advice and support for older age
Independent Age

Independent Age's response to the Department of Health consultation on draft regulations and guidance for implementation of part 1 of the (Care) Act in 2015/16

15 August 2014

About Independent Age

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1. Summary

- **Information and advice –** Independent Age welcomes the emphasis on local authorities not needing to directly provide all elements of local information and advice, but instead through partnerships. The challenge for local authorities will be to develop plans and strategies that enable them to meaningfully deliver on their duty to "establish and maintain" an information and advice service.

- **Eligibility –** The draft regulations mean that hundreds of thousands of older people will continue to find themselves ineligible for state-funded care. We worry that determining eligibility by basing decisions on whether a lack of support will have a "significant impact" on an individual will make it difficult for local authorities to come to consistent judgements about entitlement to care.

- **Market shaping –** We welcome the emphasis on the need to commission appropriate, high quality care. The time is now right for the Department of Health to consider producing guidance for local authorities on how to arrive at a fair price for care.

- **Choice of accommodation and additional payments –** We welcome the strengthened regulations and guidance on care home 'top-up' fees, but we remain concerned the draft guidance inadequately supports choice, that review periods for monitoring top-up arrangements remain too vague, and that local authorities' responsibilities around providing information and advice also remain too weak.

- **Deferred payments –** The Department of Health needs to be clear as to who can benefit from the reformed deferred payment system. Crucially, we do not see it as the default option for everyone.

Independent Age priorities

a. Information and advice

- We strongly welcome the emphasis on local authorities' role "ensuring the coherence, sufficiency and availability of information and advice across the local authority area". The guidance takes a sensible approach, calling on local authorities to look beyond their direct role in providing information and advice.

- It is vital local authorities facilitate access to independent information and advice. Adults with care needs and their carers often need impartial information and advice, particularly where a person is seeking to understand their rights or wishes to challenge a local authority's decision.

- We are also pleased that the duty to provide advocacy can be applied where people need support to ensure they are able to access, understand and act on the information and advice available to them in their area.

- It is positive the guidance specifies local authorities should be looking to produce strategies and plans to help them fulfil their duties to establish and maintain an information and advice service. The challenge now is to make sure local authorities are provided with adequate guidance on how to go about actually designing and delivering these plans.

- Greater regard needs to be given to ensuring that local authorities ensure that all information and advice they are responsible for delivering or commissioning meets recognised quality standards.

- While local authorities must support people to understand paying for care, the guidance could be clearer about the precise circumstances a local authority would typically need to refer a resident to a regulated independent financial adviser.

b. Choice of accommodation and additional payments (top-up fees)

- In preparing our response we also interviewed 13 local authorities about their current approach to managing care home top-up fees (research provided to the Department of Health separately on 24 July 2014).

- We strongly welcome the steps the Department of Health has taken to date, in particular, strengthening in regulations the legal requirement that third parties and local authorities must always enter into a written agreement and local authorities must therefore check whether "payers" are "willing and able" to make a top-up.

- However, we remain concerned that the guidance continues to provide local authorities too much discretion regarding the appropriate arrangements for reviewing top-ups. The draft guidance currently states these reviews should take place "from time to time". Guidance must instead provide clearer directions to local authorities as to how often reviews should take place in order to deliver consistent outcomes for people entering into top-up agreements.

- We are concerned that in specifying that local authorities must offer "at least one option" of care home within the cost of an adult's personal budget, this provision will neither facilitate an adult's right to choose between different homes, nor support the market shaping intentions of the Care Act. We can't see anything in the guidance that would prevent local authorities from offering just the one care home place within an adult's personal budget, even if it is a home rated by the Care Quality Commission as inadequate or in need of improvement. This section must be amended to offer adults a range of options within the cost of a personal budget.

- The guidance helpfully clarifies that any rises in the cost of a care home placement may not be shared equally between the local authority and the person paying the top-up. It is vital that local authorities explain this principle at the outset of a top-up agreement as a matter of course. However, local authorities must also look to signpost residents to independent information and advice so they can get impartial information about agreeing to a top-up and the key issues they need to be aware of in terms of the consequences of agreeing to a top-up.

c. Eligibility

- The principle of a national minimum eligibility threshold is a positive development, but at present, the draft regulations set this threshold too high. The policy objective that the majority of local authorities will continue to operate at an eligibility threshold that limits who can qualify for state-funded care and support to only those adults with the most substantial needs will continue to leave hundreds of thousands of older people outside of the care system and the care cap.

- A national eligibility threshold set at the equivalent of 'substantial' under the current Fair Access to Services framework will 'hard-wire' the present *status quo* and make any future moves towards a more inclusive care system more difficult. We worry the 19 local authorities who currently provide care to adults with 'moderate' needs will find it increasingly difficult to fund care and support at these more generous levels.

- While we strongly welcome wellbeing as an organising principle for social care, in its draft eligibility regulations the government must be clearer how it sees local authorities giving regard to individual wellbeing where an adult only unable to complete one basic care activity is deemed ineligible for care. We are worried that by placing a condition on the extent to which an adult experiences detriment to their individual wellbeing, so that they have to demonstrate the inability to complete an activity has "a significant impact on [the] wellbeing" will create additional hurdles to receiving support when the care system is already widely regarded as being in crisis. At the very least, the government needs to define in regulations what is meant by "significant impact" so the eligibility criteria can be interpreted consistently.
- We welcome the government's attempts to design an outcomes based approach in social care, but we want to see eligibility criteria that are objective and measurable, which lead assessors as far as possible to reach consistent judgements on eligibility. It would be more sensible if discussions about individuals' preferred outcomes took place once eligibility has been determined as part of the care and support planning stage.

2. Consultation questions

Preventing, reducing and delaying needs

3. Is the description of prevention as primary, secondary or tertiary, a helpful illustration of who may benefit from preventative interventions, when and what those interventions may be?

Our main concern with regard to prevention is that local authorities might believe they can fulfil their duties to prevent, reduce or delay care simply by signposting residents to information and advice, when in fact we see the provision of information and advice as just one means of preventing care needs.

While we welcome the reference to information and advice as an example of 'primary prevention', local authorities must think of their duties under Clause 4 of the Care Act (information and advice), as distinct from their duties under Clause 2 (prevention).

Guidance must be clear that while information and advice can be a suitable preventative service, it is not an appropriate preventative response in all cases. Similarly, guidance must specify that unlike some chargeable preventative services, information and advice must not be chargeable, with specific exemptions, such as regulated financial advice.

Although there are many circumstances where it makes sense for adults with established health conditions or complex care needs being helped to access intermediate care and reablement, many of these people will continue to need care and support even on completion of a successful programme of rehabilitation or reablement.

