

Draft Care Act Regulation and Statutory Guidance

Response from ADASS in relation to assessment and eligibility

1. General responsibilities of local authorities

1.1. One of the challenges in the Care Act is making sure that the different sections cohere into a consistent approach to the main aims of the Act and specifically the provisions in Sections 1 & 2:

- Promoting individual well-being
- Preventing needs for care and support

1.2. The thrust of the statutory guidance should be a balance between a focus on people's assets and the outcomes they want to achieve, their needs and the personal responsibility they have for their own well-being. We are not sure that this balance is right in the current draft. There are occasions where a person has capacity but is making unwise choices about their wellbeing and how the best outcomes for them can be achieved. The guidance could usefully give reference to how individuals also have a responsibility to promote their well-being (e.g. an explicit statement that there is an expectation that people have a responsibility for their own well-being and that councils are able to take this into account when considering what duties they may owe to a person), what to do where the person continues to make unwise well-being choices and how this can be entered into as a partnership with the local authority.

1.3. It is very important that the regulations and guidance to sections 9-13 of the Act are seen in an overall context and that links are made with provisions for actions that may:

- a) **precede** a needs assessment and decision on eligibility (i.e. first contact and initial advice and information where a 'triage' process may take place that could determine whether an assessment is offered)
- b) **follow on from** a needs assessment and decision on eligibility (i.e. care and support planning and a personal budget)
- c) **run in parallel to** an assessment and decision on eligibility (i.e. a safeguarding enquiry into an allegation of neglect or abuse)

1.4. A simple diagram illustrating how these elements relate to each other, and the sequence of events or decisions that ought to link them, would be a helpful addition to the statutory guidance (or a tool to be provided through the practice guidance).

1.5. Throughout the guidance there is reference to other local authority duties, associated legislation and other services. These include:

- The requirements of the Mental Capacity Act
- Support to Carers
- Support for children and young carers
- Advocacy
- Integration approaches or joint working with health services

It would be helpful to 'map' these out in some way either in the statutory or practice guidance to assist authorities in seeing the whole picture. Showing how this guidance links to the forthcoming guidance to the Children and Families Act 2014 would be especially welcome.

2. Assessment for Care and Support

2.1. We agree with the statement in paragraph 6.1 of the statutory guidance that an assessment should be a crucial intervention in its own right. This could be more strongly emphasised at the outset of the guidance in terms of re-stating the link to assisting the realisation of areas of wellbeing in Section 2 of the Act, the focus on assets and not deficits (also mentioned briefly in paragraph 6.4 and later in paragraph 6.33) and not seeing a needs assessment as only a step on the process of determining eligibility for care support. It would also be helpful in the Communications Strategy, to support the introduction of the Act, that the benefits of assessments are articulated without a presumption that all assessments lead to funded service provision.

2.2. **First Contact** - We agree with paragraphs 6.18 to 6.24 of the statutory guidance that the initial response to someone with care needs can save time and costs on assessments later and be of benefit to the person concerned. However, first contact staff will not usually be drawn from the staff groups described in paragraph 6.72 (referring to assessors) and this makes it even more important that practice guidance and tools to support implementation are pitched at the right level to support councils in setting high standards for initial information, advice and assessment. Using the traditional methods of working through established professional development programmes will not reach all of the people involved in first contact so other methods need to be supported.

2.3. We support the need for a flexible approach to the way in which assessments are carried out and the extent to which any tool is used depending on the person's needs, circumstances and preferences. However, there must be a proper balance between that which is appropriate and that which is proportionate and the avoidance of 'light-touch' assessments where people may have complex needs. Some of the wording in paragraph 6.23 of the statutory guidance may give the wrong message in that regard and be at odds with the content of

paragraph 6.22. A person with a serious long-term condition might appear to present needs which are 'easily recognisable' (e.g. someone with a degenerative condition such as Motor Neurone Disease) but that does not mean it would necessarily be appropriate to carry out an assessment by phone or online.

A 'national' assessment tool may not be feasible but it would be useful to develop the concept of nationally accepted 'standards' for assessments – guidance or good practice examples of how an assessment should be conducted, its timeliness and what it should cover in order to achieve the aims of the legislation. ADASS would be happy to work with other bodies, including DH, to develop this idea further.

- 2.4. **Safeguarding** – We support the content of paragraph 6.25 of the statutory guidance that enquiries into suspected abuse or neglect, and any necessary action which follows that, should not be subject to the national eligibility criteria. Current practice can lead some practitioners to focus on eligibility and provision of services rather than making enquiries, enabling people to safeguard themselves and seeking resolution and recovery. We therefore welcome the intention of the new regulations to broaden the scope of initial enquiries and find solutions that are person-centred.

We are aware of concerns that have been expressed by some voluntary sector agencies that the proposed regulations would leave some people without support and that there have been calls for 'risk of abuse and neglect' to be added to the regulations for eligibility for services. We do not believe that this is necessary and consider that such a change would not be in the best interests of people at risk of abuse as it would re-establish the link to eligibility for care and support which could be unduly restrictive and time-consuming and thus hamper a swift and effective response.

