whole; and
- 62% in purchasing power after allowance for a somewhat higher rise in prices met by local authorities on social services staff and other services.

Social services is now the seventh biggest public spending programme. It is vital that the money spent on them is spent as efficiently and effectively as possible.

**5.2** The purchasing power increase has meant that the social services departments of local authorities have been able to spend a great deal more on each major area of services. Purchasing power rose in England and Wales:

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- on services for mentally ill and learning disabled people from £515 million to £1,251 million, a factor of nearly 2 1/2; and
- on elderly and disabled people by two thirds from £2,326 million to £3,882 million, an increase of 67%.

**5.3** The changes in spending and costs in England are analysed more fully in the Department of Health's recent publication "Better Value for Money in Social Services: A Review of Performance Trends in Social Services in England". This review was based entirely on figures provided by local authorities through standard national returns.

**5.4** The review recognizes that during the decade to 1994/95 many social services authorities delivered important improvements in both the quality and the cost-effectiveness of their services. The review also, however, raises doubts about whether identifiable increases in demand and expectations account in full for all the rises in cost and in spending that occurred. One published attempt to reconcile the figures for the 1980s by the Personal Social Services Research Unit at Kent University suggested an adverse conclusion. After looking thoroughly at all the available figures, the researchers said of the substantial increase in spending over the period:

"This increase can only partly be explained by increased labour prices and increased client needs resulting from

implementation of community care. Explanations in terms of quality and efficiency changes are explored [in the research report] in relation to individual services, and there appears to be a prima facie case that efficiency reduced during the 1980s".

**5.5** The Government considers that it is very important for local authorities to adopt rigorous performance management principles, and to ask themselves the kind of questions about activity, unit costs and cost-effectiveness set out in the Department of Health's review.

**5.6** Local authorities need accurate and transparent costing of their own services to take objective decisions about value for money. They already have extensive guidance from CIPFA on accounting policies and practices, including the charging or apportionment of costs to in-house services. The Government considers that in many cases this should be applied more systematically.

**5.7** The local accountability of authorities for the quality of their financial and performance management and the cost effectiveness of their services is supported and reinforced by external scrutiny systems both at local and national level. The District Auditor scrutinises their spending and its effectiveness, reporting to the local authority but working to the code of audit practice set by the Audit Commission and approved by Parliament. And the Audit Commission nationally publishes periodic reports on aspects of social services and other local government spending and services which raise significant issues about patterns of service and their effectiveness which all authorities are likely to benefit from addressing in their own circumstances.

**5.8** The Audit Commission has in hand two further initiatives which will help local authorities to improve their effectiveness and efficiency and to probe the performance of their own services with more confidence and determination.

**5.9** First, to improve purchasing, the Commission, with support from the Department of Health, is developing a systematic framework of guidance for local community care commissioning. This will draw together best practice in arranging services for those who need them. It includes developing greater financial flexibility to meet users' needs, introducing more cost effective purchasing arrangements with suppliers of services, and stimulating the market to provide the right mix of services.

**5.10** Secondly, to improve cost control, the Commission will provide feedback to individual local authorities on recent trends in their unit costs. This will allow them to track their progress against that of similar authorities. There is already valuable material provided to all authorities comparing their costs, with other similar authorities, largely at a single point in time. The new approach will help them track their own costs over time, which is equally important in exerting proper management control over cost trends, and is linked to the Department of Health's recent review.

**5.11** In addition, following legislation in 1996 to create an appropriate framework, the Government has introduced a new system of joint reviews of individual social services departments by the Audit Commission and the Social Services Inspectorate. Each authority will be reviewed on a regular basis. The reviews will concentrate on issues of priorities, service delivery and quality and financial management. In particular they will help authorities to judge whether they are properly bringing together financial management, cost control and quality issues. This is a new departure in public services scrutiny and audit which should over time bring benefits to service users and to local and national tax-payers who finance the majority of social services' spending.

### **A new accounting framework**

**5.12** This combination of guidance, reviews, analysis and feedback will help reinforce the progress many local authorities have already made in strengthening the management of a major public service. However, the Government considers that the accountability framework needs further reform, to distinguish clearly between the assessment and commissioning functions of local social services' authorities on the one hand, and their direct provision on the other. It therefore proposes in the Social Services Reform Bill to require each social services authority to publish separate accounts for expenditure on:

- assessment, purchasing and commissioning of services, and
- direct provision of services.

**5.13** Both sets of accounts should show clearly the full resource costs, including cost of capital, of the services provided. The provisions will require the production of specific, audited, performance indicators of quality and value for money. The direct provision accounts will be required to cover any services (such as residential homes) which the authority had previously run but had hived off into trusts, unless it can be shown that the local authority no longer owns the assets and has received a fair consideration for them and no longer carries any continuing financial or other operating risk.

**5.14** The direct provision accounts will also be required to audit that the placement of authority business with the service is consistent with the principles of fair competition.

**5.15** The Government intends that these accounting principles should apply to services for adults and, suitably adapted, to those for children. Expenditure and income on regulatory services performed through the new framework described in Chapter 4 will be accounted for separately. The Government will work closely with the Audit Commission and local government over the details of these new accounting arrangements.

**5.16** In advance of legislation on these matters, the Government expects to see significant and early progress in public accountability for social services' spending, and believes that local people, including service users and their carers, will welcome that. The Government expects all social services authorities to take early steps to:

- publish an objective analysis of the value for money they are currently achieving for the local community;
- set themselves demanding targets for improvements in efficiency and effectiveness; and
- ensure that they have robust systems of performance management supported by suitable information, to deliver these targets.