People should get the preventative help they need – and this should continue to be made available to them where this is appropriate – but prevention must never be used as a tactic to absolve the local authority from properly assessing an adult's ongoing care needs and putting in place a personal budget where an adult clearly has complex support needs.

Information and advice

General feedback

- We strongly welcome section 3.19 of the guidance and the point that the duty to establish and maintain an information and advice service will not be met through the use of digital channels alone.

- The guidance is potentially confusing in how it explains accessibility as the relevant points are separated out in different sections (3.17-3.21) and then later on, 3.26-3.30. For the purpose of clarity, the Department of Health should consider reworking these sections to distinguish between accessibility (providing information and advice in a range of accessible formats) and availability (making sure this information and advice is available through a wide range of channels).

- In 3.18, it is important that a comprehensive list of the most typical accessible formats is set out in full, including large print, audio and Braille. As these preferred formats are highlighted in other sections of the draft guidance there is no reason not to cite them here. Given continued poor practice in terms of providing accessible formats to adults with sensory impairments and learning disabilities, it is also important to provide 'real world' examples to illustrate when a local authority should make a reasonable adjustment.

- Given the legally binding nature of the Equality Act 2010 (Public Sector Equality duty) to provide information and advice in accessible formats and to make reasonable adjustments, we recommend that 3.18 should be amended from stating that "reasonable adjustments '*should'* be made", to "'*must'* be made".

- Paragraph 3.19 of the guidance on information and advice should be clearer that when a local authority is instructed that it 'should' provide information and advice content in the "manner preferred by the person",

this strictly refers to non-disabled people who simply have a personal preference for information and advice delivered in a particular way. Where a disabled adult needs a reasonable adjustment to take place to access ***any*** information and advice, then the requirement in 3.18 clearly still pertains: the local authority *'must'* provide information and advice content in the manner disabled adults prefer.

- We also feel that the guidance would benefit from an illustrative case study emphasising the way in which a local authority frontline worker is typically expected to consider information and advice needs from the adult or carer's perspective. This would include asking them up front how they would like to receive information and advice, and stating it can be made available in a range of formats. This would be a genuinely person-centred approach.

- We strongly welcome the reference to independent advocacy in paragraph 3.21, but feel this point could be strengthened further still. Information and advice on the right to an independent advocate in certain circumstances will prove key to how many adults, including those with dementia, then go on to access or experience other parts of the care and support system. Subsection 67.2 and 67.4 of the Care Act note that the local authority "*must*" arrange for an independent advocate should a person experience substantial difficulty in understanding, retaining, using or weighing information and that person is involved in core parts of the care and support process. Section 3.21 in the guidance therefore needs to more closely reflect this duty where information and advice is crucial to support a person's engagement in the care and support process.

- We welcome the commitment to providing proportionate information and advice. However, it must be accepted that some adults and carers will never be or always struggle to access information and advice online, and although the draft guidance contains strong statements about digital channels not necessarily working for everyone, it is notable that the list of organisations local authorities can direct people to in section 3.63 only contains websites in the main. We recommend this section is amended to include more helpline numbers, so for example the Independent Age advice line, 0800 319 6789.

- We welcome references in 3.17 and 3.26 to the NHS Information Standard and the Crystal Mark on plain, written information, but note that these points are all made in the two subsections on accessibility, when they relate just as much to the effectiveness and accuracy of information and advice. We believe references to the NHS Information Standard are useful enough, but ultimately the standard is a poor fit for social care, intended as it is mainly for healthcare. We do accept that it is difficult to pinpoint common and agreed quality standards for all aspects of information and

advice provision, but believe nonetheless there are other standards and benchmarks the guidance could make reference to, not least for non-written forms of communication, including the AQS legal standard for advice services and other relevant benchmarks for telephone advice.

- We welcome references at 3.28 on the accuracy of information and advice "provided within the service", but this approach is labour intensive, and guidance says nothing about the accuracy of, and to what extent, independent information and advice the local authority is directing people to, remains up-to-date. We feel a reference to quality information and advice should be included in the Promoting Quality subsection in the market shaping and commissioning chapter (4.18 – 4.29) since many local authorities will be commissioning agencies to not only provide direct care, but also information and advice.

5. Views are invited about how local authorities should co-ordinate and target information to those who have specific health and care and support needs.

Local authorities need to understand the many diverse ways people obtain information on care. In research Independent Age undertook for Think Local, Act Personal, we noted that the way individuals obtain information and advice is highly personal, dependent on the 'cloud of support' that surrounds them. For each person this will be a mix of individuals, health and care professionals, charities, carers, local groups, friends, and so on.

In planning to meet their duty to deliver and sustain a local information and advice system that meets the needs of all individuals – including those with specific health and care and support needs, local authorities must reflect on the networks individuals are likely to use within their strategic planning and plan services accordingly – ensuring that gaps in provision are filled where necessary.

We recognise that some localities will not have organisations to provide specialist advice about specific health needs as the number of potential clients locally will always be quite small. In such circumstances, guidance or supporting materials should be clear that local authorities should refer people to either national advice and information agencies, or work collaboratively with other local authorities to deliver a service.

In addition, specific groups that local authorities should have regard to in section 3.15 are residents in care homes and adults with terminal illnesses. Both groups require information and advice that explains both health and social care entitlements, including entitlement to NHS Continuing Care. We welcome subsection 3.16 listing examples of information and advice specifically of benefit to carers. We recommend that this list also includes information and advice on entitlement to Carers Allowance and carers' rights to an assessment.

In planning to meet the information and advice needs of people with specific health issues, local authorities must continue to work through the Health and Wellbeing Board and engage with local Clinical Commissioning Groups. The Health and Wellbeing Board is the sensible forum to ensure that information and advice is delivered in a joined-up way and draws on the expertise of professionals across both health and social care.

6. Does the guidance provide sufficient clarity about the active role that the local authority must play to support people's access to independent financial advice, including regulated financial advisers?

We welcome the statement in 3.34 that local authorities should sometimes provide financial information and advice directly, but that local authorities also have an important role in facilitating access to independent information and advice, 'where it would not be appropriate for a local authority to provide it directly'.

However, both these points in the more detailed section on 3.46 (Facilitating access to independent financial information and advice) need further explanation to guard against a risk of local authorities either uniformly signposting or actively referring adults to a single preferred provider.

It is not entirely clear how the Department of Health intends this act of 'facilitating access' to work because in 3.46 the guidance rather cryptically states: "local authorities may not wish to make a *direct* referral to an individual independent financial adviser". We believe the guidance should instead highlight local authority's role in facilitating access to a *choice* of regulated financial advisers, and in doing so should use Society of Later Life Advisors (SOLLA) to help facilitate that choice.