Paragraph 14.2 of the draft guidance relating to safeguarding makes it very clear that one of the prime aims of adult safeguarding is "To prevent harm and reduce the risk of abuse or neglect to adults with care and support needs". Paragraph 14.4 goes on to set out 6 principles which underpin safeguarding and this includes "Prevention - It is better to take action before harm occurs." This is unambiguous in terms of the duties of local authorities and we would be able to provide many examples of cases where extensive packages of support have been put in place to reduce the risk of abuse for individuals. We do not expect that this practice will change as a result of the new regulations.

We would also like to stress that although the provision of care and support may be necessary in some safeguarding cases it is not the only option and in many cases may be less appropriate than supporting people to resolve their

circumstances. This lies at the heart of the Care Act – empowering people to seek the outcomes they want without having solutions imposed upon them. A good assessment is a service in itself and should be about identifying needs, risks, strengths and outcomes.

We are in agreement with voluntary sector colleagues about the objective – i.e. to prevent abuse and neglect wherever possible – but we do not agree that linking safeguarding support to the eligibility regulations is the way to achieve this. It might be helpful if paragraph 6.25 referred to the definition of wellbeing at the start of the Act which includes “protection from abuse and neglect.

2.5. We support the principle of increased use of integrated or combined assessments and so welcome paragraphs 6.62 to 6.66 of the statutory guidance. However, the content is relatively brief and more guidance would be helpful. There is concern about the synchronisation and timing of integrated assessments and a general worry that, as yet, relatively few NHS staff have engaged with the transformation in culture and practice that the Care Act involves for professionals across the health and care sector and not just those working in local authorities.

2.6. In response to Question 13 - *What further circumstances are there in which a person undergoing assessment would require a specialist assessor?* - Every assessment needs to be carried out by someone with the knowledge, experience and skills-set necessary for the purpose. This has always been a lawful principle of adult social care and is not changed by the Care Act. Assessment services will have to adapt e.g. to operate in a more outcomes focused way and to discharge duties of assessment for self-funders. This is not about being ‘specialist’, but about having an empathetic understanding of the experiences these groups have encountered previously with regard to adult social care.

Having said that, we think that the requirement for a specialist assessment could be extended to other areas such as:

- people with complex manifestations of autism/Asperger’s
- people with a complex condition or sets of conditions which may require ‘specialists’ not usually required within an assessment such as speech and language therapist or input from particular medical ‘specialists’ / psychologists
- assessments where people may have multiple needs such as mental health or learning disability and/or a physical impairment which may require the skills of a ‘specialist’ or ‘specialists’ to really ensure there is a good understanding of the needs of the person
- Mental Health Act assessments
- other people with fluctuating long-term health conditions such as Motor Neurone Disease or Multiple Sclerosis

However, we recognise that compiling a list can become a never-ending task and that not including every specific specialism could be counter-productive. If a list is included in the guidance, it is important to stress that this is illustrative and not definitive and emphasise that local authorities should focus on the specific needs of the person they are assessing and consider what other, specialist input is needed.

2.7. There is a lot of content in the statutory guidance on assessments and this makes the ordering of headings complicated. There is unlikely to be a definitive answer to this but the following suggestions are made:

- Bring forward paragraphs 6.25, 6.31/6.32 and 6.33 to the first section of the guidance as they are issues that need to be considered at the outset
- Place the section on First Contact (paras 6.18 to 6.24) alongside the section on Appropriate and Proportionate Assessments (paras 6.34 to 6.52) as the content has some overlap
- Place the section on Supporting the person's involvement in the assessment (paras 6.26 to 6.30) alongside the sections on Supported self-assessment (paras 6.51 to 6.58) as they have a functional link

3. Eligibility

3.1 We welcome the clarity of the 3 part test for eligibility set out in the regulations. This follows a logical progression and early testing with care managers has seen a generally positive response in comparison to the process required under the current guidance.

However, this will require a major change in practice and there are concerns about ensuring consistency of application across local authorities. The production of a good tool for determining eligibility, commissioned by DH through SCIE, would be very helpful in supporting the development of good practice.

3.2 The reference to 'some or all' basic care activities in paragraph 2 (2) (a) would be clearer if it read 'two or more'.

3.3 The words 'significant impact' on well-being in paragraph 2 (1) (c) need more clarification in the statutory regulations to avoid confusion and inconsistency. The development of more case studies is probably the most effective way of illustrating what levels of impact are meant.

3.4 Can the guidance clarify whether the word 'assistance' in paragraph 2 (2) (4) of the guidance includes verbal prompting ?

3.5 In relation to the specific questions in the consultation:

- *Question 14: Do the draft eligibility regulations, together with powers to meet other needs at local discretion, describe the national eligibility threshold at a level that will allow local authorities to maintain their existing level of access to care and support in April 2015?*

It is not possible to give a definitive answer to this question until we fully understand the outcome of the work by PSSRU working with care managers and looking at real cases and comparable costs. It is unlikely that we will know the results of that research, in terms of the possible cost implications, until this consultation period is finished. This leaves councils at risk of people's aspirations being raised (which is to be welcomed) but not having the resources to meet those expectations. There is therefore considerable concern amongst many local authorities that, in relation to the funding available to meet assessed needs, the new eligibility criteria may be too widely drawn, not clearly enough defined and linked to broad areas of well-being which thus are likely to lead to an unaffordable increase in responsibilities and costs. There is also an anticipated increase in demand from carers for assessments and a consequent increase in service demand.

