



**Consultation Response to:**

**Making Choices: Meeting the current and future  
accommodation needs of older people**

**March 2014**

1. The Law Centre welcomes the opportunity to respond to “Making Choices: Meeting the current and future accommodation needs of older people.”

## About the Law Centre (NI)

2. The Law Centre is a public interest law non-governmental organisation. We work to promote social justice and provide specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. It provides a specialist legal service (advice, representation, training, information and policy comment) in a number of areas of law, including community care and mental health law as well as social security, immigration and employment. Law Centre services are provided to almost 400 member agencies across Northern Ireland. The Law Centre is a member of the Older People’s Advisory Panel, chaired by the Commissioner for Older People for Northern Ireland and the Rights in Community Care Group.

## Introduction

1. This consultation document has been developed as a result of the some Health and Social Care Trusts announcing the planned closure of statutory residential homes in spring 2103 that went beyond the target of 50% within three to five years set by *Transforming Your Care – Vision to Action*; most critically, without any meaningful input from the residents of those homes or their families. The announcements caused unnecessary levels of stress among the residents of those care homes and the Minister made the decision to withdraw the power from the Trusts; instead centralising it with the HSCB to allow for more time “to engage with individuals, families, communities and staff” and for a regional approach to the future of statutory residential care home provision to be developed<sup>1</sup>.
2. The Law Centre supports the focus of *Transforming Your Care* on the home as being the hub of care. We believe that people should be given the opportunity to live in their own homes for as long as possible and

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<sup>1</sup> Statement from the Minister for Health, Social Services and Public Safety to the NI Assembly, 7 May 2013.

receive the support that they require to enable them to do so. However we also recognise that this will not always be appropriate for a variety of reasons and a range of alternative living arrangements should be available to meet the needs of people for whom living at home is not an option.

3. The Law Centre believes that any process that could lead to the closure of a residential care home must be underpinned by the full and active involvement of residents and their families. If a care home is to close, then appropriate accommodation must be available to the resident in a location in which they are comfortable and happy.

### **Proposed Criteria**

4. The Law Centre is concerned with the proposed criteria. We feel that they are too blunt, that the weightings given in the scoring could lead to perverse results and are disappointed that there is no mechanism that actively takes into account the views of residents and their families. We will comment on the proposed criteria below and then propose what we believe should be the key part of any process moving forward.

#### *1) Availability and accessibility of alternative services*

5. The Law Centre welcomes that the HSCB has recognised that this criterion should be given a high weighting in the scoring system. However the weighting is not high enough to prevent a situation from arising that leads to a residential home which scores highly on this criterion, but lower on the others, from being recommended for closure before one that scores low on this but highly on the other three. The result of this could be that a residential care home, for whose residents do not have appropriate alternative accommodation available, could be recommended for closure over a residential care home for whose residents do.
6. We believe that no residential care home should be considered for closure if all its residents cannot be move to appropriate and accessible accommodation.
7. We would also welcome clarity on who determines what is considered to be an available and accessible service for each resident and which factors will be considered when assessing the suitability of an

alternative service in an individual case. We believe that each resident and their families should have an input into this process and would caution against this being determined solely by a third party on their behalf unless it is unavoidable.

## 2) *Quality of care*

8. Quality of care is a hugely important issue and it would be concerning if any statutory care home is currently operating and falling below the standard of care expected. This is an issue that should be addressed as a matter of urgency outside of this process if the Board suspects this to be the case. The welfare of the residents of residential care homes is paramount.
9. The Law Centre believes that this criterion is being assessed in too blunt a manner. For example, five of the six pieces of information assessed are done so negatively with only one that is positive (compliments). There is little assessment of other aspects that could indicate that a care home provides positive quality of care.
10. Each of the six pieces of information assessed as part of this criterion uses an arbitrary cut-off point of acceptability/unacceptability. Given that residential care homes vary in terms of number of residents, larger residential homes would be at a natural disadvantage in this criterion. If this criterion is to be assessed in this manner, it would be more appropriate to look at this information relative to the number of residents living there. It would also be appropriate to give greater weighting to the biggest failings.
11. By looking at the standards and guideline compliance of care homes over the last five years, it could disadvantage those that have made a determined effort to improve their quality of care more recently and whose residents are happy with the level of care they are receiving.
12. The consultation document does not clarify when referring to complaints whether these contain such that could be considered vexatious. It does not specify whether consideration will be limited to those complaints which involve dissatisfaction with the quality of care.
13. By assessing the number of complaints that a residential care home receives, this potentially disadvantage those with good and well

publicised complaints policies against ones which discourage feedback.

