

# Draft national minimum eligibility threshold for adult care and support

## LGA and ADASS joint response

November 2013

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### About us

1. The Local Government Association (LGA) is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times, focusing our efforts where we can have real impact. We will be bold, ambitious, and support councils to make a difference, deliver and be trusted.
2. The LGA is an organisation that is run by its members. We are a political organisation because it is our elected representatives from all different political parties that direct the organisation through our boards and panels. However, we always strive to agree a common cross- party position on issues and to speak with one voice on behalf of local government.
3. We aim to set the political agenda and speak in the national media on the issues that matter to council members.
4. The LGA covers every part of England and Wales and includes county and district councils, metropolitan and unitary councils, London boroughs, Welsh unitary councils, fire, police, national park and passenger transport authorities.
5. We work with the individual political parties through the Political Group Offices.
6. Visit [www.local.gov.uk](http://www.local.gov.uk)
7. The Association of Directors of Adult Social Services (ADASS) represents Directors of Adult Social Services in councils in England. As well as having statutory responsibilities for the commissioning and provision of adult social care, ADASS members often also share a number of other responsibilities for the commissioning and provision of housing, leisure, library, culture, arts, community services and a significant proportion also hold statutory role of children's services Director.

### A note on our response

8. We welcome the opportunity to comment on this discussion document. The LGA, and ADASS have been at the forefront of calling for reform of our care and support system for a number of years and eligibility is a key part of the debate.
9. The issues that the discussion document covers are an important piece of the jigsaw. However, they are only one part and this response should therefore be read in conjunction with the joint LGA-ADASS-Solace response to the recent funding reform consultation.

## **The role of eligibility**

10. For half a century adult social care has been moving steadily away from a system characterised by centralised planning and control and toward a system that is based on principles of personalisation. Ideas of 'choice', 'control' and 'independence' are now rightly firmly established as defining features of the system we aim to deliver. As we have become more person-centred we have also focused more on joining up the public (and third) sector offers so that an individual's wellbeing is supported by the full range of universal local services. The current care and support reforms are an important opportunity to cement this model further and to both help keep people fit, well and out of the system, and reduce the need for more costly state interventions.
11. However, in recent years, and in response to the extreme financial pressures councils have faced, eligibility has assumed greater significance as one of the few levers councils have been able to use to manage demand and cost. This has only strengthened the status of adult social care as a rationed service. Trying to marry a universal approach to wellbeing with a social care system based on ever-restrictive eligibility has created a real tension in the system.
12. If we are to realise the aspirations contained in the white paper and Care Bill (including the capped-cost model of funding reform) we therefore need to rethink the role of eligibility. Doing so is necessary to resolve the tension between rationing on the one hand and a universal approach to wellbeing on the other. We believe there are two broad stages to this.
  - 12.1. First, making eligibility work in the short-term to support the significant changes proposed in the Care Bill that will come into effect in April 2015 and April 2016.
  - 12.2. Second, revisiting the fundamental purpose and function of eligibility in the longer-term.
13. In support of the longer-term work, both the LGA and ADASS look forward to engaging with the Department through its new 'Assessment and eligibility new framework working group' to test alternative models, as per the white paper commitment to doing so.

## **National eligibility from 2015/16**

### Balancing national and local inputs

14. We have consistently supported the idea of national eligibility. A national approach is required to achieve portability and to try and create more fairness and equality in the system. People with eligible needs in one part of the country should have absolute confidence that their needs will be recognised and met should they move to another part of the country. As the vast majority of councils are already operating at 'substantial' we therefore also support the national threshold being set at an equivalent level.

15. However, whilst we support the idea of portable *assessments*, we do not believe there should be an expectation that an individual's *package of care* will be portable as well (though we accept that may be the case in the interim period before the receiving authority is able to conduct its own assessment of the individual's needs). Decisions on how to meet eligible need must be made locally to take account of the specifics of any given locality (such as local unit costs, and local patterns of provision). We believe it is essential that this is made clear in any national campaign activity the government leads to raise awareness of the reforms. We must not create unachievable expectations.

### The definition

16. As stated above we support the national threshold being set at the same level that the majority of councils are currently operating at – 'substantial'. However, anecdotal evidence from the sector (including evidence gained from LGA-ADASS-DH funding reform engagement events and Care Bill workshop events) suggests that the proposed definition of 'substantial' is more generous than the current definition of 'substantial'. For example, current FACS guidance explains 'substantial' in terms of the individual's inability "to carry out the *majority* [our emphasis] of personal care or domestic routines". This compares to the draft regulations, which state that an adult will meet the 'substantial' criteria if they are "unable to carry out *one or more* [our emphasis] basic household activities".
17. Should the new threshold indeed prove to be more generous when applied locally then we can expect more people being eligible for services. This would carry an obvious cost implication beyond the amount the government has provisionally budgeted for (which covers just the cost of moving the small number of councils currently at 'critical' down to 'substantial'). To be clear, we are not arguing against a more generous prescription, simply that it must be fully funded from new money.
18. Furthermore, the basis on which eligibility is to be determined under the new system – 'risk to wellbeing', as opposed to the current 'risk to independence' – may also have an impact on the numbers deemed to be eligible (which again carries a cost implication – both in terms of increasing the number of potential council-funded individuals, and in terms of bringing forward the likely time required to reach the cap).
19. Although again anecdotal some of the feedback we have received from colleagues in the sector suggests a risk to wellbeing is an inherently more 'catch all' (and subjective) basis for defining eligibility than risk to independence. That is not to say the wellbeing approach is wrong – indeed, we support the idea given the founding principle of promoting wellbeing in Clause 1 of the Care Bill. However, we believe further work is required to think through the implications of this as there is the potential for the wellbeing definition to extend the council's adult social care duty beyond its current scope. We would be happy to discuss this further with the Department.
20. Finally, defining eligibility in terms of what the individual cannot do only reinforces the point about tension in the system as noted above. As currently drafted the eligibility regulations are very much based on a deficit model of care, as opposed to the asset approach outlined in the white paper, whereby the individual's personal