**5.17** The Government will continue to monitor developments in the efficiency and effectiveness of social services closely. Strengthening performance here will play a very important part in improving the services provided to clients and to the wider public.



# *Social Services - Achievement and Challenge*

## **4 *Protecting the Public Through Regulation***



*The objectives of regulation*

*The regulation of home and day care services*

*Regulatory independence*

*Comprehensiveness, focus and flexibility*

*The national role*

**4.1** The regulatory safeguards now established around social and other care services are wider in scope and more effective than they were but the regulatory system overall has grown up piecemeal over many years and the care services and the needs of the people who use them have changed significantly during that time. In 1995 the Government therefore set up a wide-ranging review of the registration and inspection of social services and nursing homes. The report of Tom Burgner, the independent assessor, was published in October 1996 and the Government then announced some decisions on his recommendations. After further consideration of the issues, the Government is now setting out a more detailed outline of its objectives for the development of care regulation in the future.

### **The objectives of regulation**

**4.2** The Government believes that the regulatory framework for protecting people with care needs should meet a number of key objectives:

- a. it should cover all the main services where vulnerable and highly dependent people spend significant amounts of time and there are significant risks of poor care standards or mistreatment;
- b. it should be flexibly applied so that most regulatory effort is focused carefully and rationally on facilities where care and mistreatment risks are highest;
- c. the costs of compliance with regulatory standards should be assessed along with the risks which they safeguard against; and the cost of the regulatory process should generally speaking be met through fees paid by the providers of services;
- d. the prime purpose of regulation should continue to be the establishment of basic safeguards and humane standards of provision which all providers must meet before being allowed to offer any service; those wishing for higher standards, as many will do, will continue to be able to choose care at the standard they want and can afford;

- e. the regulatory framework should reflect but not determine the shape and development of the patterns of care as they evolve to meet changing patterns of need;
- f. regulators should be clearly and fully separate from and independent of service providers and their management; and enforcement powers should apply equally to the independent and local authority sectors;
- g. the regulatory process should be open and transparent to users, potential users and the wider public;
- h. the responsibility for regulation should remain local and should not be centralised, but the Government through the Health Departments should ensure that over a period of time there are national benchmarks for the main areas of care to encourage reasonable consistency and provide local regulatory authorities with a starting point for their own standards; and that through monitoring and guidance the regulatory system is operating fairly and effectively; and
- i. the regulatory framework and regulatory process should to the degree necessary cover both social and health care standards and safeguards for the same clientele, and duplication of care regulation should be avoided.

## **The regulation of home and day care services**

**4.3** It was one of the main objectives of the Community Care reforms of 1993 to help people to remain in their own homes for as long as possible. Since the reforms were implemented this policy has led to a large increase in the arrangement of home and day care services by social services departments. Many of these services have been provided by social service staff, but there has been a substantial growth in the proportion that is provided by the independent sector. Chapter 2 of this White Paper makes clear the Government's view that this development is welcome.

**4.4** These services have not hitherto been subject to regulation. This position has, however, become anomalous. The provision of such care to vulnerable people is an activity where high standards of individual competence and honesty are essential. The Burgner review recommended that the scope of social care regulation should be extended to cover these services. The Government agrees with that recommendation and will make the necessary provision for the regulation of both the public and the independent sectors in the Social Services Reform Bill. In framing the detailed proposals the Government will appraise and cost the options in the usual way so that the regulatory framework is appropriate, proportional and affordable.

## **Regulatory independence**

**4.5** The Government has already announced that it intends to bring all local authority directly managed care services of the kind which the regulatory system covers fully and legally within its scope, as regards inspection, licensing and enforcement. Local authorities' adults' and children's homes, their home care services, their children's homes and day care facilities would thus be put clearly in the same situation as comparable facilities provided by the voluntary and private sectors. To reinforce the independence of the regulatory function, the Government intends to legislate to ensure that social services' regulatory functions should not be performed by social services department.

## **Comprehensiveness, focus and flexibility**

**4.6** The Government accepts the analysis in the Burgner report that the regulatory framework should be adaptable to the development of care provision and care needs, and should not inhibit changes in their pattern as individuals' needs change, and care providers evolve new approaches to them. It is already clear that there is a significant overlap between the people who enter residential homes and those who enter nursing homes. Particularly in residential and nursing homes, residents are likely to have both health and social care needs and it is important that the home is able to assess and meet their needs flexibly and effectively. The regulatory system should not impede that objective.

**4.7** The regulatory effort should be properly focused according to the degree of vulnerability, social

isolation and dependency of the people cared for. Where these characteristics are less pronounced the regulatory checks should be proportionately less onerous. It is also desirable that regulation and inspection of facilities where people characteristically have a multiplicity of care needs should be coherent and that, for example, separate visits by different regulatory teams perhaps with different standards or approaches should be avoided.