We believe that by suggesting local authorities can make a direct referral to a single adviser that there is a risk it could result in local authorities being liable should such a referral cause a person to challenge the information and advice they received on the grounds they were mis-sold a financial product.

The guidance is not always clear (3.41 is an example) when it would make sense for local authorities to facilitate a person's access to independent financial information and advice, that is generic rather than specialist or regulated in nature and does not contain information or advice about specific financial products. For some people support from a service like the Money Advice Service in terms of money management will suffice.

The guidance should contain clear, simple case studies that demonstrate to local authorities the circumstances where it would be preferential (and conversely,

inappropriate) for a local authority to refer directly to a choice of regulated, independent financial adviser.

Finally, we warmly welcome the statement in section 3.39 that local authorities must provide information to help people understand their charges, including top-ups.

However, one of the statements – "in the case of top-ups, (a) local authority *should* ensure someone is willing and able to pay for them" – does not correspond with the legal duty set out in 5 (1) (a) of the Choice of Accommodation Regulations, which clearly states a 'payer' needs to be able and willing to pay a top-up before the additional cost of a care home place can be agreed. So section 3.39 needs to state that "in the case of top-ups, a local authority *must* ensure someone is willing and able to pay for them".

Market shaping and commissioning

We strongly welcome the development of new guidance on market shaping, which rightly emphasises that local authorities should focus on services being outcomes focused, appropriate and of a high quality.

There are welcome references to the type of care local authorities should be looking to commission, with a belated recognition in guidance that routine 15-minute care visits are not appropriate for people with intimate care needs.

4.27 on remuneration of care workers could be strengthened, however. Baroness Kingsmill in her recent review on workforce issues identified somewhere in the region of 200,000 care workers not getting paid the National Minimum Wage. At least with respect to their own (directly employed) care workers, we believe local authorities should work towards ensuring remuneration is at least sufficient to comply with the national minimum wage (NMWR) legislation for hourly pay or equivalent salaries.

Tackling systemic non-compliance with the national minimum wage legislation seems to be one of the driving objectives behind the government's new Low Pay Commission (National Minimum Wage) Bill, charging higher penalties where employers fail to pay their staff the minimum wage. We don't believe this guidance on the Care Act should be any weaker than the new legislation planned in this area, at least not in terms of the messages it sends out about the need to root out non-compliance with NMWR.

We worry that the sections on staffing feel rather under-developed, when the Care Quality Commission consultation on guidance for providers on meeting their fundamental standards states explicitly that providers have to "deploy enough suitably qualified, competent and experienced staff to meet all regulatory requirements" described in Part 3 of the Health and Social Care Act

2008 (Regulated Activities) Regulations 2014. We believe the regulations that providers need to meet should be complemented by similar commissioning responsibilities for local authorities, so they make sure they are considering how to commission services that have enough suitably qualified, competent and experienced staff. The language used in both sets of guidance now under consultation should be similar so local authorities and providers in effect work towards the same goal.

We also believe the government's Care Certificate for new care workers should be highlighted in the guidance as one obvious benchmark local authorities should take into account when they seek to commission providers. In section 4.26 the guidance should be amended so that it states local authorities should be looking to make sure the providers they contract with are supporting their new care workers to achieve the Care Certificate within their first 12 weeks.

Where we feel this section of guidance is currently weakest is in relation to setting usual costs for care and calculating a fair rate for care that minimises the need for large third party top-ups in residential care. Section 4.28 merely references the Laing & Buisson toolkit for local authorities to understand how to go about setting a fair price for care. This section needs expanding, not least in light of the most recent High Court ruling concerning Newcastle City Council's payment of care home fees, which led to a challenge by care home provider Abbeyfield. We feel a good next step would see the government looking to highlight a range of appropriate ways in which a fair price for care *could* be calculated, even though we recognise the need to avoid being too prescriptive.

Mr Justice Norris concluded that in this particular case, the local authority hadn't shown that its method of calculating a fair price for care was "sufficient" to inform itself as to the actual costs of care so that it could have due regard to them. The ruling focused in on what constitutes a reasonable local authority-arranged fee for residential care. We believe the draft guidance needs to be amended to clarify that local authorities have to be transparent about their method for calculating minimum fee levels to provide quality care and that in doing so local authorities need to give regard to the real, market costs of care.

In a climate where it has become normal for providers to take disputes over the payment of fair rates from local authorities to judicial review, we would strongly advise the Department of Health to pursue research in this area to support local authorities to better determine how to reach a 'fair price' for care.

Our recently published research into how local authorities manage care home top-up fees noted how actively maintaining good relationships between local authorities and providers can work to reduce the need to agree top up fees that get paid to cover the costs of residential care.

Needs assessments and carers assessments

13. What further circumstances are there in which a person undergoing assessment would require a specialist assesser? Please describe why a specialist assessor is needed, and what additional training is required above the requirement for the assessor to be appropriately trained to carry out the assessment in question.

Whilst we think questions concerning specialist assessments are important, we have other concerns regarding the assessment process which we feel need addressing.

We welcome that local authorities must ensure that assessers are adequately trained. This is particularly important where a local authority has chosen to outsource assessment and review functions.

We remain concerned however about the intention to use 'light touch' and supported self assessment and telephone-based assessments as these may unintentionally filter people with care needs out of a full assessment.

The government must deliver clear guidance as to when use of these assessments is appropriate in the context of delivering personalisation and how a person can request a full face-to-face assessment or review of needs as an alternative.

Focusing specifically on light-touch financial assessments, the Department of Health must reflect on the outcome of the 2010 judicial review against Cornwall County Council which criticised the local authority for not properly carrying out an assessment of the person's disability related expenditure by doing a home visit. Such costs should be considered if they are reasonable expenditure needed for independent living. We worry light-touch financial assessments will overlook these important details on disability related expenditure.

Additionally, people who undertake self assessment must be assured that the local authority is taking their views about their needs seriously and cannot dismiss them out of hand.

Guidance also needs to specify that all determinations on assessment and review (written or otherwise) include clear references on a person's right to challenge an eligibility decision and how to do this. Assessment guidance also needs to clarify situations where specific information and advice should be provided as part of the assessment process, particularly to support a person to address identified unmet needs.

Eligibility

14. Do the draft eligibility regulations 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? If you believe they don't please explain your reasons for this.

We agree that the draft eligibility regulations describe the threshold at a level that will allow local authorities to maintain their existing level of access to care and support. However, we think the policy objective to maintain existing levels of access to care and support is a bad mistake.

