

<b>Title:</b> Reform of adult social care legislation Accompanying IA for the White Paper "Caring for our future: reforming care and support" <b>IA No:</b> 7065  <b>Lead department or agency:</b> Department of Health  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 03/07/2012		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Caroline Allnutt, Department of Health			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> GREEN
--	---------------------------

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out? Measure qualifies as One-Out?
£90m	£0m	NA	No   NA

**What is the problem under consideration? Why is government intervention necessary?**

The law provides the underpinning framework for care and support and is critical to the way care is delivered on a day-to-day basis to people who need it. Well-crafted legislation makes a fundamental difference to the ease of implementation on the ground and the clarity provided for professionals and the public. However, the legal framework for adult social care had been roundly criticised as opaque, complex and anachronistic and there is widespread support for reforming it. Doing nothing would mean retaining this complex and confusing legal framework.

**What are the policy objectives and the intended effects?**

Our aims in reforming the law around care and support are to:

- modernise the legal basis to reflect the Government's ambitions for personalised adult social care;
- simplify the law into one single statute for adult social care; and
- consolidate all existing legislation and repeal old statute dating back over 60 years.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Two options have been considered:

Option 1: Do nothing. This would mean retaining the current legal framework, under which there are well over a dozen Acts of Parliament dealing with adult social care.

Option 2: Consolidation and reform of the law, taking the Law Commission's recommendations into consideration. This is the preferred option, which will provide one unified adult social care statute, accessible and understandable for both local authority professionals and service users and carers.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:		Non-traded:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY:  Date: 3/7/12

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 40	High: 140	Best Estimate: 90

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	43	0	42
High	49	0	48
Best Estimate	46	0	45

#### Description and scale of key monetised costs by 'main affected groups'

The transitional costs relate to the costs to local authorities of training social workers and other staff about the reformed legislation. There are no recurrent costs.

#### Other key non-monetised costs by 'main affected groups'

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	10	82
High	0	22	188
Best Estimate	0	16	135

#### Description and scale of key monetised benefits by 'main affected groups'

The benefits are savings to local authorities from reduced work interpreting legal issues, reduced complaints and reduced litigation and a small saving to the Local Government Ombudsman from reduced numbers of complaints.

#### Other key non-monetised benefits by 'main affected groups'

Creating a clearer and simpler statute with clearer and simpler practice guidance will mean that fewer mistakes are made and will prevent wrong advice being given. This will improve the outcomes and experiences of service users, carers and their families.

#### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

There is some uncertainty about the reduction in time to be spent by social workers on legislative matters, the reduction in future numbers of complaints and the amount of litigation to be avoided. There is also some uncertainty about the extent of training about the reformed law required by social workers and other staff. The assumptions in this Impact Assessment are, however, based on the expert opinion of the Law Commission.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits:	Net:	No	NA

## Summary of impact

1. This Impact Assessment provides analysis of the costs and benefits of the Government's intention to reform the law relating to care and support. It should be read alongside the report of the Law Commission, published in May 2011, the recommendations of which have greatly influenced the approach to reform of legislation.<sup>1</sup> It should also be read in conjunction with the White Paper, "Caring for our future: reforming care and support" and the Government's response to the Law Commission recommendations, *Reforming the law for adult care and support*.
2. To take forward reform of adult social care law, the Government has announced its intention to publish a draft Care and Support Bill for pre-legislative scrutiny. The Government proposes to create a single, modern statute for adult social care, which reforms confusing existing provisions and provides clarity and coherence in operation.
3. Alongside the proposals set out in the White Paper, the draft Care and Support Bill will support care and support professionals to undertake their role more effectively and empower people who use care and support, their families and carers, by helping them understand what help is available and how they can best access and navigate care and support.
4. Many of the specific provisions within the draft Bill are designed to clarify aspects of care and support, including the individual's journey through the system, their rights and the responsibilities of local authorities. The draft Bill will enact many of the policy commitments within the White Paper and is critical to achieving the Government's objectives for care and support. These proposals are set out in greater detail across the other three corresponding Impact Assessments for the White Paper and draft Care and Support Bill.
5. For the purposes of this Impact Assessment, we have assumed that costs and benefits would commence from 2015/16, following enactment of the Care and Support Bill. However, the implementation timetable is subject to the passage of legislation through Parliament.
6. In setting out analysis of the costs and benefits of law reform, this Impact Assessment also considers the impact on various affected groups. Much of the evidence underpinning the analysis in this Impact Assessment is taken from the Law Commission's Impact Assessment, which was published in May 2011 alongside the Commission's recommendations for reform of adult social care law.<sup>2</sup>
7. The proposals for reform of the law set out in this Impact Assessment do not fall within the scope of the Government's "One-In One-Out" (OIOO) rule which states that "no new primary or secondary UK legislation which imposes costs on business or civil society organisations can be brought in without the identification of existing regulation with an equivalent value (in terms of net costs to business) which can be removed."
8. These proposals do not involve any additional regulatory measures that impose costs on business or civil society and are therefore considered out of scope of this rule. The changes to the law proposed in the White Paper relate to the responsibilities of local authorities and other public sector partners for planning and commissioning of adult care and support and for meeting the needs of their local population.