**4.8** The Government regards the removal of duplicated or overlapping assessment of single facilities as an essential objective of new regulatory arrangements. Inspection teams should reflect all the necessary professional skills in social and health care. The Government has been encouraging partnership arrangements along these lines between health authorities and social services departments for some years but progress has been slow. The Government now considers it right to amend the regulatory machinery so as to make certain that duplicated regulation and differences of standards in the same locality would be avoided and that the necessary assessment expertise and regulatory authority is brought together within one body for each locality. It therefore intends that all regulatory responsibilities now exercised by social services departments (including those for children's services) and the regulatory responsibility for nursing homes now exercised by health authorities should be brought together into new local statutory bodies vested in law with the necessary regulatory powers and formed by consortia of local and health authorities in the area, with small but suitably representative membership drawn from the participating authorities. A model on these lines was amongst the options for regulatory machinery in the Burgner report. It is the model the Government prefers.

**4.9** The creation of such a single regulatory authority for each locality raises the question whether it is right to maintain the legal division of adult care homes for regulatory purposes into residential homes and nursing homes. The Government sees attraction in moving towards a single category in which each care home would be assessed and licensed appropriately according to the nature of the clientele for which it offered services and the range of services they would characteristically need. The benefits of such an integrated framework could be greater flexibility for providers, and a wider range of services available to users as their needs changed over time. People in residential homes who start to need more intensive support characteristic of nursing homes could face an easier choice between remaining in a setting with barely sufficient care support or moving to another one with more suitable care but in a different location and with a wholly new set of carers and fellow residents.

**4.10** The details of such a change need full assessment. More carefully graded regulatory standards should enable some people with care needs between residential and nursing care as now defined to receive more suitable and less costly care at a level between the two; but in other cases a risk of drift to higher cost care might emerge. The Government will consult further on these issues with particular reference to the need to reassure existing and future residents that their interests would be better catered for within this more flexible structure and that neither they nor local authorities purchasing care on their behalf would be exposed to the risk of extra costs.

**4.11** The Government does not intend to alter the responsibilities of health authorities for regulating independent sector acute hospitals and other specialist health care facilities. It envisages that existing appeal mechanisms through the Registered Homes Tribunal should be retained and it will pursue the Burgner recommendations for improving its procedures. In bringing forward legislative proposals the Government will take the opportunity to ensure that appeals and enforcement systems are consistent with the model appeals mechanism and the principles of the Deregulation and Contracting Out Act 1994. It will also discuss the exemptions from regulation which currently apply, for example to bodies set up by private statute or royal charter, with the organisations involved. In advance of preparing in detail the necessary legislation the Government will publish and consult on more detailed proposals which will be discussed carefully with consumer, provider, local authority, NHS and professional interests. It does not intend to alter the regulatory framework for fire safety, environmental health and health and safety regulation which affects care facilities along with other types of business.

**4.12** The Government has already announced its intention to bring small private children's homes into the regulatory framework. The Government is also minded to accept the Burgner recommendation that voluntary children's homes at present regulated by the Secretary of State should come within the new local framework for regulating other care services. It will give an opportunity for comment on these proposals to Sir William Utting who is conducting a general review into safeguards in children's



residential care and other settings where children live away from home. The Government will also bring the proposals to the attention of the Tribunal of Inquiry investigating allegations of child abuse in North Wales.

### **The national role**

**4.13** In parallel with developing this new approach to the structure of regulation, the Health Departments will develop the machinery for setting national benchmarks for care standards. This machinery will include opportunities for participation in this work by local authorities, health authorities, Trusts and the primary health care sector, user interests, care providers and professional interests. The arrangements will include requirements for assessing the risks to people in different care settings, the most effective safeguards, and their likely costs.



# *Social Services - Achievement and Challenge*

## **4 *Protecting the Public Through Regulation***



*The objectives of regulation*

*The regulation of home and day care services*

*Regulatory independence*

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**4.1** The regulatory safeguards now established around social and other care services are wider in scope and more effective than they were but the regulatory system overall has grown up piecemeal over many years and the care services and the needs of the people who use them have changed significantly during that time. In 1995 the Government therefore set up a wide-ranging review of the registration and inspection of social services and nursing homes. The report of Tom Burgner, the independent assessor, was published in October 1996 and the Government then announced some decisions on his recommendations. After further consideration of the issues, the Government is now setting out a more detailed outline of its objectives for the development of care regulation in the future.

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in North Wales.

### **The national role**

**4.13** In parallel with developing this new approach to the structure of regulation, the Health Departments will develop the machinery for setting national benchmarks for care standards. This machinery will include opportunities for participation in this work by local authorities, health authorities, Trusts and the primary health care sector, user interests, care providers and professional interests. The arrangements will include requirements for assessing the risks to people in different care settings, the most effective safeguards, and their likely costs.



# *Social Services - Achievement and Challenge*

## **5 *Spending and Value for Money Regulation***

*A new  
accounting  
framework*

**5.1** In the ten years to 1994-95 spending on social services by all local authorities in England and Wales rose by:

- nearly three times in cash, from £2.8 billion to £8.0 billion;
- 75% in real terms, after allowance for general price rises in the economy as a whole; and
- 62% in purchasing power after allowance for a somewhat higher rise in prices met by local authorities on social services staff and other services.

Social services is now the seventh biggest public spending programme. It is vital that the money spent on them is spent as efficiently and effectively as possible.

**5.2** The purchasing power increase has meant that the social services departments of local authorities have been able to spend a great deal more on each major area of services. Purchasing power rose in England and Wales:

- on children's services from £1,257 million in 1984-85 to £1,743 million in 1994-95, an increase of 39%;
- on services for mentally ill and learning disabled people from £515 million to £1,251 million, a factor of nearly 2 1/2; and
- on elderly and disabled people by two thirds from £2,326 million to £3,882 million, an increase of 67%.