Countless reports, including recent reports from the National Audit Office and the Public Accounts Committee, highlight the increasing pressures on the system and the high levels of unmet need. In their current form, these eligibility regulations mean many people will continue to find their care and support needs remain unmet.

While we welcome wellbeing as an organising principle for social care, in its regulations on eligibility, the government must be clearer how it intends wellbeing to apply to entitlement to support.

It makes sense for an assesser to consider the impact not being able to complete a particular activity has on an individual's wellbeing, but we worry that multiple hurdles are now being introduced that for hundreds of thousands of older people will continue to act as a bar to getting local authority care and support.

Where the achievement of one basic care activity is fundamental to an adult's sense of wellbeing, so for example being able to maintain personal hygiene, it's difficult to see how these regulations give regard to their wellbeing now the proposal sees an adult needing to demonstrate they are unable to carry out "some or all" basic care activities.

We are worried that inclusion of a condition evaluating whether there is "a significant impact on [the] wellbeing" of the individual will create additional hurdles to receiving support in that a person will not only have to demonstrate a need for support, but that not having the need met will lead to a "significant" impact on their wellbeing. Unless "significant" is defined in the regulations, it is difficult to see how the drive for greater consistency can be achieved.

It is scarcely believable that someone who is not able to independently toilet oneself would have to demonstrate this then has a significant impact on their wellbeing. So the guidance needs to be clearer about the *types* of need it would make sense for assessors to consider in closer detail and judge in terms of an adult's inability to complete certain activities and whether this warrants a discussion about "significant impacts".

It would clearly be disproportionate and unhelpful for an assesser to labour through a set of questions that seeks to establish whether each and every need, including being unable to eat and drink, toilet oneself and so on, does in fact have a significant impact on an adult's wellbeing. Guidance could usefully distinguish between those activities (so for example not being able to feed oneself) that will always have a significant impact on an adult's wellbeing, and other activities, such as accessing and engaging in work, training, education or volunteering, which assessors may want to consider in more detail in terms of an adult's inability to complete them and the subsequent impact on their wellbeing.

Additionally, we worry that the new legal framework might unintentionally create a hierarchy of needs with personal care outcomes (or "basic care activities") prioritised over other care outcomes – a regressive step in comparison to the present Fair Access to Care Services framework.

The guidance is not always as clear as it could be, so for example in section 6.87 (b) it could be clearer that all activities included within the scope of the eligibility regulations are to be judged on an equal basis, with the word "or" separating each paragraph.

The use of the term "some or all" basic care activities in regulations (outcomes an individual cannot achieve) without a clear definition as to what the Department of Health means by "some" (ie 2.2(a)) is highly problematic.

At the very least, "some or all" needs to be clearly defined as "two or more" outcomes an individual would need to demonstrate they cannot independently achieve so the criteria are interpreted consistently.

Alternatively, and this is the better approach in our view, "one or more" outcomes would work as a better phrase and would better fulfil local authorities duties to promote individual wellbeing. By just limiting care to adults who cannot complete two or more activities, local authorities risk leaving behind thousands of older and disabled people who experience severe difficulties in one particular area of their life, which begs the question how their wellbeing will be promoted.

In summary, we agree that the eligibility regulations attempt to maintain the status quo, but we think this is highly problematic. Specifically, we have concerns that a number of sections in the regulations and guidance remain unclear and may lead to inconsistent interpretations across local authorities.

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?

Dealing with the focus on outcomes, we do not feel that an outcomes based approach is achievable at the assessment stage. We want to see eligibility criteria that are objective and measurable, which lead to consistent judgements on entitlement to care and support. We would therefore prefer to see discussions about preferred outcomes taking place once eligibility has been determined - as part of the care and support planning stage.

Attempting an outcomes based approach at the assessment stage may see local authorities adopting local 'shadow' criteria based on an individual's actual needs in order to meaningfully determine eligibility.

Trying to frame the ability to eat and drink as part of the wider outcome to "manage or maintain nutrition for good health" is likely to lead to irrational decision-making about eligibility.

Different local authorities would in all likelihood reach unacceptably varied judgements about which outcomes an adult can and can't achieve. Assessing whether certain needs can be met, or certain activities completed, is a much more straightforward approach.

Attempting to identify whether an adult is able to maintain personal hygiene and everyday appearance is fraught with difficulty, as is expecting an assesser to determine whether an adult can manage or maintain nutrition for good health. Considering outcomes in this way could lead to inappropriate and random value judgements which give scant regard to the actual tasks or activities an adult can independently complete.

We are concerned that the new regulations do not refer to a person's need to stay safe from abuse as an outcome in its own right. The regulations need to be explicit and make sure that a person is able to stay safe from abuse is a "specified outcome" in 2.2. The present Fair Access to Care Services criteria states that a person will be eligible at a "substantial" level of need "when 'abuse or neglect has occurred or will occur'", and the new eligibility framework must ensure entitlement to support on this same basis.

We strongly believe that in carrying out an assessment that a person's social, psychological, emotional needs should be taken into account in determining eligibility. We are concerned that the current guidance does not specify this.

We also worry that a strict outcomes focus could make portability problematic where local authorities have differing views on what constitutes a particular outcome.

16. Do the current definitions of "basic care activities" include all the essential care tasks you would expect? If not, what would you add?

We believe the current definitions are reasonably comprehensive but need to be extended to cover communication needs.

In defining "basic care activities" as "essential care tasks that a person carries out as part of a normal daily living", the Department of Health must also consider including 'prompting and supervising medication' as a category as this is an essential task that is regularly undertaken by care workers – distinct from the medical need of 'administering medication'.

The Department of Health should also 'unpack' the phrase "the cleaning and maintenance of one's home" (2.3(g)) as this covers a range of tasks that may include cleaning, repairs, financial management, and the paying of bills.

Similarly guidance should be clear that care and support to carry out shopping is a specific care need, and should therefore be considered as part of the outcome that looks at "accessing necessary facilities or services in the local community" (2.2(d)).

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

The eligibility regulations do not specify how a specified outcome or basic care activity should be met, including through specifying when a person should enter residential accommodation.

With the abolition of Section 21, accompanying guidance around how to meet needs and outcomes should clarify to local authorities how eligibility regulations relate to the setting of realistic personal budgets (and independent personal budgets) that enable people to afford placements in residential care, and how local authorities should manage situations where a person's chosen way of achieving their outcomes is to move into residential accommodation.

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?

In seeking to determine eligibility for care and support, the guidance must be clear preconceptions about a person's situation must not influence the type of assessment they receive, so for example telephone-based or 'light touch' assessments. Assessments should all work towards the same objective, no matter how they are undertaken and be designed to identify all potential needs.