---

<sup>1</sup> [http://www.justice.gov.uk/lawcommission/docs/lc326\\_adult\\_social\\_care.pdf](http://www.justice.gov.uk/lawcommission/docs/lc326_adult_social_care.pdf)

<sup>2</sup> [http://lawcommission.justice.gov.uk/docs/lc326\\_adult\\_social\\_care\\_impact\\_assessment.pdf](http://lawcommission.justice.gov.uk/docs/lc326_adult_social_care_impact_assessment.pdf)

9. Table 1 below sets out a summary of impact and the various groups affected by these proposals:

*Table 1: Summary of Impact*

Impact	Is legislation required?	Implementation date	Costs fall to	Benefits accrue to
Training of social workers	Yes	2015/16	Councils	Users
Training of other staff	Yes	2015/16	Councils	Users
Reduction in time spent by social workers on everyday activities	Yes	2015/16	None	Councils
Fewer complaints	Yes	2015/16	None	Councils & Local Government Ombudsman
Reduction in time spent by local authority lawyers	Yes	2015/16	None	Councils
Reduction in litigation costs	Yes	2015/16	None	Councils

10. Table 2 below sets out how the estimated costs and benefits (savings) will be profiled over a ten year appraisal period. As set out above, Year 1 of implementation is assumed to be 2015/16 although this is subject to the passage of legislation through Parliament.

*Table 2: Costs and benefits associated with overall reform of adult social care law (£m)\*  
(Price base year: 2010/11)*

Impact	Agent	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	Total	Average annual
Reduction in time spent by social workers on everyday activities - recurring savings	Councils	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	123.5	12
Fewer complaints - recurring savings**	Councils		1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	13.2	1
Reduction in time spent by local authority lawyers - recurring savings	Councils		1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	11.3	1
Reduction in litigation costs - recurring savings	Councils		0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	5.1	1
Training of social workers (direct costs) - transition costs	Councils	4.2	2.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	6.4	
Training of social workers (opportunity costs) - transition costs	Councils	25.1	12.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	37.6	
Training of other LA staff (opportunity costs) - transition costs	Councils	1.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.7	
<b>Totals</b>													
Transition costs	Councils	31.0	14.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	46	
Costs (discounted)	Councils	31.0	14.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	45	
Recurring savings	Councils	12.4	15.6	15.6	15.6	15.6	15.6	15.6	15.6	15.6	15.6	153	16
Savings (discounted)	Councils	12.4	15.1	14.6	14.1	13.6	13.2	12.7	12.3	11.9	11.5	131	
<b>Net savings (NPV)</b>												86	

\*Not all benefits associated with these proposals are monetised, only direct cash savings are therefore included within this table.

\*\* Savings from fewer complaints include an estimated £25,000 saving to the Local Government Ombudsman.

# Evidence Base (for summary sheets)

This section includes:

- I. The case for change
- II. Policy objectives
- III. Impact of policy proposals
- IV. Risks and assumptions
- V. Specific impact tests