**5.3** The changes in spending and costs in England are analysed more fully in the Department of Health's recent publication "Better Value for Money in Social Services: A Review of Performance Trends in Social Services in England". This review was based entirely on figures provided by local authorities through standard national returns.

**5.4** The review recognizes that during the decade to 1994/95 many social services authorities delivered important improvements in both the quality and the cost-effectiveness of their services. The review also, however, raises doubts about whether identifiable increases in demand and expectations account in full for all the rises in cost and in spending that occurred. One published attempt to reconcile the figures for the 1980s by the Personal Social Services Research Unit at Kent University suggested an adverse conclusion. After looking thoroughly at all the available figures, the researchers said of the substantial increase in spending over the period:

"This increase can only partly be explained by increased labour prices and increased client needs resulting from

implementation of community care. Explanations in terms of quality and efficiency changes are explored [in the research report] in relation to individual services, and there appears to be a prima facie case that efficiency reduced during the 1980s".

**5.5** The Government considers that it is very important for local authorities to adopt rigorous performance management principles, and to ask themselves the kind of questions about activity, unit costs and cost-effectiveness set out in the Department of Health's review.

**5.6** Local authorities need accurate and transparent costing of their own services to take objective decisions about value for money. They already have extensive guidance from CIPFA on accounting policies and practices, including the charging or apportionment of costs to in-house services. The Government considers that in many cases this should be applied more systematically.

**5.7** The local accountability of authorities for the quality of their financial and performance management and the cost effectiveness of their services is supported and reinforced by external scrutiny systems both at local and national level. The District Auditor scrutinises their spending and its effectiveness, reporting to the local authority but working to the code of audit practice set by the Audit Commission and approved by Parliament. And the Audit Commission nationally publishes periodic reports on aspects of social services and other local government spending and services which raise significant issues about patterns of service and their effectiveness which all authorities are likely to benefit from addressing in their own circumstances.

**5.8** The Audit Commission has in hand two further initiatives which will help local authorities to improve their effectiveness and efficiency and to probe the performance of their own services with more confidence and determination.

**5.9** First, to improve purchasing, the Commission, with support from the Department of Health, is developing a systematic framework of guidance for local community care commissioning. This will draw together best practice in arranging services for those who need them. It includes developing greater financial flexibility to meet users' needs, introducing more cost effective purchasing arrangements with suppliers of services, and stimulating the market to provide the right mix of services.

**5.10** Secondly, to improve cost control, the Commission will provide feedback to individual local authorities on recent trends in their unit costs. This will allow them to track their progress against that of similar authorities. There is already valuable material provided to all authorities comparing their costs, with other similar authorities, largely at a single point in time. The new approach will help them track their own costs over time, which is equally important in exerting proper management control over cost trends, and is linked to the Department of Health's recent review.

**5.11** In addition, following legislation in 1996 to create an appropriate framework, the Government has introduced a new system of joint reviews of individual social services departments by the Audit Commission and the Social Services Inspectorate. Each authority will be reviewed on a regular basis. The reviews will concentrate on issues of priorities, service delivery and quality and financial management. In particular they will help authorities to judge whether they are properly bringing together financial management, cost control and quality issues. This is a new departure in public services scrutiny and audit which should over time bring benefits to service users and to local and national tax-payers who finance the majority of social services' spending.

### **A new accounting framework**

**5.12** This combination of guidance, reviews, analysis and feedback will help reinforce the progress many local authorities have already made in strengthening the management of a major public service. However, the Government considers that the accountability framework needs further reform, to distinguish clearly between the assessment and commissioning functions of local social services' authorities on the one hand, and their direct provision on the other. It therefore proposes in the Social Services Reform Bill to require each social services authority to publish separate accounts for expenditure on:

- assessment, purchasing and commissioning of services, and
- direct provision of services.

**5.13** Both sets of accounts should show clearly the full resource costs, including cost of capital, of the services provided. The provisions will require the production of specific, audited, performance indicators of quality and value for money. The direct provision accounts will be required to cover any services (such as residential homes) which the authority had previously run but had hived off into trusts, unless it can be shown that the local authority no longer owns the assets and has received a fair consideration for them and no longer carries any continuing financial or other operating risk.

**5.14** The direct provision accounts will also be required to audit that the placement of authority business with the service is consistent with the principles of fair competition.

**5.15** The Government intends that these accounting principles should apply to services for adults and, suitably adapted, to those for children. Expenditure and income on regulatory services performed through the new framework described in Chapter 4 will be accounted for separately. The Government will work closely with the Audit Commission and local government over the details of these new accounting arrangements.

**5.16** In advance of legislation on these matters, the Government expects to see significant and early progress in public accountability for social services' spending, and believes that local people, including service users and their carers, will welcome that. The Government expects all social services authorities to take early steps to:

- publish an objective analysis of the value for money they are currently achieving for the local community;
- set themselves demanding targets for improvements in efficiency and effectiveness; and
- ensure that they have robust systems of performance management supported by suitable information, to deliver these targets.

**5.17** The Government will continue to monitor developments in the efficiency and effectiveness of social services closely. Strengthening performance here will play a very important part in improving the services provided to clients and to the wider public.