They should look to reach consistent judgements on eligibility, regardless of whether an adult currently gets support from a carer and no matter what their current finances.

We note that subsection 6.23 explains that at "first contact" with an individual, "local authorities should be aware of the risks" of deciding on a 'light touch' assessment based on "an appearance of need for support". This point is crucial. It is particularly pertinent now local authorities can outsource assessment functions.

It is critical in such circumstances that local authorities retain clear oversight and adequate control over external assessment processes to ensure that assessments remain proportionate and recognise issues around mental capacity and underlying needs. In finalising guidance the Department of Health should reflect on the concerns of the Public Accounts Committee report which criticised the outsourcing of assessment processes for disability benefits, and lead to recommendations that any new systems and policies should be fully tested, and that any assurances on taking over assessment functions made by third parties are based on strong evidence.

We note that the case study of Sally (p. 75) is designed to help local authorities consider a person's strengths and capabilities. Whilst we agree it would be helpful to consider strengths and capabilities, again we believe this would be more appropriate at the care and support planning stage. We also worry that that the case study presented is far too simplistic, and doesn't specify whether Sally has an entitlement to support.

One final critical issue that the regulations and guidance must address are an adult's underlying needs, so that where people do not recognise their own needs or struggle to articulate their needs assessors take extra care to identify these needs in order that they can reach a reasonable judgement on adults' entitlement to care and support.

For example for an adult who compulsively hoards to the extent that they can no longer maintain personal hygiene, but does not consider this a problem, guidance needs to highlight where it is the assessors' role to nonetheless explore which outcomes are at risk of not being achieved. Although the guidance touches on this, in an environment in which many assessments take place through outsourced organisations, we worry many older people's presenting needs and attitude to their wellbeing could prevent them from receiving a full and thorough assessment.

Charging and financial assessment

'Light touch' financial assessments make sense in some circumstances. However, local authorities should involve the person themselves in deciding their preferred mode of assessment. An adult should be able to request a full financial assessment even if local authorities doubt full financial assessments are always proportionate.

12-week property disregard

22. Do you agree that we should adjust the operation of the 12-week property disregard to better support those most at risk? and 23. Would you prefer to see the current approach retained?

We welcome the inclusion in the Care Act 2014 regulations the principle (first set out in LAC 2001(10)) to continue to allow people moving into permanent residential care a window of time or 'breathing space' in order to consider whether or not to sell their property or to review other alternative financial options.

This 'space' also gives a much-needed buffer period within which the main home can be attempted to be sold without forcing the resident to exhaust all their savings or that of a third party or to run up an unsecured debt with the care home unnecessarily.

We welcome the emphasis on better support for those who have to make a permanent move into a care home at a time of crisis or to consider selling their property due to "unexpected changes in circumstance", such as a bereavement and as a result are suddenly faced with difficult choices about funding their future care.

However, we are concerned that the changes now under consultation specifically disadvantage self-funders already resident in care homes. It is a shift to a discretionary and as a result, less transparent, position with regards to those self-funders already resident in care homes. In Annex B on treatment of capital the guidance needs to be explicit how existing care home residents might be treated under the new rules.

Previously, every self-funding resident in care home accommodation whose savings had reached the level that entitled them to local authority support would be entitled to the 12-week property disregard.

From 2015, a self-funder's ability to plan ahead disqualifies them from automatic entitlement to the 12-week disregard. However, achieving success in planning

and preparation is reliant on self-funders first having prior access to quality advice and information at an early stage. We are concerned that if this does not occur, self-funders may risk using up all their assets including those under the lower capital limit if the property takes time to sell or risk running up debt with the care home.

We are worried about those residents with non-housing assets sitting just above the upper capital limit who may have moved into a care home for only a relatively short period before their savings reduced down. They may not have had adequate time to be able to plan or prepare for this change in circumstances appropriately.

However, under the proposed adjustments, they would miss out on automatic eligibility for a 12-week property disregard. Another situation would be if a person has been entitled to NHS Continuing Health Care in a care home and this is then withdrawn. They may become a self-funder for the first time but have had no time to plan. It is important that the discretionary disregard considers "sudden and unexpected" changes in a person's care requirements as well as changes in their financial circumstances.

The introduction of a discretionary disregard for self-funders runs the risk of greater inconsistency in different local authority areas. As a result, if the discretionary element remains, for greater transparency, it is vital that local authorities must provide a written breakdown of why they have refused to exercise their discretion to offer the 12-week disregard in individual circumstances. Decent access to independent information and advice for self-funders will also be key.

Other disregards

26. Should pre-paid funeral plans be disregarded and if so should there be a limit to the size of plan that can be disregarded? If so, how much?

We would welcome the introduction of a disregard for pre-paid funeral plans in the financial assessment for a permanent care home move. It would formalise the current situation across the country where many local authorities already disregard the plans in the financial assessment as per the treatment for Pension Credit capital rules. It would provide much-needed reassurance for older people moving into a care home who have saved all their lives that their funerals can be carried out in accordance with their wishes without placing a financial burden on their families.

Choice of Accommodation and additional payments (top-up fees)

In preparing our response we also interviewed 13 local authorities about their approach to care home top-up fees.

We welcome many of the changes the government has proposed in this area, not least placing the rules on choice of accommodation and additional payments on to a firmer statutory footing through the making of regulations.

In terms of specific changes to the *Charging and financial assessment guidance* we propose the following amendments:

- 8.29 – It is vital that local authorities read and understand Annex A on top-up fees in the delivery of their duties. The final sentence of 8.29 needs to be strengthened so that local authorities *"must have regard to"* the guidance at Annex A, as opposed to the current *"should ensure they read"*.

- 8.33 – Offering "at least one option that is affordable within a person's personal budget" is not sufficient in terms of supporting choice. This sentence should be amended to offer instead *"a range of options".*

Recommended amendments to Annex 'A' on Choice of accommodation and additional payments

- 10 – Reflecting points concerning personal budgets made in other parts of the guidance (11.9 and 11.24 of the personal budgets guidance), a local authority "*must*" take into consideration cases or circumstances where the "cost to the local authority may need to be adjusted to ensure that needs are met."

- 11 – Reflecting our amendment to 8.33 in the Charging and financial assessment guidance (above) this section should instead state that "the *local authority should aim to offer a range (ie more than one) of suitable different types of* accommodation that could meet the person's needs in full within the amount in their personal budget".

  Supporting this amendment, the final sentence should include the following inserted text "Only *if* a person has chosen a more expensive accommodation *when the LA could also offer a suitable and more affordable alternative* can a 'top-up' payment be sought. Paragraphs 19 and 20 set out guidance on Additional Costs".