## **I. The case for change**

1. Adult social care is a construct of the law. Its intrinsic elements, including the responsibilities of those who commission and provide care and support, the range of support available and the rights of people who use care and support, are defined by the law that underpins it. Well-crafted legislation makes a fundamental difference to the ease of implementation on the ground and the clarity provided for professionals and the public.
2. Unfortunately, the current legal framework is anything but well-crafted and has been roundly criticised as opaque, complex and anachronistic. Over 60 years, a patchwork of legislation has grown and evolved. There are well over a dozen existing Acts of Parliament and there is much overlap and duplication between the various statutes. In addition to the primary legislation, there is a vast array of regulations, directions, circulars and guidance. The net result is complexity and confusion for those who have to navigate through the law – including social workers, care users and carers.
3. The Law Commission acknowledged this problem and conducted a three-year review into social care legislation. In May 2011, it published its report with 76 recommendations for reform to Government.<sup>3</sup> As part of its review, the Law Commission completed an Impact Assessment and this document draws heavily on their analysis.<sup>4</sup> The Government has published its formal response to the Law Commission alongside the Care and Support White Paper.
4. The law provides the underpinning framework for care and support and is critical to the way care is delivered on a day-to-day basis to people who need it. It therefore needs to align with and support the Government's policy objectives for adult care and support. For too long, the law has failed to keep pace with the shared ambitions of Government, the care sector and people who use care and support.
5. It is the Government's view that the law should:
  - Recognise the guiding principle of care and support to improve people's wellbeing. It should focus on the person, not the service, to meet citizens' legitimate expectations of modern public services.
  - Recognise the contribution that people with care needs make to their communities and treat carers as equals, not as an extension of the person they care for.
  - Respect the modern realities of care and support and the role of the state in supporting the complex web of relationships between individuals, carers and independent providers. It should ensure that councils take responsibility for all people in a place – to lead the local system for the benefit of all, not just a few.
  - Help to empower people. Care and support can suffer from an information deficit – many people do not know what they are entitled to and often do not understand the concepts of care at their most basic. The law has a large part to play in this. A simpler, more coherent law would help promote an understanding of rights, responsibilities and entitlements.<sup>5</sup>

---

<sup>3</sup> [http://www.justice.gov.uk/lawcommission/docs/cp192\\_Adult\\_Social\\_Care\\_consultation.pdf](http://www.justice.gov.uk/lawcommission/docs/cp192_Adult_Social_Care_consultation.pdf)

<sup>4</sup> [http://lawcommission.justice.gov.uk/docs/lc326\\_adult\\_social\\_care\\_impact\\_assessment.pdf](http://lawcommission.justice.gov.uk/docs/lc326_adult_social_care_impact_assessment.pdf)

<sup>5</sup> Further discussion of the White Paper measures to improve the availability of high quality information and advice can be found in the corresponding Impact Assessment "Independence, choice and control."

6. Due to demographic change, the importance of care and support will continue to grow in the years ahead. Therefore, it is essential that the legal framework regulating its delivery is clear, simple and effective.

## **II. Policy objectives**

7. Our aims in reforming the law relating to care and support are to:
  - *Modernise* the legal basis to reflect the Government's ambitions for personalised adult care and support:
    - Refocus the law around the person, not the service, by enshrining new statutory principles that place the wellbeing of the individual at the heart of individual decisions about care.
  - *Simplify* the law into one single statute for adult social care, supported by clear regulations and a reformed bank of statutory guidance in one place:
    - Develop a more transparent framework, which simplifies practice for care professionals, reduces burdens, and empowers individuals to better understand their rights and responsibilities.
  - *Consolidate* all existing legislation and repeal old statute dating back over 60 years:
    - Incorporate existing powers for local authorities where they fit with the modern service, whilst bringing the provisions up to date and creating a new statutory framework for adult safeguarding.<sup>6</sup>
    - Rationalise and remove unnecessary top-down controls or restrictions to allow services to innovate and meet the changing needs of local populations.
8. The law should recognise that the guiding principle of care and support is to promote the wellbeing of the individual, with a focus on the person and their needs, choices and aspirations, rather than the service or the local authority. The law should treat carers as equals, not as an extension of the person they care for. It is vital that everyone should understand what care and support is and how it can make a difference to their lives. The law should ensure councils can take responsibility for all people in a place – to lead the local system for the benefit of all, not just a few. Reform of the law therefore also supports the Government's policy proposals for change, set out in the Care and Support White Paper and analysed in the other corresponding care and support Impact Assessments, "Independence, choice and control", "Quality, care providers and the workforce" and "Assessment, eligibility and portability for care users and carers."

## **III. Impact of policy proposals**

9. Two options have been considered:
  - Option 1: Do nothing; or
  - Option 2: Consolidation and reform of the law, taking the Law Commission's recommendations into consideration.

### ***Option 1: Do nothing***

10. This option would mean retaining the existing law relating to adult social care. There is not one unified adult social care statute to which local authorities and care users can refer to see what services can or should be provided. There are currently over 30 Acts of Parliament dealing with adult social care. The law is also subject to further direction and approval, with the consequence that a statute by itself may not provide the answer to whether a local authority has a power or a duty to provide services. Further to this, the current statute does not provide a statement of fundamental principles on which community care legislation is based, to aid interpretation in the implementation and operation of the law.

