Risks and rights: how social care can survive Brexit
SUMMARY

BREXIT – the challenge for social care

• Workforce
• Economy and funding for social care
• Loss of EU funding and partnerships
• Rights of disabled people
• Distraction from domestic policy issue
SUMMARY

BREXIT – the solutions

1 Government must safeguard the supply of health and social care workers needed to continue delivering safe, high quality care. In particular, a future immigration system must be flexible to take into account a range of skills and employer needs, not just salary levels. It is vital that such a system must be flexible enough to allow social care to recruit from Europe when staffing needs cannot be met through additional domestic recruitment and training. Any transitional system must provide clarity and certainty so that people entering the UK are clear on their status.

2 Government must work with the relevant bodies to develop a strong, sustainable plan for how the sector can respond to the challenge of leaving the EU, particularly in the event of a ‘no deal’ outcome. VODG is committed to co-operating with a strategy of this kind.

3 Government must analyse and address (a) the impact of loss of EU funding on services provided by the voluntary sector and (b) the on-going availability of EU grant funding, given that the UK is a net contributor to the EU budget.

4 Government should commit to guaranteeing EU structural and investment funding for voluntary organisations beyond 2020, so that they can plan accordingly.

5 The rights of disabled people must be protected by UK legislation which can only be amended by voting in Parliament rather than by secondary legislation. VODG endorses the Disability Rights UK manifesto\(^1\) for disability rights in a post-EU UK and calls on the Government to implement its recommendations.

6 Government gives assurances that plans to leave the EU will not mean that reform of the funding system for adult social care is not abandoned during the life of this Parliament.

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INTRODUCTION

Britain’s exit from the EU coincides with a crisis in social care. According to the Care Quality Commission\(^2\), the sector is at ‘full stretch’ in terms of funding and the ability to meet rising demand for care and support. The decision to leave the EU raises a number of concerns for voluntary sector providers of adult social care, which relate to:


- The impact of Brexit on the sector’s ability to recruit and retain staff
- The potential for economic downturn and its impact both on the funding of adult social and on the sector’s cost base
- Loss of funding from and partnership opportunities with the EU
- Continued protection of the rights of disabled people, and
- The potential for Brexit to distract from the urgent need to reform the system for funding adult social care in order to place it on a fairer and more sustainable footing.
There are 11 million disabled people living in England, representing 20% of the population. Voluntary and not-for-profit organisations provide essential services to disabled people in ways that promote independence, choice and control as well as supporting their carers. The voluntary sector provides 19% of adult social care jobs, suggesting that the sector provides around one fifth of this vital support to disabled people.\(^3\)

Since the decision to leave the EU VODG has regularly reviewed the Brexit-related risks and issues facing the sector with members, and has also shared intelligence and produced resources to support the sector with its decision-making.\(^4\)\(^5\)\(^6\).

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**The challenge**

VODG members are concerned that:

- Britain’s exit from the EU could exacerbate staff shortages in the social care sector, which are particularly acute in some regions and for some types of job, because the supply of workers willing to take on care jobs, many of which are low paid, would be reduced.

- While the future of EU nationals after Brexit remains uncertain, EU staff who are currently working in the care sector may decide to leave and others may be put off coming to fill vacancies.

- Employment rights which disproportionately affect low paid and agency staff, on whom the social care sector relies, could be affected by EU withdrawal, in turn affecting staff morale and employers’ ability to recruit.

- The supply of EU nationals volunteering in social care could also be affected.

- If it becomes more difficult to recruit staff and volunteers, the quality and sustainability of care for disabled people will suffer.

- Employment rights which disproportionately affect low paid and agency staff, on whom the social care sector relies, could be affected by EU withdrawal, in turn affecting staff morale and employers’ ability to recruit.

VODG also fears that it would become even harder to recruit staff to the social care sector if working conditions were made worse by the removal of aspects of employment legislation which have their origins in EU law. This applies particularly to areas of legislation which have protected the rights of low paid workers but have proved unpopular with some employers, for example:

- Once the Transfer of Undertakings Protection of Employment legislation (TUPE) is no longer subject to the constraints of EU law, the Government may wish to make it easier to harmonise terms and conditions following a TUPE transfer.

- The right for holiday pay to accrue during periods of sick leave and for holiday pay to be calculated based on all aspects of remuneration, not just basic pay, are important benefits for low paid workers, which could be at risk following withdrawal from the EU.

- The Agency Worker Regulations 2010 provide basic protections for agency workers, the most fundamental of those protections being the right to the same basic working and employment conditions as those direct recruits of the hirer after 12 weeks on assignment. If this piece of legislation is reformed following exit from the EU it would have a significant impact on the social care workforce.
The scale of the problem

Around 95,000 of the 1.45 million workers in the adult social care sector – just under 7% – come from other EU countries. The sector has become increasingly reliant on workers from the EU, with the proportion rising by 3% nationally between 2012 and 2017. The picture varies by region, from around 1,300 EU workers in the North East to 23,000 in London, where the figure has risen from 9% of the London social care workforce in 2012 to 13% in 2017.