# *Social Services - Achievement and Challenge*

## *2 Service for Adults*



*The role of the individual*



*Families, carers and wider community resources*



*Individual choice*



*Partnerships with other agencies*



*A more focused role and better value for money: a new legal framework*



*Residential care*



*Care in people's homes*

**2.1** The community care reforms of 1993 caused a transformation in social care for adults. There is greater individual choice, and a wider range of provision available for residential and domiciliary care. The majority of residential care is now provided in the independent sector and the proportion of independently provided domiciliary care is growing rapidly. Local authorities have been developing their role as purchasers of services. The importance of assessment - both of users and of carers - as a means of ensuring that services are appropriate to need has become firmly bedded into the system.

**2.2** In central government and locally there is a new emphasis on close cooperation and joint working between all the agencies involved in community care, and in particular between social services authorities and health and housing authorities. Significant effort has been put into this area and important advances have been made.

**2.3** The various different strands of public finance have been rationalised - the large and rising social security expenditure that had been available only to support people in residential and nursing homes has been brought together with local government expenditure on community care. The resources available for social care are now being used more flexibly to meet both domiciliary and residential care needs. Local government spending on community care, including the money transferred from social security since 1993, rose in England and Wales from £2.9 billion in 1990-91 to £6.3 billion in 1996-97.

### **The role of the individual**

**2.4** The Government's approach to the delivery of social care has already been made clear in Chapter 1. The function of social services departments is to underwrite individual responsibility rather than substitute for it. Since the foundation of the welfare state in 1948 individuals with the means have always been expected to contribute to the cost of their social care needs.

**2.5** The biggest single social care cost which individuals are expected to meet themselves is the cost of residential and nursing home care if they need it. The Government has already announced a number of measures which are designed to reinforce the capacity of the majority of citizens to contribute to the cost of this type of care.

**2.6** In April 1996 the Government more than trebled - from £3,000 to £10,000 - the personal savings wholly disregarded in the means-test for residential and nursing home charges. At the same time it doubled from £8,000 to £16,000 the capital assets which are partly protected from the means-test because the local authority and the individual share the cost of meeting the charges. These changes are of immediate benefit to everyone in care homes with assets of more than £3,000. They will equally benefit those with such means who enter care homes in the future.

**2.7** The Government is also planning to introduce new incentives to help people insure against their care costs. In the recent policy statement "A New Partnership for Care in Old Age" (CM 3563) the Government announced its plans to establish a partnership scheme which will help people to make better provision for their care costs through such insurance. These proposals involve easing the means test for the benefit of those who take it out. The Government has decided that the marketing of all long-term care insurance should be regulated. The Government also plans to allow people to "top up" the residential care arranged by their local authority from resources disregarded by the means test.

**2.8** These important proposals will be introduced at the earliest opportunity. In the meantime, to ensure that the legislation is as well prepared as possible, it has issued for consultation a draft Statutory Instrument to regulate the selling and marketing of long-term care insurance under the Financial Services Act, and a draft Bill to establish the partnership scheme and allow "topping up".

### **Families, carers and wider community resources**

**2.9** Many people with disabilities living in the community manage with the support of family and friends, and the majority of older people do not call on statutory social services. There are at least 6.8 million carers in Great Britain, providing informal care to sick, disabled or otherwise vulnerable people. This figure is evidence of the degree to which family and community support for elderly and disabled people continues.

**2.10** The Government's policy has been to improve support for carers. The Carers (Recognition and Services) Act 1995 gives carers a legal right to recognition in their own right in the assessment process. Many social services departments have used their growing budgets since 1993 to improve support for carers.

**2.11** There is also an enormous range of local and national voluntary bodies and self-help groups which provide old, disabled or otherwise vulnerable people with direct support and advice, and which can do a great deal to reduce their social isolation. The Government has fostered these important areas of activity through, for example, the "Make a Difference" initiative on volunteering, the support of local volunteer partnerships and through a wide range of grants.

**2.12** Many people who need such support know or can relatively easily find out how to access it. But others are less aware. The Government sees essential roles for social services departments in reflecting this wider community support in their assessments of local need and resources, in supporting and stimulating voluntary

activity as many already do and in helping individuals to benefit from it.

**2.13** Where a social services department performs these functions well, it will help itself to target most of its own substantial resources on those with high dependency needs because they are particularly frail or disabled or because (like many of those who suffer from mental health, or drug and alcohol abuse problems and have an unsettled way of life) they are socially isolated to a degree that may make it difficult for normal community resources to help them.

### **Individual choice**

**2.14** Giving users a much greater influence in choice of provision of local authority financed services, and the way care is arranged, has become an increasingly important priority of social services management in recent years. The Government intends to reinforce and extend this principle.

**2.15** The Community Care (Direct Payments) Act 1996, which will be implemented in April 1997, enables authorities to give younger disabled people money to purchase the support in their own homes that the local authority would otherwise have arranged for them after a normal community care assessment. Where local authorities establish a direct payments scheme, disabled people who so wish will be able to make and manage their own support arrangements.

**2.16** The Government believes that the introduction of direct payments will significantly reinforce users' ability to choose services of most direct benefit to themselves. Clearly it will be important to monitor the scheme's implementation, and ensure that it proves manageable, cost effective and delivers the benefits expected from it. The Government will be reviewing the scheme a year after its introduction, and provided it is shown to be successful in all these objectives, the Government will extend it to cover other categories of service user.