---

<sup>6</sup> Further discussion of the White Paper proposals to place Safeguarding Adult Boards on a statutory footing can be found in the corresponding Impact Assessment "Quality, care providers and the workforce".

## *Benefits*

11. In the short-term, doing nothing will avoid the transitional costs of reform, which comprise costs to local authorities associated with training of social workers and other local authority staff.

### **Option 2: Consolidation and reform of the law**

12. As outlined above, the legal framework for adult social care consists of a patchwork of legislation, which makes interpretation and application of the law complex and time consuming. Consolidation and simplification would be best achieved by establishing a unified statute for care and support.

13. The intended effect of reform is to create a clear, cohesive, modern and accessible scheme for adult social care, which sets out the responsibilities of local authorities and the rights of individuals. Our aims in reforming the law around social care are to:

- *Modernise* the legal basis to reflect the Government's ambitions for personalised adult social care. This will involve refocusing the law around the person, not the service, by enshrining new statutory principles that place the wellbeing of the individual at the heart of a person's decisions about care.
- *Simplify* the law into one single statute for adult social care, supported by clear regulations and a reformed bank of statutory guidance in one place. We will develop a more transparent framework that simplifies practice for care professionals, reduces burdens, and empowers individuals have greater understanding of their rights and responsibilities.
- *Consolidate* all existing legislation, and repeal old statute dating back over 60 years. We will incorporate existing powers for local authorities where they fit with the modern service, whilst bringing the provisions up to date and creating a new statutory framework for adult safeguarding. We will rationalise and remove unnecessary top-down controls or restrictions to allow services to innovate and meet the changing needs of local people.

14. These aims will be achieved by addressing a number of shortcomings of the existing law relating to adult social care, which have given rise to the problems identified earlier. This Impact Assessment assesses the impact of changes to the adult social care statute per se; as set out in the White Paper, the Government is proposing to take forward a number of policy initiatives some of which will also require legislation. Further details of these policy proposals are outlined in the three other corresponding Impact Assessments for the White Paper and draft Care and Support Bill.

## *Benefits*

15. Consolidation of the law will produce a variety of cost savings to local authorities and the Local Government Ombudsman (LGO). Details are set out below. Creating a clearer and simpler statute, with clearer and simpler practice guidance, will mean that fewer mistakes are made and will prevent wrong advice being given, which will improve the outcomes and experiences of service users, carers and their families.

### Everyday activities of social workers

16. We assume that simplifying the law will reduce the administrative burden on social workers, as they will spend less time interpreting legal issues.

17. There is little data that expressly covers the time spent by social workers considering legal issues, but research does indicate that they currently spend a great deal of time on administrative work and less time on face-to-face contact with care users. In fact, a recent UNISON survey indicated that 73% of the social workers that were surveyed felt that they had either "insufficient" or "very insufficient" time available to spend with care users.<sup>7</sup>

---

<sup>7</sup> UNISON, *Not Waving but Drowning: Paperwork and Pressures in Adult Social Work Services*, 2009.

18. In addition, evidence in literature also suggests that social workers are generally lacking in legal knowledge and that they do not devote much of their time to legal matters.<sup>8</sup> The Law Commission highlighted one survey that suggests that many social workers do not use the law at all in practice. It reports that law has a “low profile in daily practice” and that there is a lack of “overt use of the law to inform practice.” This results in a dependency on policy and procedure rather than professional discretion.<sup>9</sup> Some researchers have suggested that this lack of legal knowledge, along with the uncertainty created by the complexity of the law, may cause more defensive administrative practices in response to the threat of litigation.<sup>10</sup>
19. The Law Commission concluded that this lack of legal knowledge results in delays to processes. Evidence suggests that these delays may be due to a social worker’s lack of knowledge of potential alternative solutions, or may be the result of social workers lacking the confidence in their knowledge to assert themselves when consulting with other professionals.<sup>11</sup>
20. The Law Commission acknowledged that it would be artificial to single out particular elements in social workers’ daily tasks, rather it proposed that a certain percentage of time spent on that task will henceforth be saved as a result of a reformed legal framework. Therefore, the Commission attempted to quantify the savings in social workers’ daily tasks by making a global estimate of the sort of overall time savings brought about by a clearer and simpler legal structure. Its assumptions were tested through consultation and, although no written responses dealt with the accuracy or otherwise of this approach, in consultation meetings with social workers and social worker managers, it was broadly accepted as reasonable.
21. Acknowledging that it is comparatively crude, the Law Commission assumed that social workers will save between 20 and 45 minutes a week on average and that this equates to between 0.68% and 1.54% of their time annually.<sup>12</sup> The Law Commission believes that the timesavings for frontline social workers might be towards the bottom of this range, whereas it might be higher for more senior managers. This will produce savings to local authorities of between £7.6 million and £17.1 million per year. As set out in table 1 in Annex 1 below, our mid-point best estimate of these savings is £12.4 million.