- 20 – We recommend further clarification about situations where the local authority must meet the additional cost in subsection 24. It must be clear that where this results in an increase in cost to the local authority, they are responsible for meeting this: "The following sections of guidance only apply where the person has chosen a more expensive setting. Where someone is placed in a more expensive setting solely because the local

authority has been unable to make *suitable* arrangements the personal budget must *increase in order to* reflect this amount. *The local authority would pay the total cost, less the financial assessment.* The person would then contribute towards this personal budget according to the financial assessment. The additional cost provisions must not apply in such circumstances."

- 24 – It is important that local authorities are clear that should a top-up arrangement fall through, that they are liable for the total cost of the placement and must consider the risk of moving a person in any reassessment of needs. The first sentence of subsection 24 needs to be amended: "Ultimately, if the arrangements for a 'top-up' were to fail for any reason, the local authority would need to meet the *'total'* cost or make alternative arrangements, subject to a needs assessment *and consideration of the risks of a move*."

- 29 - Guidance must clearly imply through the way in which bullets are ordered what the 'default' option is for paying a top-up. For additional costs, the third bullet point should be put first and clearly highlighted as the default option, i.e. the person paying the 'top-up' pays to the local authority.

- 31 – Guidance on the provisions for reviewing the top-up agreement should be stronger so that it states that an agreement to make a 'top-up' payment must be reviewed *in a way agreed by the third party, without any assumptions being made about the preferred frequency of reviews.*

- 32 – The guidance could be clearer that in the majority of cases the most appropriate review arrangements will take place annually, at the time the resident's care needs are reviewed and the annual assessment of finances takes place.

- 33 – We suggest that the final sentence of this subsection must reiterate to local authorities the importance of evaluating the risk of moving a person in any reassessment triggered by the ceasing of a top-up: "As with any change of circumstance, a local authority must undertake a new assessment before considering this course of action, including any assessment of health needs and have regard to the person's wellbeing *and the risks associated with a move*".

- 35 – We recommend here that guidance should state that the contract/written agreement should include a commitment by the local authority ensuring than any percentage increases to the top-up are reasonable and should not exceed a certain amount each year, in order to mitigate the danger of unfair fee increases and minimise the danger that the overall top-up payment agreement would fail. To assist local authorities we believe there is a strong case for the Department of Health

to develop a model written agreement that contains standard information that all third parties need to be aware of.

- 36 – We agree with the guidance noting that a local authority may wish to negotiate any future price rises with the provider at the time of entering into a contract, but we are concerned that this may mean that self funders in the care home may pick up the costs of such future proofing through cross-subsidies they find themselves having to pay. We recommend that any advance arrangements on cost rises are shared with all those affected, be they people entering into a top-up arrangement, or self funding residents.

- 42/43 – We recommend that the end of either subsection 42 or 43 should reiterate the duty on local authorities to provide information and advice, and in the case of top-ups we strongly believe that people need access to independent information and advice to best understand both the terms of a top-up request and whether indeed the request itself is legitimate; *"The local authority should always facilitate access to independent information, advice and advocacy."* Reflecting that top-ups are often agreed at a time of crisis, we recommend that an additional signpost to information and advice should take place around six months after the written agreement has been made with the third party.

27. Does the guidance need to particularly cover these types of accommodation (Shared Lives / Extra Care Housing)? If so, what would it be helpful to discuss?

The Department of Health needs to clarify how the principle of choice and the practicality of a top-up can be assured in the context of supported living accommodation, where there is a rent element and different funding streams involved (so for example the Department for Work and Pensions and local authority-administered social security benefits).

Additionally we feel that there are crucial differences with Shared Lives schemes in that the individual in question will be sharing with others, including the overall cost of any placement. The risks of relationship breakdown between residents and the need to move as a result may introduce additional complications with any top up arrangements.

28. What are the risks of the expansion of the additional cost provisions so that the person can meet this cost themselves (to both local authorities and the person)? How can any risks be mitigated by regulations and guidance?

We recognise that there are additional risks to both the individual and the local authority in expanding the ability of people to top-up the cost of their own care:

- For people below the upper capital threshold, too significant a top-up will mean they deplete their assets more rapidly and more quickly reach the lower threshold.
- In such a situation local authorities will be expected to contribute to the cost of a person's care at an increased rate or may have to request that a person chooses a different and cheaper placement, or requests that the person make the authority aware that they have a consenting third party who can contribute the top up amount.

Looking further ahead to 2016, and anticipating this autumn's consultation where there will be further questions on self-funded top-ups, we believe the government needs to consider:

- The circumstances that apply for people who the local authority is 'metering' towards the lifetime care cap but who first deplete their assets to the point where they start to qualify for some level of local authority means-tested support; many of these adults will no doubt want to continue paying for the standard of care home accommodation to which they have become accustomed and will therefore in a number of cases, look to make self funded (or 'first party' top-ups).
- There is an additional group – care home residents who the local authority is not aware of who are funding their own care home placement at a rate that is significantly higher than the cost the local authority would be prepared to pay. This group might not think to approach their local authority for information and advice, let alone an assessment to start their care meter running, and therefore represent a high risk to the local authority should they completely exhaust their assets and find themselves eventually needing local authority-funded care and support.
- As part of their duties establishing an information and advice system locally, local authorities should ensure that tailored information and advice is available to enable self-funders who do not get an independent personal budget, to understand the consequences of any decisions they make about how they spend down their capital and savings.
- Local authorities must not be able to veto a self-funder's choice of residential care home, but the local authority should provide publicly available information and advice on the risks of exhausting assets and

capital. For people for whom local authorities are monitoring progress towards their care cap, the local authority should try to obtain an assurance from the person that a third party would be able to pay any remaining top-up should they choose to stay in a more expensive care home placement and they deplete their assets.

Pension reform

29. What do you think the impact of the increased pension flexibilities might be for social care charging for people and local authorities? How can any risks be mitigated via regulations and guidance?

We strongly believe that as part of the proposed Guidance Guarantee that information should be provided about the tax and benefit system and social care funding and potential future care costs, and what this means for decision-making about pension money. For example, there needs to be a discussion with people about the consequences of a full withdrawal of their pension and how that would be treated as income in a means test if they were to need social care in the future.

Deferred payment agreements

We welcome the extension of the deferred payment scheme and the government's commitment to ensuring that the scheme is affordable to those who may benefit from it. It is crucial that the scheme is implemented sensibly so as to protect both individuals and local authorities from overreaching themselves financially.