**2.17** The Government also wishes to encourage experimentation with other ways of reinforcing the individual's right to influence their choice of residential or nursing home. The Direction on Choice gave people receiving publicly funded care in a residential or nursing home the right to indicate the home of their choice from the range of suitable and affordable alternatives. Some authorities are looking at voucher schemes as a way of extending and facilitating this right to choice. The Government intends to ensure that there are no legal obstacles to the use of vouchers in this way.

**2.18** Finally, the Government considers that some service users would welcome more choice in the sources of advice available to them in the selection of the support which their local authority has assessed them as needing and is willing to finance. There are already some examples of local authorities encouraging some service users, once their needs have been assessed, to rely on specialist voluntary bodies or service user groups for advice on how those needs can best be met. It may well be that disabled people who choose to receive cash payments instead of services under the new legislation will also wish to choose their own sources of advice about how they might best use the money. It is more likely that such choices will be sensibly made where the user's needs are likely to remain fairly stable and the call for regular reassessment of basic needs is thus infrequent. But the Government would like to encourage a wider variety of choice in sources of advice available to users and will ensure that the legal framework within which social services operate does not place obstacles in the way of this objective.

### **Partnerships with other agencies**

**2.19** The Government has given the National Health Service and local authorities the strategic objective of providing a seamless service, working across boundaries. Over the last three years the Government has taken steps to assist inter-agency working, and to address problems that have arisen. There has been a wide range of central initiatives from the Health Departments, and other Government Departments working together to support the development of local corporate approaches, and to ensure consistency of overall policy. The Government will maintain this emphasis. A current example of such work within Government, involving also consultation with local government, is the Department of Social Security's review of the use of Housing Benefit in financing supported housing.

**2.20** In the field of mental health, where successive reports and inquiries have shown that many local and health authorities find reliable partnership arrangements difficult to maintain, the Government has identified

and is consulting on options for structural change to improve performance ("Developing Partnerships in Mental Health" (CM3555)).

### **A more focused role and better value for money: a new legal framework**

**2.21** The primary function of a social services department should be to assess the social care needs of its population; to plan the provision required to meet those needs over a period of years; and, in the light of the resources likely to be available in the community as a whole, to decide how to deploy its own resources most effectively to contribute towards that plan. Social services departments are uniquely placed to carry out this strategic function not least because of the links they can forge with other agencies sharing responsibilities for the groups of people concerned.

**2.22** Local authorities are also currently direct providers of care services. The Government does not however believe that this is a function for which they are well-suited, and indeed the evidence suggests this may not be a cost effective use of their resources. There is clear evidence, shown in detail in the Department of Health's recently published review "Better Value for Money in Social Services: A Review of Performance Trends in Social Services in England", that services from the private and voluntary sectors often offer better value for money.

**2.23** Local authorities have never directly provided nursing home care, and are increasingly relying on the private and voluntary sector for residential care; in recent years they have also started to rely increasingly on external providers for care in the home though they still provide the majority directly.

**2.24** The trends in favour of external supply have clear advantages, in value for money, and user choice, and in enabling authorities themselves to focus more fully on their most essential role of defining the overall needs of their communities, liaising with the other agencies (notably health and housing) which also support users, setting priorities, and assessing individual need within those priorities and deciding which should receive public support.

**2.25** The Government therefore wishes to entrench the trend towards more external supply of residential and home care.

### **Residential care**

**2.26** From 1993, when local authorities started to receive the large transfer of money from the social security budget for their new community care responsibilities, the Government ring-fenced each new annual tranche of finance in England through a special transitional community care grant, and made it a condition that 85% of this money should be spent in the private or voluntary sectors.

**2.27** This was a natural approach because the higher levels of social security income support had been available only to people going into independent sector care homes. It has been successful. In the year to March 1993, local authorities in England placed in homes which they directly owned and managed nearly 80% of the 97,000 people they were supporting in residential care. By 1995 they were supporting more people in independent sector homes than in directly managed homes out of the much increased total of 140,000.

**2.28** The special grant and its 85% condition were never intended to be permanent, and the Government does not wish to continue to hypothecate local government finance in this way. It therefore intends instead to legislate for some changes in the framework of powers through which local authorities provide or arrange residential care.

**2.29** It proposes to alter authorities' power directly to provide residential care. At present, this is a neutral power which neither encourages nor inhibits direct provision. The Government intends that the power should remain, but that it should be qualified to make clear that it may be used only where an authority can show the need to use it after a rigorous and objective review of independent sector alternatives.

**2.30** The need to retain directly managed residential homes is likely to become increasingly rare. The law will therefore place a strong and clear onus of proof on authorities wishing to retain existing residential homes or to open or acquire new care homes. It will require formal reviews of existing direct provision to be conducted periodically by each authority. In these reviews, authorities must be able to demonstrate that on

planning projections of the expected need for services and the predicted available supply, there will be insufficient independent sector provision (either currently in existence or which could be developed in time) to meet projected service needs competitively in terms of cost and quality.

**2.31** Such reviews would need to be carried out in a transparent way. Planning projections and relative costings must be made public to enable local users, carers and independent sector providers to challenge inaccurate information or assumptions before any decision is made to retain local authority provision. An open review will also ensure that the local authority can clearly be held accountable for its decisions. The District Auditor will check in the normal way that the authority had performed the review properly in accordance with their statutory duty.

**2.32** The criteria against which the review must be carried out will be set out in regulations and so will be binding on local authorities. The Government intends that the statutory default powers, which enable the Secretary of State in the last resort to apply to the courts for orders requiring authorities to perform their social services duties, will cover this review process.