## Complaints

22. It is reasonable to assume that a more modern legal structure will reduce the number of complaints, and therefore the cost to local authorities to investigate them, and the Law Commission agrees with this.<sup>13</sup> It is not expected that the reduction in complaints will occur as a result of a significant difference in the decisions made about service provision in the new system, but rather, because there will be fewer mistakes. Clearer and simpler law will mean that better decisions are made with fewer mistakes, which will in turn result in fewer complaints.
23. According to estimates from the National Audit Office, in 2006/07, adult social care complaints cost local authorities in England approximately £14.4 million (at 2010/11 prices).<sup>14</sup> This figure relates to the internal costs to local authorities of dealing with complaints, excluding the costs of complaints to the LGO.
24. The reduction in complaints is likely to be modest. Reductions are most likely to occur in relation to complaints about inaccurate advice, lack of information or expenses/costs. Such complaints account for approximately 21% of complaints to local authorities.<sup>15</sup> Based on this figure, the Law Commission assumed a saving of between 5%-15% of complaints with a best estimate of 10%. This would result

<sup>8</sup> Law Commission, *Adult Social Care Law Reform Impact Assessment*, 2011.

<sup>9</sup> Braye, S. et al., “Beyond the Classroom: Learning Social Work Law in Practice”, *Journal of Social Work* 332, 330, 2007.

<sup>10</sup> Postle, K., ‘Between the Idea and the Reality: ambiguities and tension in care managers’ work’, *British Journal of Social Work* 335, 2002.

<sup>11</sup> McDonald, A. et al., “Barriers to Retaining and Using Professional Knowledge in Local Authority Social Work Practice with Adults in the UK”, *British Journal of Social Work* 1370, 1379, 2002.

<sup>12</sup> Law Commission, *Adult Social Care Law Reform Impact Assessment*, 2011.

<sup>13</sup> *Ibid.*

<sup>14</sup> National Audit Office, *Feeding Back? Learning from Complaints Handling in Health and Social Care*, 2008. This figure has been calculated using the GDP deflator of 2.71%.

<sup>15</sup> *Ibid.*



in savings of between £0.7 million and £2.2 million per year, based on the calculated 2010/11 figures. As set out in table 2 in Annex 1 below, our mid-point best estimate of these savings is £1.45 million.

25. In addition to the costs to local authorities, there are also costs of complaints to the LGO. The Law Commission noted that in 2009/10 the LGO considered 836 complaints relating to adult social care and estimated that almost £0.5 million was spent investigating these complaints.
26. The Law Commission estimated that there will also be reductions to the number of complaints that the LGO receives. This is likely to be a smaller reduction than the one seen to local authorities, as it is likely that complaints involving mistaken decisions are resolved earlier in the complaints process when the local authority is still investigating it. The Law Commission estimated that there would be a reduction of between 2.5%-7.5%. Based on this, the saving to the LGO would be between £0.01 million and £0.04 million per year (see table 2 below).
27. The total annual savings relating to complaints would be between £0.71 million and £2.24 million per year – mid-point best estimate £1.475 million – comprising £1.45 million to local authorities and £0.025 million to the LGO. Local authority complaints processes are often lengthy, with a number of escalation stages and individuals do not always submit their complaints immediately after an incident has occurred. As a result, we assume that these savings will not start to be realised until 2016/17, assuming the provisions of the reformed law come into effect in 2015/16.