Social care providers across the country are already struggling to recruit and retain staff. The care sector as a whole has a vacancy rate of 6.6 per cent (compared with a vacancy rate of 2.6 per cent across the economy). For qualified nurses the vacancy rate is 9 per cent. Skills for Care estimates that just over a third of nurses have left their role within the past 12 months. Looking to the future, one study suggests that the social care sector could face a shortfall of more than one million care workers by 2037.

Concerns relate not only to the paid workforce, but also to volunteers. Estimates suggest that around 3 million people volunteer in health and social care. The European Voluntary Service scheme, which is part of the Erasmus programme and funded by the EU, is an important source of recruitment for young volunteers. Uncertainty over the future of the scheme, together with the possibility that EU volunteers will become embroiled in the complexity of applying for the tier five visas currently required of non-EU nationals, raises concerns about the supply of this important resource for the sector.

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7 Skills for Care (2017) Annual social care workforce estimates. www.nmds-sc-online.org.uk/content/view.aspx?id=Adult%20social%20care%20workforce%20estimates


VODG wants the Government to take all possible measures to safeguard the supply of health and social care workers needed to continue delivering safe, high quality care. In particular, a future immigration system needs to take into account a range of skills and employer needs, not just salary levels. Such a system must be flexible enough to allow social care to recruit from Europe when staffing needs cannot be met through additional domestic recruitment and training.

It is also important that any transitional system provides clarity and certainty so that people entering the UK are clear on their status.

The Cavendish Coalition¹, of which VODG is a member, provides those leading the negotiations with expertise and knowledge on the issues affecting both the health and social care workforce.

The challenge

VODG members are concerned that:

- An economic downturn as a consequence of Brexit could lead to the collapse of many providers of services and support for older and disabled people. The publicly funded social care sector has suffered seven years of funding reductions and is already in urgent need of more funding to meet rising costs and demand.

- Rising inflation is a key risk of a no deal Brexit. This would exacerbate existing cost pressures from the National Living Wage and sleep-in payments for people who rely on essential round the clock care.

- A weakened economy could also create more demand for publicly funded social care, which providers would be unable to meet.

The scale of the problem

Government’s ability to fund social care relies on the performance of the economy. Social care has already borne the brunt of reductions in public spending; since the advent of austerity in 2010 cumulative adult social care savings have amounted to £6.3bn\(^\text{12}\). Planned savings for adult social care in 2017/18 are a further £824m. The savings made in councils’ adult social care budgets are passed on to the voluntary sector in the form of reductions in the number of support packages purchased and the rates paid. In practice this means that fewer people are getting the help they need. In 2016, 90% of councils were only able to respond to people with “critical or substantial” needs, compared to 47% who set this threshold in 2005. This means, despite the growth in size of the older and disabled population, 400,000 fewer people are getting publicly funded help\(^\text{13}\).


The scale of the problem cont.

The prospect of the UK leaving the EU without a deal raises significant concerns about the impact on the public finances. Research by UK in a Changing Europe at King’s College London finds that likely macroeconomic impacts would include:

- A further significant fall in the exchange rate. Pre-referendum predictions that a vote to leave the EU would result in a 10-15% fall in sterling proved accurate. A further fall of similar magnitude could be expected.

- A (consequent) rise in inflation, and fall in real wages and consumer demand. These impacts would probably materialise more quickly than in 2016-2017, that is soon after the breakdown in negotiations.

- A fall in business confidence. Unlike the referendum, this would likely be sustained, and translate quite quickly into a slowdown in investment, particularly in sectors reliant on trade with the EU (either exports or imported components) or where regulatory certainty is important for investment decisions.

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14 The UK in a Changing Europe (2017) Cost of no deal. ukandeu.ac.uk/research-papers/cost-of-no-deal/
**The scale of the problem cont.**

Rising inflation will have an effect on wage demands and voluntary sector employers’ ability to recruit staff. A fall in business confidence and a potential for unemployment levels to increase could benefit the wider social care sector in the short term, but would have no effect on voluntary organisations whose income relies largely on council funding. If costs continue to rise above the settlements voluntary organisations can negotiate from councils, the sustainability of providers will be at risk.

At the same time a weakened economy will have an impact on demand for publicly funded social care, as older people see the value of their homes and pensions fall and more find themselves without the means to pay for their own care.

The Local Government Association (LGA) has pointed out that social care requires more, not less funding\(^\text{15}\). LGA estimates that adult social care faces a funding gap of £1 billion by 2020. This estimate includes only the unavoidable cost of demography, inflation and the National Living Wage. This figure excludes other significant pressures, including the potential costs associated with ‘sleep-ins’, which include both historic liabilities and future costs, as well as any resources to address unmet need.


**The solutions**

VODG asks that Government work with the relevant bodies to develop a plan for how the sector can respond to the challenge of leaving the EU, particularly in the event of a ‘no deal’ outcome. VODG is committed to co-operating with a strategy of this kind.
The challenge

VODG members are concerned about the loss of EU funding and opportunities for partnership working and knowledge transfer after Britain leaves the EU.