**2.33** Since the reviews will not directly result in the letting of specific contracts, it will not be necessary for independent sector providers to tender bids. And since they will be strategic, there will be no need to move existing residents out of existing care homes against their will. Nor will it affect the authorities' continuing responsibilities for the financial support they give them at the moment. The Government will ensure, by amending powers if necessary, that local authorities continue financial support for residents who are properly their responsibility.

**2.34** Some local authorities have tackled the issue of removing the conflict of interest inherent in being both purchaser and provider by turning their in-house provision into independent trusts. Local authorities must show that this approach represents good value for money for the taxpayer, and does not result in unfair competition between former local authority homes and other independent providers. The review process will therefore include a requirement for local authorities openly to examine the arrangements they have with such independent trusts, and any future proposals for reducing their in-house provision in this way, to ensure that arrangements are cost effective, and proper in terms of the use of publicly financed assets; and that they do not infringe fair competition principles. The new statutory accounting framework described in Chapter 5 will also reinforce the distinction between the social services department's commissioning and providing roles, and their duty to obtain good value for money.

**2.35** In conducting their reviews, local authority social services departments should work closely with health authorities, and should also consider, in close collaboration with housing departments, the extent to which existing patterns of residential provision actually best meet the range of needs that people have. Social services departments will be encouraged to involve local planning services in the review process. There may, for example, be room for a shift of balance between different forms of sheltered housing and residential care; and scope for greater flexibility in linking different kinds of provision to offer a spectrum of support or care for people as their needs change. When authorities are divesting themselves of directly run residential care, they could for example consider whether there was scope to harness private finance to improve the availability of more suitable provision, for example sheltered housing and very sheltered housing.

## **Care in people's homes**

**2.36** In non-residential care, the independent sector is not yet so well developed, although the Government has been pleased to see increasing use of independent sector providers, particularly in the provision of home help and home care, and evidence that this has led to more flexible care arrangements, notably providing help at times that suit the user best.

**2.37** The Government wishes to encourage and facilitate this trend. It therefore intends that the new statutory framework described above for care homes should cover domiciliary and day care services as well.

**2.38** In order to create the necessary confidence to allow the domiciliary and day care market to flourish, and to help ensure a level playing field between independent sector and local authority providers, the Government accepts the need for the effective and economical regulation of domiciliary and day care provision (whoever provides it), and will include the necessary legal provision in its Social Services Reform Bill as explained in Chapter 4.





# *Social Services - Achievement and Challenge*

## **4 *Protecting the Public Through Regulation***



*The objectives of regulation*

*The regulation of home and day care services*

*Regulatory independence*

*Comprehensiveness, focus and flexibility*

*The national role*

**4.1** The regulatory safeguards now established around social and other care services are wider in scope and more effective than they were but the regulatory system overall has grown up piecemeal over many years and the care services and the needs of the people who use them have changed significantly during that time. In 1995 the Government therefore set up a wide-ranging review of the registration and inspection of social services and nursing homes. The report of Tom Burgner, the independent assessor, was published in October 1996 and the Government then announced some decisions on his recommendations. After further consideration of the issues, the Government is now setting out a more detailed outline of its objectives for the development of care regulation in the future.

### **The objectives of regulation**

**4.2** The Government believes that the regulatory framework for protecting people with care needs should meet a number of key objectives:

- a. it should cover all the main services where vulnerable and highly dependent people spend significant amounts of time and there are significant risks of poor care standards or mistreatment;
- b. it should be flexibly applied so that most regulatory effort is focused carefully and rationally on facilities where care and mistreatment risks are highest;
- c. the costs of compliance with regulatory standards should be assessed along with the risks which they safeguard against; and the cost of the regulatory process should generally speaking be met through fees paid by the providers of services;
- d. the prime purpose of regulation should continue to be the establishment of basic safeguards and humane standards of provision which all providers must meet before being allowed to offer any service; those wishing for higher standards, as many will do, will continue to be able to choose care at the standard they want and can afford;

- e. the regulatory framework should reflect but not determine the shape and development of the patterns of care as they evolve to meet changing patterns of need;
- f. regulators should be clearly and fully separate from and independent of service providers and their management; and enforcement powers should apply equally to the independent and local authority sectors;
- g. the regulatory process should be open and transparent to users, potential users and the wider public;
- h. the responsibility for regulation should remain local and should not be centralised, but the Government through the Health Departments should ensure that over a period of time there are national benchmarks for the main areas of care to encourage reasonable consistency and provide local regulatory authorities with a starting point for their own standards; and that through monitoring and guidance the regulatory system is operating fairly and effectively; and
- i. the regulatory framework and regulatory process should to the degree necessary cover both social and health care standards and safeguards for the same clientele, and duplication of care regulation should be avoided.

### **The regulation of home and day care services**

**4.3** It was one of the main objectives of the Community Care reforms of 1993 to help people to remain in their own homes for as long as possible. Since the reforms were implemented this policy has led to a large increase in the arrangement of home and day care services by social services departments. Many of these services have been provided by social service staff, but there has been a substantial growth in the proportion that is provided by the independent sector. Chapter 2 of this White Paper makes clear the Government's view that this development is welcome.