### Litigation

28. We believe that simplifying the law will lead to a reduction in the level of litigation that local authorities face, as fewer mistakes will be made as a result of misinterpretation. This will result in savings to local authorities of the direct costs of litigation (including counsel's fees and court costs) together with savings in legal advisors' time.
29. In its consultation Impact Assessment, the Law Commission suggested that between 30% and 40% of the time spent by lawyers working on adult social care would be saved by simpler law.<sup>16</sup> Few comments were received to support or refute this, although one local authority did contest it, on the basis that most of its work was on safeguarding and Court of Protection work, rather than mainstream adult social care.
30. In order to make a more accurate assumption, the Law Commission conducted research on the social care workload of the higher courts to establish the proportion of issues litigated that would not have been litigated if the system that it proposed was introduced. This was a small-scale study, which took account of social care cases in the Court of Appeal and Administrative Court for the year from July 2009. There were twelve adult social care cases in this period and it was concluded that in eight of them their proposals for law reform would have made no difference. Of the remaining four, one would not have been litigated at all, and it was estimated that a third of the issues in the other three cases would not have to be litigated.<sup>17</sup> This gives a figure of 16.67%.
31. The Law Commission therefore revised its original assumption and suggested that between 10% and 20% - best estimate 15% - of the time spent by lawyers working on adult social care would be saved by simpler law, although this is assumed to be a modest estimate. However, the Commission did note that this potentially underestimates the savings, as where litigation would still have been necessary consolidation and clearer provisions would have made the process quicker.
32. Based on the Law Commission's estimates, this would result in savings of between £0.8 million and £1.7 million per year for local authorities. As set out in table 3 in Annex 1 below, our mid-point best estimate of these savings is £1.25 million.
33. It is estimated that around £3.8 million per year is spent on the direct costs of litigation, which includes counsel's fees, court costs and other disbursement, and time spent by non-legal staff on the

---

<sup>16</sup> Law Commission, *Adult Social Care: A Consultation Paper*, 2010.

<sup>17</sup> Law Commission, *Adult Social Care Law Reform Impact Assessment*, 2011.

litigation.<sup>18</sup> Assuming that litigation is reduced by between 10% and 20%, the savings would be between £0.4 million and £0.8 million per year. As set out in table 4 in Annex 1 below, our mid-point best estimate of these savings is £0.6 million.

34. As the litigation process is lengthy and it takes a long time for cases to be referred to court, we assume that the savings in relation to reduced litigation will not start to be realised until 2016/17, assuming provisions of the reformed law come into effect in 2015/16.
35. A recent report by Counsel and Care found that one of the top three issues that older people, their families and carers contacted Counsel and Care's advice service about in 2010 was concerns about being given incorrect and often illegal advice by their council.<sup>19</sup> It has also been suggested that social workers' lack of confidence in applying the law can result in delays to the assessment and care planning processes.<sup>20</sup> Similarly, a lack of legal knowledge can lead to an over-reliance on limited statutory powers or local authority policies, meaning that individuals do not always get the most appropriate support to meet their needs.
36. Creating a clearer and simpler statute with clearer and simpler practice guidance will mean that fewer mistakes are made and will prevent wrong advice being given. This will not only result in fewer complaints and less litigation, as outlined above, but will also improve the outcomes and experiences of care users, carers and their families.

### Costs

37. There will be some transitional costs resulting from the changes to the legal framework and these relate, in the main, to the training of social workers.
38. It will be necessary to train existing social workers in the new law. The Law Commission suggested that there would be a requirement of four days of training per adult social worker in the first year and a further two days in the second year.<sup>21</sup> From then onwards, normal continuing training requirements would fulfil any ongoing need.
39. Assuming that an external trainer conducted the training and that local authorities used their own premises and therefore incurred no costs for venue hire, the total cost for training would be between £4.2 million and £8.5 million over the two years. Broken down, this would mean costs to local authorities of between £2.8 million and £5.7 million in the first year and between £1.4 million and £2.8 million in the second (see table 5 below). As set out in table 5 in Annex 1 below, we have used mid-point best estimates of £4.25 million in the first year and £2.1 million in the second. These costs would be reduced considerably if the training were to be conducted in-house.
40. The opportunity costs of social workers' time whilst completing this training would be £25.1 million in the first year and £12.5 million in the second (see table 6 in Annex 1 below).
41. One issue that needs to be taken into consideration is that social work students generally study the legal framework during either the first or the second year of their degree. This will mean that for the first year or two of the new system newly qualified social workers will need to be retrained. The Law Commission suggested that it would be prudent to allow an extra two days of training for two years for these individuals and estimated that this would mean that approximately 750 individuals require additional training.
42. There will be some additional opportunity costs associated with the training of other local authority staff, such as those who work in call centres. This training would only be required on a one-off basis and it is reasonable to assume that it could be provided in-house by a social worker. Although it has not been possible to make accurate calculations for the costs of this training, we estimate that it will cost between £1 million and £2.5 million. We have used a mid-point best estimate of £1.75 million. Our assumptions and calculations are set out in table 7 in Annex 1 below.