Given the potential implications of signing a deferred payment agreement, we are pleased that government is clear that people considering a deferred payment should be signposted to regulated financial advice. We note, however, that in explaining the scheme the government must ensure it is clear that a deferred payment agreement (DPA) is only open to people in specific circumstances, having previously announced the scheme as being "universal".

We welcome the serious consideration being given to ensuring that deferred payment schemes are sustainable. While we support the intention to allow local authorities discretion to approve higher "loan to value" ratios as this may support some people struggling to sell their homes, such loans must be closely monitored to ensure long term sustainability. To this end, the government must clarify both the minimum and maximum amounts that a person can take as a top-up as part of their deferred payment. We support the inclusion in guidance of a tool to assist local authorities when assessing sustainability and the level of manageable risk (9.42).

30. Should the eligibility criteria for deferred payment agreements be extended to include people in extra care and very sheltered housing? Do you have evidence of the likely demand for deferred payment agreements from people whose needs are met in extra care or very sheltered housing?

In principle, we support the proposal to extend the availability of DPAs to people entering extra care sheltered housing and supported living as well as care home accommodation, bringing it in line with the range of accommodation types now specified in choice of accommodation regulations. However, we would still want to avoid a situation where entering into a deferred payments arrangement becomes the default option in all circumstances.

While it is helpful to reduce the variation between how different care settings are treated it is also important to acknowledge the differences in the funding regimes for care homes and extra care housing, for example, the daily living costs in an extra care setting. A detailed explanation of how this will operate in practice, including on how a move from one type of accommodation to another will affect the DPA, is vital to reduce the financial risk to the local authority and ensure sustainability.

32. Do you agree that the maximum LTV for deferred payment agreements should fall between 70 and 80%? Do you have any evidence to support a particular amount within that range?

We support the setting of a maximum loan-to-value for deferred payment agreements that enables people to have the widest possible choice of accommodation available while still retaining enough capital to cover all the associated costs required on the sale of the property.

We welcome section 9.30 of the guidance that allows local authorities to exercise their discretion to extend the maximum loan-to-value (to an absolute maximum of the property's full sale value minus the lower capital limit) in specific circumstances, such as the acute ill-health of the resident. It is important, however, that people are made aware prior to entering into the scheme that interest will still be allowed to accrue beyond the maximum loan-to-value amount.

33. Do you agree that people should be able to keep a proportion of any rental income they earn on a property they have secured a deferred payment agreement on? Are there other ways people could be incentivised to rent out their houses?

We agree that people should be able to keep a certain proportion of any rental income they earn on a property secured under a deferred payment agreement in order to help with associated costs, such as reasonable property maintenance costs or building insurance.

We welcome the stipulation in guidance on how local authorities should develop information and advice for homeowners on managing their property, which should include landlord responsibilities (9.23). However, the increased responsibilities associated with renting out a property does mean that there will be a limit on the number of people moving into a care home who would also be willing to consider also becoming a landlord without considerable support from a third party.

35. Do you agree that local authorities should be required to accept any legal charge on a property as security for a deferred payment agreement when they are required to enter into one and not just a first charge?

We support the introduction of more flexible approach that encourages local authorities to consider accepting a range of alternative financial options as security for a deferred payment agreement in addition to the required legal mortgage charge.

We also acknowledge that allowing other types of legal charge, not just a first charge would enable those people with outstanding mortgages remaining on their property to be considered for a DPA.

However, we consider that the decision whether or not to accept other types of charges, e.g. second charge mortgages, should be left at the local authority's discretion depending on the individual's set of circumstances. Issues the local authority would consider include the available equity in the property (after both first and second charges are paid off) and the outstanding mortgage term. Introducing a less restrictive approach to security must not put either the local authority or the individual at unreasonable financial risk.

36. In line with the recommendations of the Independent Commission on Funding of Care and Support, do you agree that the interest rate should be set so that it is reasonable for people, cost neutral to local authorities and as such that it does not create incentives for people to apply for deferred payments when they are not needed?

37. Do you agree that there should be a different interest rate for deferred payment agreements made at the local authority's discretion? If so, what should the maximum rate be?

We welcome the new provisions to make deferred payment agreements more financially sustainable for local authorities, if this does serve to improve take up. However, it is vital that any increase in take-up is appropriate and based on an informed understanding of the new scheme, including the way the interest on the loan will operate.

One overall interest rate would create more consistency in the operation of the new DPAs. It would make the scheme easier to understand for those considering entering into such an agreement and also reduce the bureaucracy involved for individual local authorities.

We support the provision that the interest rate must be set at a reasonable and affordable level, taking into account the fact that interest will continue to accrue on the loan after the resident has passed away and until such time as the loan is repaid. If after the resident has passed away, there is a delay in selling the property there is a risk that the interest will substantially increase the final loan owed to the local authority. It is important this point is made clear to those entering into a DPA and in particular that they are aware in 9.74(c) of the guidance that the instance of the resident passing away terminates the DPA but does not terminate the interest accruing on the loan until it is repaid in full (9.82). Other important issues to consider are:

- We consider that local authorities should not be able to increase the interest rate set on the loan during the term of the individual agreement.
- It is important that people who are contemplating a DPA must be made aware of the interest rate, when it will start accruing, how it will not be counted towards the care cap while still increasing the total amount of debt owed to the local authority. The advice should include what the alternative options might be to pay for care, including whether in some cases selling the property might prove to be a better option than a DPA.
- In the current discretionary scheme offered by local authorities there are variations between local authorities in the level of interest rate set and the cost of the legal charge. As a result, a proposal for a national body to oversee and administer the DPA scheme has been mooted by some in

order to create more consistency and reduce the financial risk to local authorities.

- While we acknowledge the importance of local authorities retaining ultimate responsibility for the administration of DPA, we still call for some form of national oversight and nationally coordinated implementation support or best practice guidance. At the very least, we support the inclusion in guidance of a model deferred payments scheme to which all local authorities should be encouraged to sign up to in order to reduce the possibility of 152 different schemes being developed across the country. One potential outcome of local authorities being able to outsource statutory functions is that some authorities could deliver their deferred payment scheme in collaboration with other local authorities.

Care and Support plans

38. Does the guidance on personalisation fully support and promote a care and support system that has personalisation at its heart?

We support the government's approach to personalisation, but for older people in particular the success of personal budgets has been varied and limited for a number of reasons.

Care Act guidance must ensure older people including adults with severe cognitive impairment or dementia have care plans that reflect more than just basic care outcomes and reflect a person's other hopes and ambitions, in terms of accessing necessary facilities in the community and sustaining family or other personal relationships.