14. There is a danger in sending out a message that if a resident is to make a complaint about an aspect of their care in a residential home that they could inadvertently be making it more likely for the home to be considered for closure. Although a complaint made now would not be considered under this criterion, it is essential that such a fear developing among residents be avoided.
15. There are other reasons why a vulnerable-adult investigation can happen in a residential care home that does not directly implicate the staff. For example, a vulnerable adults investigation may be instigated where there is alleged financial abuse of a resident by a third party relative who has been managing their money for them whilst they have been living in the residential care home. It would be unfair to consider investigations that have found no wrongdoing or failing on the part of the care home staff.
16. This criterion is solely based on a measurement of the quality of care in a resident's current residential care home. It is essential, however, that if a resident is to be moved to another home, that the quality of care is as good if not better than that he or she is currently experiencing. This must form part of any criteria that determines the future of a resident's future accommodation needs.

### 3) Care trends

17. The Law Centre recognises that models of domiciliary care and supported housing schemes have advanced in recent years and help older people maintain their independence for much longer than was the case in the past.
18. As acknowledged in the consultation document, Trusts have had different admission policies operating for statutory residential care homes. This must be taken into account when looking at demand for residential care. It could be that this type of care is deemed to be the most appropriate for individuals but no such facility has been admitting new residents in the location. It is inappropriate to say that there is no demand when the Trust has essentially cut off demand and/or the independent sector is not providing it.

#### *4) Best use of public money*

19. The Law Centre welcomes that the Board has given the lowest weighting to this criterion in the scoring matrix. It is crucial that decisions are based upon what is best for the individual rather than on the availability of financial resources. However this still could become a determinant factor in a scoring situation leaving one care home earmarked for closure on the basis of its higher running costs over another whose scores on other criteria are similar.

#### **Law Centre Recommendations**

20. As noted in the introduction to this response, the Law Centre believes that residents and their families should be fully involved in decisions taken about the future of residential care homes. Unfortunately this is not reflected in the proposed criteria. We believe that the Board could be at risk of making the same mistake as the Trusts by not fully consulting with the current residents of residential care homes in a real and meaningful way. If the process is carried out as detailed in the consultation document then residents and their families could find themselves in a similar position as before, with care homes being recommended for closure without a feeling that their views have formed part of the criteria.

21. Any decision to close a particular residential care home with the result that individuals will be required to transfer to an alternative placement will necessitate consideration of residents' respective Article 8 rights to enjoy their family life, private life and/or home life and so any decision should be reflective of human rights considerations.

22. The Law Centre proposes that the views of residents and families are formally taken into account as part of the criteria with the greatest weighting on the views of the resident. This process could be facilitated independently with the assistance of an independent advocacy organisation that would help elicit the views and feelings of residents about their care and living arrangements. As there are only 283 permanent residents in residential care homes across Northern Ireland, this would not be an onerous task and would be seen to be highly progressive. Actively involving residents in decisions about their

home's future would be empowering and could lead to much improved decision making.

23. Situations may emerge whereby some residents and their families have different opinions on their experience of the care provided by a residential care home and on what the most appropriate alternative accommodation would be. It should not be assumed, for example, that a family member's views are fully reflective of that of a resident. This further demonstrates the need for independent advocacy services to be available at the earliest stage to help facilitate the full and active engagement of residents and their families and ensure that no voice is lost in the process.
24. The views of residents and their families should be taken into account alongside the availability of appropriate alternative accommodation as the main criteria for deciding the future of residential care homes. The Department has a responsibility to ensure that each individual resident is given appropriate care in an environment that meets his or her needs. No resident should be left in a position in which he or she is worse off, either in terms of quality of life or financially, as a result of the closure of a residential care home.
25. The Law Centre believes that these two criteria should form the basis upon which the future of an individual residential care home is determined as opposed to the scoring matrix proposed by the Board, which as noted above, could lead to perverse results. This would indicate a marked change of approach from that originally taken by the Trusts and puts the individual resident and their families at the centre of the process. It would help counter perceptions that the process is primarily about saving money and could set an international benchmark for how a difficult process such as this should take place.

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