---

<sup>18</sup> *Ibid.*

<sup>19</sup> Bernard, C., *Care Concerns 2010: "No Help Here"*, 2011.

<sup>20</sup> Law Commission, *Adult Social Care Law Reform Impact Assessment*, 2011.

<sup>21</sup> *Ibid.*

43. It is not expected that there will be any ongoing costs from law reform.

#### **IV. Risks and assumptions**

##### *Key assumptions*

44. For the purposes of this cost benefit analysis we have made several assumptions, which are based on the expert opinion of the Law Commission:

- In 2009/10, there were 21,240 social workers working in adult social care in England who would be affected by our proposals. We have assumed that these numbers will remain constant over the next five years.
- In 2010/11, the total average cost to a local authority of one social worker is £52,363 and that includes the mean basic salary and on-costs.
- There are 182 full-time equivalent legal advisors working for local authorities in England. In 2009, there were 3,072 full-time equivalent lawyers working for local authorities in England and Wales. We have estimated that approximately 5 per cent of the workload of lawyers in local authorities relates to adult social care. The proportion of the population of England and Wales residing in England is 94.6 per cent and it has been assumed that the proportion of lawyers is the same. We have assumed that these numbers will remain constant over the next five years.
- One day of external legal training costs £45 per social worker. This is based on there being 20 social workers per training session. In-house training creates no additional costs.
- The level of provision of adult social care services will remain the same.
- The price base year is 2010/11. We have assumed that, subject to the agreement of Parliament, the Care and Support Bill would receive Royal Assent in 2014, and 2015 is the earliest that the provisions could come into force.

##### *Sensitivities*

45. We have built a range of sensitivities into our analysis. These include the following:

- There will be between 5 and 15 per cent (best estimate 10 per cent) fewer complaints to local authorities.
- We will save between 10 and 20 per cent (best estimate 15 per cent) of the costs of local authority legal advisors and costs of litigation.
- There will be a time saving in social worker's work of between 0.68 and 1.54 per cent (best estimate 1.11 percent).

##### *Risks*

46. The main risk to be considered is an inevitable degree of uncertainty around our assumptions, in particular:

- The number of social workers who require training. There is also some uncertainty about the extent of training that social workers will require on the reformed law.
- The transitional costs as in-house training may attract additional costs.
- The extent of the reduction in time spent by social workers on legislative matters.
- The number of complaints and the amount of litigation that will be avoided, as well as the savings to local authorities from a reduction in complaints about adult social care.

## **V. Specific Impact Tests**

### *One-In One-Out*

47. The proposals for reform of the law set out in this Impact Assessment do not fall within the scope of the Government's "One-In One-Out" (OIOO) rule which states that "no new primary or secondary UK legislation which imposes costs on business or civil society organisations can be brought in without the identification of existing regulation with an equivalent value (in terms of net costs to business) which can be removed."
48. These proposals do not involve any additional regulatory measures which impose costs on business or civil society and therefore are considered out of scope of this rule. The proposed reforms to the law which will undergo pre-legislative scrutiny relate to the responsibilities of local authorities and other public sector partners for planning and commissioning of adult social care services and for meeting the needs of their local population.

### *Equality*

49. Our overarching aim in reforming the law on adult social care is to establish a clear, coherent and effective system for adult social care in England. This will help to clarify the rights of care users and carers.
50. In reforming the adult social care statute we will also look to remove discriminatory and outdated language, such as the definition of a disabled person under section 29 of the National Assistance Act 1948.
51. As part of its review of the adult social care statute, the Law Commission consulted with a wide range of care user and carers, including older people, people with learning disabilities, deafblind adults, people with physical disabilities, alcohol misusers, and people with mental health problems. The Law Commission also participated in several events with representative organisations and user-led organisations.
52. Further information regarding impacts on equalities is provided in the corresponding White Paper Equality Analysis.

### *Health and well-being*

53. Our plans for law reform are expected to have a significant positive impact on health and well-being. A key objective of the reforms is to build a clear, coherent legal framework for adult social care, so that service users and carers can easily understand what they might be entitled to.

### *Human rights*

54. We do not consider that our proposals for law reform would be incompatible with human rights law. Our proposed reforms would comply with the objectives of promoting and protecting human rights under the Human Rights Act 1998.

### *Justice system*

55. We do not expect that our proposals for law reform will lead to an increase in cases before the courts or tribunals. Rather, as we detail above, we expect there to be some moderate savings in the resources devoted to litigation on adult social care.