The scale of the problem

According to the National Council for Voluntary Organisations (NCVO), UK charities received around £300 million from EU funding in 2016. Not being part of the EU means that UK charities will no longer have access to this funding source. Although chancellor Philip Hammond announced in October 2016 that the Government would guarantee EU structural and investment funding commitments entered into before Britain leaves the EU, it is unclear what will happen after 2020, when this commitment will no longer apply.

The solution

VODG asks that:

- Government undertakes an assessment of (a) the impact of loss of EU funding on services provided by the voluntary sector and (b) the ongoing availability of EU grant funding, given that the UK is a net contributor to the EU budget.

- Government makes a commitment to guarantee EU structural and investment funding for voluntary organisations beyond 2020, so that they can plan accordingly.

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Risks and rights: how social care can survive Brexit

BREXIT’S IMPACT ON THE VOLUNTARY SOCIAL CARE SECTOR

The challenge

VODG members are concerned that the UK’s withdrawal from the EU will result in a reduction in rights for disabled people currently safeguarded by the European Court of Justice.

The scale of the problem

There are more than 300 EU directives that relate solely to disabled people and in particular to their accessibility to jobs and training. After Brexit these rights could be watered down or removed through secondary legislation. Brexit would also remove the possibility for UK citizens to resort to the European Court of Justice if they felt their equality rights had been contravened, and UK citizens would not automatically benefit from future legislative developments.

To give a recent example of such legislation, in December 2015 the EU proposed the European Accessibility Act, which aims to improve the functioning of the internal market for accessible products and services for people with disabilities and older people by removing barriers created by divergent legislation. If the UK leaves the EU it will not be bound by this directive. Or, as one contributor to a round table hosted by the disabled people’s organisation Disability Rights UK said:17 ‘We must be very, very sure...that the status quo won’t be worse after the Brexit. There are so many laws; there are for example the 2006 aviation regulations - airlines not to discriminate against disabled passengers. That is not in the Equality Act. If we’re losing this - and this is just one example and I can give 10 others - if you lose this law, this country goes back quite a long way in two years.

Or regulation on the manufacturing of buses (it is not allowed for public bus companies to produce buses which are not low floor). That would never be a national law normally; it was made by the EU’.

The solutions

The rights of disabled people must be protected by UK legislation which can only be amended by voting in Parliament rather than by secondary legislation. VODG endorses the Disability Rights UK manifesto for disability rights in a post-EU UK and calls on the Government to implement its recommendations.18

The challenge

After the General Election in June 2017 the Government said it would issue a consultation on the future funding of social care. Government has announced a process for consulting on social care\textsuperscript{19}. But with a predominant focus on addressing older people’s care and support needs VODG is concerned that disability provision could be sidelined.

There is general agreement on the urgent need to resolve this issue and whilst the consultation is welcome, it must not distract from the need for reform. The Care Quality Commission’s latest report on the state of health and social care warns that the current system is ‘straining at the seams’. The CQC’s chief executive Sir David Behan also described social care as ‘one of the greatest unresolved public policy issues of our time’ and said ‘the anticipated consultation on adult social care will provide the opportunity for Parliament, the public and professionals to consider how we can collectively develop an appropriately-funded social care system that can meet people’s needs, now and in the future’\textsuperscript{20}.


The challenge cont.

VODG members share the concerns of others that the government’s focus on Brexit may absorb the time of civil servants and mean that public debate focuses on arrangements for leaving the EU rather than domestic policy. The social care sector cannot afford to wait any longer for reform.

Disability Rights UK shares these concerns in relation to prospects of making progress on the rights of people with disabilities.

The Committee on the Rights of Persons with Disabilities (CRPD)\(^2\) has raised concerns about existing laws, regulations and practices that discriminate against persons with disabilities. Furthermore, the CRPD have pointed to Government’s lack of information on policies, programmes and measures that will protect disabled people from being negatively affected post-Brexit. Disabled people’s organisations hope for a clear action plan following the Committee’s concluding observations on the major human rights issues identified, but fear that Government attention is channelled overwhelmingly into Brexit, this hope will not be realised\(^2\).

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\(^{21}\)Committee on the Rights of Persons with Disabilities (CRPD, 2017) Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland. www.ohchr.org/EN/countries/ENACARegion/Pages/GBIndex.aspx

The solutions

VODG wants government to give assurances that plans to leave the EU will not mean that reform of the funding system for adult social care is not abandoned during the life of this Parliament. This means more than issuing a consultation and requires government to take steps to implement a sustainable funding solution.
About VODG and our members

VODG is a national charity that represents over 80 of the UK’s leading not-for-profit organisations who provide services to disabled people in ways that promote independence, choice and control. Our members work with around a million disabled people, employ more than 85,000 staff and have a combined annual turnover in excess of £2.8 billion. Our members are diverse in terms of their size, history and individual strategies, yet they share common values: promoting the rights of disabled people; shared approaches to citizenship; and user choice and control and in successfully delivering person-centred services.

VODG works on behalf of members to influence the development of social care policy, build relationships with government and other key agencies, promote best practice and keep members up to date on matters that affect service delivery. Our overarching aim is to ensure that VODG members, working in partnership with commissioners, people who use services and their families can provide progressive, high quality and sustainable services that uphold rights and meet the requirements of disabled people.