**4.4** These services have not hitherto been subject to regulation. This position has, however, become anomalous. The provision of such care to vulnerable people is an activity where high standards of individual competence and honesty are essential. The Burgner review recommended that the scope of social care regulation should be extended to cover these services. The Government agrees with that recommendation and will make the necessary provision for the regulation of both the public and the independent sectors in the Social Services Reform Bill. In framing the detailed proposals the Government will appraise and cost the options in the usual way so that the regulatory framework is appropriate, proportional and affordable.

### **Regulatory independence**

**4.5** The Government has already announced that it intends to bring all local authority directly managed care services of the kind which the regulatory system covers fully and legally within its scope, as regards inspection, licensing and enforcement. Local authorities' adults' and children's homes, their home care services, their children's homes and day care facilities would thus be put clearly in the same situation as comparable facilities provided by the voluntary and private sectors. To reinforce the independence of the regulatory function, the Government intends to legislate to ensure that social services' regulatory functions should not be performed by social services department.

### **Comprehensiveness, focus and flexibility**

**4.6** The Government accepts the analysis in the Burgner report that the regulatory framework should be adaptable to the development of care provision and care needs, and should not inhibit changes in their pattern as individuals' needs change, and care providers evolve new approaches to them. It is already clear that there is a significant overlap between the people who enter residential homes and those who enter nursing homes. Particularly in residential and nursing homes, residents are likely to have both health and social care needs and it is important that the home is able to assess and meet their needs flexibly and effectively. The regulatory system should not impede that objective.

**4.7** The regulatory effort should be properly focused according to the degree of vulnerability, social isolation and dependency of the people cared for. Where these characteristics are less pronounced the regulatory checks should be proportionately less onerous. It is also desirable that regulation and



inspection of facilities where people characteristically have a multiplicity of care needs should be coherent and that, for example, separate visits by different regulatory teams perhaps with different standards or approaches should be avoided.

**4.8** The Government regards the removal of duplicated or overlapping assessment of single facilities as an essential objective of new regulatory arrangements. Inspection teams should reflect all the necessary professional skills in social and health care. The Government has been encouraging partnership arrangements along these lines between health authorities and social services departments for some years but progress has been slow. The Government now considers it right to amend the regulatory machinery so as to make certain that duplicated regulation and differences of standards in the same locality would be avoided and that the necessary assessment expertise and regulatory authority is brought together within one body for each locality. It therefore intends that all regulatory responsibilities now exercised by social services departments (including those for children's services) and the regulatory responsibility for nursing homes now exercised by health authorities should be brought together into new local statutory bodies vested in law with the necessary regulatory powers and formed by consortia of local and health authorities in the area, with small but suitably representative membership drawn from the participating authorities. A model on these lines was amongst the options for regulatory machinery in the Burgner report. It is the model the Government prefers.

**4.9** The creation of such a single regulatory authority for each locality raises the question whether it is right to maintain the legal division of adult care homes for regulatory purposes into residential homes and nursing homes. The Government sees attraction in moving towards a single category in which each care home would be assessed and licensed appropriately according to the nature of the clientele for which it offered services and the range of services they would characteristically need. The benefits of such an integrated framework could be greater flexibility for providers, and a wider range of services available to users as their needs changed over time. People in residential homes who start to need more intensive support characteristic of nursing homes could face an easier choice between remaining in a setting with barely sufficient care support or moving to another one with more suitable care but in a different location and with a wholly new set of carers and fellow residents.

**4.10** The details of such a change need full assessment. More carefully graded regulatory standards should enable some people with care needs between residential and nursing care as now defined to receive more suitable and less costly care at a level between the two; but in other cases a risk of drift to higher cost care might emerge. The Government will consult further on these issues with particular reference to the need to reassure existing and future residents that their interests would be better catered for within this more flexible structure and that neither they nor local authorities purchasing care on their behalf would be exposed to the risk of extra costs.

**4.11** The Government does not intend to alter the responsibilities of health authorities for regulating independent sector acute hospitals and other specialist health care facilities. It envisages that existing appeal mechanisms through the Registered Homes Tribunal should be retained and it will pursue the Burgner recommendations for improving its procedures. In bringing forward legislative proposals the Government will take the opportunity to ensure that appeals and enforcement systems are consistent with the model appeals mechanism and the principles of the Deregulation and Contracting Out Act 1994. It will also discuss the exemptions from regulation which currently apply, for example to bodies set up by private statute or royal charter, with the organisations involved. In advance of preparing in detail the necessary legislation the Government will publish and consult on more detailed proposals which will be discussed carefully with consumer, provider, local authority, NHS and professional interests. It does not intend to alter the regulatory framework for fire safety, environmental health and health and safety regulation which affects care facilities along with other types of business.

**4.12** The Government has already announced its intention to bring small private children's homes into the regulatory framework. The Government is also minded to accept the Burgner recommendation that voluntary children's homes at present regulated by the Secretary of State should come within the new local framework for regulating other care services. It will give an opportunity for comment on these proposals to Sir William Utting who is conducting a general review into safeguards in children's residential care and other settings where children live away from home. The Government will also bring the proposals to the attention of the Tribunal of Inquiry investigating allegations of child abuse

in North Wales.

### **The national role**

**4.13** In parallel with developing this new approach to the structure of regulation, the Health Departments will develop the machinery for setting national benchmarks for care standards. This machinery will include opportunities for participation in this work by local authorities, health authorities, Trusts and the primary health care sector, user interests, care providers and professional interests. The arrangements will include requirements for assessing the risks to people in different care settings, the most effective safeguards, and their likely costs.