Personal Budgets

We welcome the core principle of personal budgets; that individuals should receive an allocation of support tailored to their specific needs. Guidance must be clearer that, in determining the level of a personal budget, local authorities take full account of local market conditions *at that time* – including the cost and availability of support, and in doing so are able to offer individuals a budget that is realistic and supports them to exercise choice as to how to meet their assessed needs.

To manage individual's expectations (and reduce the likelihood of any subsequent challenges), the government must be explicit in guidance that a local authority must ensure that people understand how their budget has been determined through clear and easily available information and advice on the local policy on personal budgets.

Additionally, a definition of 'timeliness' of agreeing a budget needs to be clearly defined in guidance, and the consequences of not doing so for the individual (ie having to pay for care that otherwise would be the responsibility of the local authority) made explicit.

In terms of specific changes to the guidance we propose the following changes:

- 11.9 – It is important that guidance strongly accentuates the importance of timeliness of a person's support and a reference to this here could be useful; "The personal budget must always be an amount sufficient to meet the person's care and support needs *'in a timely way'"*. Additionally we feel that this section could benefit from reminding local authorities that the purpose of the financial assessment is to determine what a person can afford to pay. The final sentence of 11.9 should be amended accordingly: This overall cost must then be broken down into the amount the person *"can afford to"* pay, following the financial assessment, and the remainder of the budget that the authority will pay.

- 11.13 – In relation to our views on additional payments, this section must be amended similarly to reflect that local authorities must offer a range of options: "Similarly, there will be cases where a person is making an additional payment (or a top-up) in order to be able to secure the care and support of their choice, where this costs more than the local authority would normally pay for such a type of care *and "appropriate and suitable alternatives had been offered""*.

- 11.21 - We are concerned that full consideration of an older person's personal social and emotional outcomes in residential or nursing accommodation does not often take place due to assumptions about how home in and of itself fulfils a person's social and emotional needs. This is not always the case. Many care home residents want to pursue outcomes that necessitate accessing the wider community. We recommend the following amendment to this sub section to further emphasise that budgets must be sufficient regardless of the assumed support delivered within a person's immediate care home environment: "Local authorities should ensure that the method used for calculating the personal budget produces equitable outcomes to ensure fairness in care and support packages *regardless of the environment in which care and support takes place, for example, in a care home or someone's own home".*

- 11.24 - Guidance must be clear how a local authority should ensure that personal budgets reflect local market conditions, so they are not merely based on the preferential rates that a local authority can secure through a block purchase. In doing so the guidance should ensure that the local authority takes reasonable steps to provide a budget that reflects the availability of support at the time the personal budget is allocated.

We recommend this sub-clause is changed to: *"The local authority must base the direct payment amount both on the price of purchasing quality local provision rather than the cost to the local authority and reflect the availability of support at the time the budget is agreed. By doing so, the personal budget should be sufficient for a person to purchase care and support on the local market."*

- 11.29 - We recommend that the examples of "other aspects" are switched around to better promote the meeting of outcomes and not to imply that *cost* is the more important arbiter of a budget decision: "Generally, the agreement of the final budget and support plan should not involve scrutiny of specific elements of the plan on the basis of their cost alone. Consideration should be given to the cost of meeting needs as part of a wider evaluation of other aspects such as *such as anticipated outcomes, as well as value for money"*.

- 11.31 – The intention to 'mainstream' direct payment as the preferred option should be promoted by listing "as a direct payment" first on the list.

- 11.33 – The Department of Health should review whether it is correct to say that a local authority "*should*" provide people with information and advice on how an Individual Service Fund arrangement works by reflecting on 3.22 in the Information and advice guidance which says that the authority "*must* ensure that information and advice is provided on the care and support system locally".

- 11.48 – We recommend that the Department of Health inserts a new third sentence which gives more detail on what transparency in the personal budget process should entail; *"Such transparency should involve the local authority providing information on the RAS and on the complaints process".*

Direct Payments

46. The draft regulations seek to ensure choice is not stifled, and the direct payment is not monitored excessively – is this strong enough to encourage greater direct payment use, but workable for local authorities to show effective use of public monies?

We believe that agreeing the degree of flexibility in how a plan meets a person's defined outcomes, and the extent to which the authority considers approaches to monitoring as excessive or acceptable are locally determined and can differ drastically between local authorities.

We therefore welcome the stated intention that monitoring is to be managed in a more 'light touch' manner, with a review undertaken 6-8 weeks after the plan is implemented, and at agreed intervals after. We hope this will promote more consistency of practice.

Boundary with the NHS

49. Is the description in the guidance of exceptions to provision of healthcare (which effectively sets out the boundary between NHS and local authority responsibilities) sufficiently clear and does it maintain the current position on the boundary?

We agree with the policy intention of maintaining the current position of the boundary between the NHS and local authority responsibilities and it is important that this boundary is respected. The boundary clarified by the 1999 Court of Appeal ruling in the Coughlan case must remain in place.

Delayed Transfers of Care

51. Will any of these changes affect the working of delayed discharge processes in ways not discussed in the guidance?

We agree that not obliging the NHS to request a reimbursement from local authorities may support closer working relationships. We note however that there is a risk in removing the reimbursement exemption for weekends and bank holidays in areas where seven-day working practices are not yet fully embedded.

Delegation of local authority functions

63. Are there any core principles or requirements that local authorities should always place on contractors when delegating care and support functions?

We strongly believe that as a core principle that contractors undertaking care and support functions on behalf of the local authority should exercise the same responsibilities as the local authority itself. This is particularly vital where contractors are delivering statutory duties such as assessment.

Guidance must be clear that the requirements placed upon local authorities in ensuring that assessments are appropriate to need and proportionate, and in supporting a person to challenge an eligibility decision, also extend to contractors.

The transition to the new legal framework

81. Are there other considerations around preparation for implementation of the April 2016 elements of the Care Act on which national guidance would be helpful? and 82. Are there other considerations around preparation for implementation of the April 2015 elements of the Care Act on which national guidance would be helpful?

In the light of comments from the LGA and ADASS in summer 2014 we are highly concerned that the government may have underestimated the preparedness of the social care sector to deliver the proposed reforms. The timetable that has been set is extremely challenging.

We worry that without significant implementation support from central government, the timetable may be hard to achieve, or will be achieved without adequately embedding new practice to ensure the system works effectively.

The government must urgently reflect on one of the key proposals of Andrew Dilnot's 2011 commission report which called for the government to both implement the capped costs reform and ensure that there is sufficient funding to correct years of under-funding in the means-tested system. Crucially, Dilnot noted that local authorities will need to be able to manage existing pressures as well as the new requirements resulting from the capped costs reforms.

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