- *Question 15: Do you think that the eligibility regulations give the right balance of being outcome-focused and set a threshold that can be easily understood, or would defining 'basic care activities' as 'outcomes' make this clearer ?*

There are different views about whether 2 (2) (a) should refer to 'basic care outcomes' or to outcomes which are more consistent with the objectives of person-centred planning. It is logical and desirable to carry forward the principle of personal outcomes into the determination of eligibility for care support.

However, we recognise that changing the basic care activities into outcomes is likely to involve more subjective judgements which could lead to inconsistency of application. We also understand the arguments put forward by organisations that represent people who need care services that the eligibility criteria must be unambiguous and deal with the necessities of life. The guidance therefore needs to be supported with case examples and good practice to ensure consistency of approach. This should be part of the work that SCIE and Skills for Care have been commissioned to supply.

We consider that 'basic care activities' are not aspirational and that care and support plans are more likely to be innovative and move away from a task and finish approach if they are based on personal outcomes (e.g. comparing the basic care activity of eating and drinking with an outcome of being well nourished and having a balanced diet that supports health). This suggests developing domains based on the areas of well-being set out in Section 1 of

the Act. Meeting basic care needs feels more like maintaining a status quo rather than improving outcomes for people.

For these reasons we support the use of basic care outcomes rather than basic care activities.

- *Question 16: Does the current definitions of 'basic care activities' include all the essential care tasks you would expect? If not, what would you add ?*

In relation to the basic care activities set out in paragraph 2 (3) of the regulations:

- we do not think that the needs of people with mental health problems are properly reflected in the care activities section. This would probably be easier to accommodate if care outcomes were used instead of care activities (see above) with a clear link to the impact on well-being in the guidance.
- it would be helpful to clarify in the statutory guidance whether assistance with or managing incontinence is included in either 'managing personal hygiene' or 'toileting'.
- we have said before that the inclusion of 'cleaning' is problematic. Councils would not usually provide assistance with cleaning (although there may be some extreme circumstances where this may be necessary – e.g. for people who 'hoard') so this does not sit easily with other care activities which are at a higher level of necessity. However, we accept that this may be a pressing issue for some groups of people and would welcome more dialogue on how this should be reflected in the guidance.
- reference is made to 'maintenance' of one's home. It would be helpful to have more clarity on this. Does maintenance refer to the physical repair and upkeep of the home or does it also include being able to sustain and retain that home ? Many people require assistance with budgeting, benefits, neighbour issues etc. in order to keep their home. If this second meaning is also intended it would probably be helpful to give it a separate heading and provide more explanation in the statutory guidance.

Whilst we want to emphasise the critical importance to well-being of having a decent home we also recognise that actions to maintain that home will usually not be within the remit of social care and this underlines the importance of engagement from other statutory, voluntary and private sector agencies to support people.

- *Question 17: Are you content that the eligibility regulations will cover any cases currently provided for by section 21 of the National Assistance Act 1948?*

Some councils have expressed concern about the position of some groups of people who may not be covered by the new regulations, namely:

- People who 'hoard' and make their home uninhabitable or create major nuisances for neighbours
- People who self-neglect
- People who misuse substances
- Rough sleepers

It would be helpful to have clarification on these points.

- *Question 18: Does the guidance adequately describe what local authorities should take into consideration during the assessment and eligibility process? If not, what further advice or examples would be helpful?*

There has been good consultation and involvement of councils by DH in the drafting of the statutory regulations and the guidance and many points raised have been included in revised drafts. However, as already stated, these will require a major transformation in culture and practice and there are concerns about the resources of councils to fully prepare for these changes in time for April 2015.

The guidance tries to strike a balance between prescription and local flexibility but this means that there are a number of uncertainties about how some processes will work in practice (e.g. supported self-assessments) and many questions about definition and interpretation that could lead to inconsistent implementation. Examples have already been given in this response where more guidance or case studies are needed. In addition, the quality of work commissioned from SCIE by DH to support implementation is likely to be of crucial importance.

Councils would also welcome the development of guidance on how best to manage overall caseloads and risk. FACS provides a four-tier model of risk [Critical/Substantial/Moderate/Low) that enables team managers and others to make practicable evaluations of priority. That is not so transparent under the new criteria, but the need to prioritise caseload risk still remains.

As well as drawing on comments from the ADASS Personalisation Network and a SCIE/ADASS workshop on 2nd July this response takes into account specific contributions from:

- Cheshire West and Chester Council
- East Sussex County Council
- Peterborough City Council
- London Borough of Southwark
- Stockport Metropolitan Borough Council
- London Borough of Sutton
- Swindon Borough Council
- Wiltshire Council