aspirations are valued and considered alongside the full range of support available from the community (including friends and family). We fully support this latter approach and therefore do not want the eligibility threshold to be given disproportionate attention; doing so will undermine the system's 'universal offer' which is important for keeping people fit, well, and independent.

### Gateway and assessment

21. In the new system from April 2015 eligibility will take on an added importance. Not only will it be the basis on which those with assessed limited financial means are able to access council-funded services; it will also be the basis for determining when an individual's care costs accrue to their care account. For this reason we anticipate a potential increase in legal challenge of local authority decisions on whether an individual's needs are eligible or not (particularly in cases where individuals have fluctuating need). We therefore question the government's assumption that "a modern legal structure will reduce the number of complaints". We accept that over time this may be the case as the workforce and the public develop a better understanding of the new system. But certainly in the short-medium term there is real potential for increased challenge and appeals (and the framework possibly being defined in part through individual case law).
22. To help avoid legal challenge and, more importantly, to help ensure as smooth a transition to the new system as possible, workforce training will clearly be important. The Impact Assessment for Care and Support Legal Reform proposes that social workers will need four days training in year one (2015/16), and two days training in year two (2016/17). We believe this may not be adequate given the sheer scale (and complexity) of the reforms that the workforce will need to be absolutely familiar with. It will also be important to ensure that agency staff are adequately trained.
23. Assessment clearly goes hand in hand with eligibility. The process will be important for helping people to understand not only the support available to meet eligible need, but also how ineligible need might be prevented or its escalation delayed. As we said in our funding reform consultation response, as demand for assessment increases we may well see (or need to see) a type of triage service develop. Through this, some people would receive what would effectively be a 'statement of pre-eligibility need' that would identify relevant support from universal services and informal support from friends and family.
24. Flexibility and a proportionate approach to assessment (along with adequate IT calibrated to meet the requirements of the new system) will be key to managing the increased demand for assessments, and we will need to consider whether a two-tier system is appropriate. For example, the significant numbers of people that will approach their council simply to start their care account running will not require a detailed assessment conducted by a professional social worker.
25. It may therefore be appropriate to contract out assessments for this group of people (though councils would still face associated costs). These 'simpler' assessments could then be conducted by, for example, providers or local third sector organisations who would play a new role combining elements of assessment, advice, signposting and support on self-assessment. However, such a two-tier approach is predicated on having a clear system with clear definitions.

## Carers

26. The proposals remove the previous qualifying conditions of 'regular' and 'substantial' in terms of defining who is a carer. However, more clarity would be helpful to ensure that support is given to all those who need it for continuing their caring role.
27. Section 4 of the draft regulations talk in terms of 'care' rather than 'care and support'. Not including 'support' appears at odds with the Care Bill as brought from the House of Lords, which states that the local authority's duty to assess a carer arises from their apparent need for 'support'. We think 'support' needs to be retained in the language as carers play a broad role beyond just 'care' – such as providing emotional support, or support with paperwork.
28. We question the term 'unable or unwilling' in 4(1)(a). 'Unable' would exclude situations where a carer is physically unable to care, even with assistance. However, that carer may still provide a role in terms of emotion (or other) support. 'Unable or unwilling' may be interpreted very differently by different people in different circumstances.

## **A design for the longer-term**

29. Two forces are at play in care and support: a personalised approach to achieving wellbeing; and eligibility for accessing the system. At best these are incongruous, at worst they are in conflict. Resolving this situation ultimately relates to how much funding is available; both for adult social care (which impacts on eligibility) and other council services such as public health, leisure and transport to name three (which impacts on wellbeing). These are, quite rightly, political decisions.
30. The key challenge for the future – and assuming a financial backdrop which continues to be extremely testing – is therefore how we (a) use available resources to best effect and (b) manage access to the system, to maximise independence and wellbeing for individuals.
31. Our starting point should be designing services on the personalisation model and providing much greater emphasis on changing the individual's journey through the system. This means helping people to be clear about their choices, signposting them to local support that can help maintain their independence, and assisting them – alongside our partners – to manage their own lives, with a greater focus on earlier intervention and prevention. For those people who need more support we need a clear outcomes-based approach which builds on their own abilities. Underpinning such a model should be a simpler eligibility system which, using current definitions for ease of reference, would effectively operate at two levels: critical/substantial to ensure eligible high end needs are met, and moderate/low to codify the universal offer (which would include assistance, support, advice and a simple level of services).
32. The current proposals for the regulations do not take us in this kind of direction. They are also unlikely to address the fundamental issue of inequity given the process of applying the criteria will remain inherently subjective. The two broad options for removing this subjectivity are to either develop a much simpler system

such as briefly outlined above, or to pin down the process so tightly that different interpretations of the regulations are not possible. We argue the latter is almost impossible (not to mention undesirable) precisely because the agreed starting position is the very broad definition of 'risk to wellbeing', which we believe is important in supporting people to have a good quality of life.