## **Annex 1: Calculations**

### **Savings**

Table 1: everyday activities of social workers

	Low	Best	High
Number of full-time equivalent (FTE) social workers working in adult social care	21,240 <sup>22</sup>		
Average total salary to employer (including on costs)	£52,363 <sup>23</sup>		
Time savings	0.68%	1.111%	1.54%
Annual savings	£7,562,893	£12,345,310	£17,127,728

Table 2: savings from fewer complaints

	Low	Best	High
Reduction in complaints to local authorities	5%	10%	15%
Spending on complaints by local authorities in England	£14,000,000 <sup>24</sup>		
Savings to local authorities	£720,000	£1,440,000	£2,160,000
Reduction in complaints to the LGO	2.5%	5%	7.5%
Spending on complaints by LGO	£539,816		
Savings to the LGO	£13,495	£26,991	£40,486
Annual savings	£733,495	£1,466,991	£2,200,486

Table 3: savings from less lawyers' time required (in England)

	Low	Best	High
Number of FTE lawyers working on adult social care	182 <sup>25</sup>		
Median salary (excluding on-costs)	£45,400 <sup>26</sup>		
Time savings	10%	15%	20%
Annual savings	£823,280	£1,239,420	£1,652,560

Table 4: savings from lower litigation costs (in England and Wales)

	Low	Best	High
Costs met by public funds	£2,480,000 <sup>27</sup>		
Costs agreed and met by opponents	£746,000 <sup>28</sup>		
Social workers	£570,000 <sup>29</sup>		
Time savings	10%	15%	20%
Annual savings	£379,600	£569,400	£759,200

<sup>22</sup> Skills for Care, *We gather information about the social care sector: the state of adult social care workforce in England*, 2010.

<sup>23</sup> This is the average salary of social workers in 2010/11 plus direct over head costs – PSSRU, *Unit Costs of Health and Social Care*, 2011.

<sup>24</sup> National Audit Office, *Feeding Back? Learning from Complaints Handling in Health and Social Care*, 2008. This figure has been calculated using the GDP delator of 2.71%.

<sup>25</sup> In 2009, there were 3,072 FTE lawyers working for local authorities in England and Wales. About 5% of the workload of lawyers in local authorities relates to adult social care. The proportion of the population of England and Wales residing in England is 94.6% and it has been assumed that the proportion of lawyers is the same.

<sup>26</sup> Law Commission, *Adult Social Care Law Reform Impact Assessment*, 2011.

<sup>27</sup> *Ibid.*

<sup>28</sup> Legal Services Commission, *Statistical Information 2009-10*, 2010.

<sup>29</sup> Law Commission, *Adult Social Care Law Reform Impact Assessment*, 2011.

## Transitional costs

Table 5: costs of training social workers (in England)

	Low	Best	High
Number of qualified social workers (headcount) working in adult social care	23,545 <sup>30</sup>		
Number of days training (year 1)	4 <sup>31</sup>		
Number of days training (year 2)	2		
Costs of trainer (per day) <sup>32</sup>	£600	£900	£1,200
Training costs (year 1)	£2,825,400	£4,238,100	£5,650,800
Training costs (year 2)	£1,412,700	£2,119,050	£2,825,400
Total training costs	£4,238,100	£6,357,150	£8,476,200

Table 6: opportunity costs of training social workers (in England)

Number of qualified social workers (headcount) working in adult social care	23,545
Hourly cost of social workers	£38 <sup>33</sup>
Number of days training (year 1)	4
Number of days training (year 2)	2
Opportunity costs (year 1)	£25,051,880
Opportunity costs (year 2)	£12,525,940
Total opportunity costs	£37,577,820

Table 7: opportunity costs of training other local authority staff (in England)

	Low	Best	High
Hourly cost of social worker (trainer)	£38		
Hourly cost of those being trained	£20 <sup>34</sup>		
Number of staff per session	25		
Number of hours per session	3		
Number of sessions per local authority	4	7	10
Cost per local authority	£6,456	£11,298	£16,140
Total training costs	£981,312	£1,717,296	£2,453,280

<sup>30</sup> Skills for Care, *We gather information about the social care sector: the state of adult social care workforce in England*, 2010.

<sup>31</sup> Law Commission, *Adult Social Care Law Reform Impact Assessment*, 2011.

<sup>32</sup> Assumes that there will be approximately 20 social workers per training session.

<sup>33</sup> PSSRU, *Unit Costs of Health and Social Care*, 2011.

<sup>34</sup> Assumes that the average salary of those being trained is £15,000.