

Wellbeing

“Wellbeing” is a broad concept, relating to the following areas in particular:

- personal dignity (including treatment of the individual with respect);
- physical and mental health and emotional wellbeing;
- protection from abuse and neglect;
- control by the individual over day-to-day life (including over care and support provided and the way it is provided);
- participation in work, education, training or recreation;
- social and economic wellbeing;
- domestic, family and personal relationships;
- suitability of living accommodation;
- the individual's contribution to society

Local Authorities Must:

- Promote wellbeing when carrying out any of their care and support functions in respect of a person. This is the guiding principle for the Act. It is to apply equally to adult service users and their carers, and to certain children when they are in transition.
- Include a focus on delaying and preventing care and support needs, and supporting people to live as independently as possible for as long as possible; wellbeing cannot be achieved simply through crisis management.
- Also apply the wellbeing principle when dealing with people who may not have eligible needs.
- Ensure these conversations look at people holistically; LAs and their partners **must** focus on joining up around an individual, making the person the starting

point for planning, rather than what services are provided by what particular agency

Local Authorities Should:

- Ensure the wellbeing principle covers the key components of independent living, as expressed in the UN Convention on the Rights of People with Disabilities.
 - As with promoting wellbeing, the factors above will vary in their relevance and application to individuals. For some people, spiritual or religious beliefs will be of great significance, and **should** be taken into particular account. For others, this will not be the case. Local authorities should consider how to apply these further principles on a case-by-case basis

Preventing, reducing or delaying needs

Care Act offers a definition of “**prevention**”:

- Primary prevention / promoting wellbeing;
- Secondary prevention / early intervention;
- Tertiary prevention / intermediate care and reablement;

The focus of prevention; developing local approaches to prevention; working with others to focus on prevention; identifying those who may benefit from prevention; LAs must provide or arrange for services, facilities or resources which would prevent, delay or reduce individuals' needs for care and support, or the needs for support of carers.

Local Authorities Must:

- Consider the importance of identifying services, facilities and resources that are already available in their area, which could support people to prevent, reduce or delay needs, and which could form part of the overall local approach to preventative activity.
- Promote diversity and quality in provision of care and support services, and ensure that a person has a variety of providers to choose from.
- Consider how to identify “unmet need”.
- Ensure the integration of care and support provision, including prevention, with health and health-related services, which includes housing.
- Cooperate with each of their relevant partners and the partners must cooperate with local authorities.
- Set up arrangements between their relevant partners and individual departments in relation to their care and support functions, including prevention to preventative support; charging for preventative services.
- Establish and maintain a service for providing people with information and advice relating to care and support.
- Proceed to offer the individual an assessment, where a person refuses resources offered under preventative arrangements, but continues to appear to have needs for care and support.

- In assessing individual needs, consider whether those concerned would benefit from the preventative services, facilities or resources provided by them or which might be available in the community.
- Provide some services free of charge; for example reablement must be provided up to six weeks, or minor aids and adaptations up to the value of £1,000.
- **Not** charge more than it costs to provide or arrange for the particular type of support

Local Authorities Should:

- In considering how to give effect to their responsibilities, local authorities **should** consider the range of options available, and how those different approaches could support the needs of their local communities
- Targeted interventions **should** include approaches to identifying carers.
- Early intervention **should** include a fall prevention, minor adaptations to housing which improve accessibility or provide greater assistance for those at risk of a fall, or telecare services
- Prevention **should** include consideration of the role a person's family or friends can play in helping the person to meet their goals

- Where possible, actively promote participation in providing interventions that are co-produced with individuals, families, friends, carers and the community. “Co-production” is when an individual influences the support and services received, or when groups of people get together to influence the way that services are designed, commissioned and delivered
- Where the local authority does not provide such types of preventative support itself, it **should** have mechanisms in place for identifying existing and new services, maintaining contact with providers over time, and helping people to access them
- Consider how they can work with different partners to identify unmet needs for different groups, for example working with the NHS to identify carers, and how to coordinate shared approaches to preventing or reducing such needs
- In developing and delivering local approaches to prevention, the local authority **should** consider how to align or integrate its approach with that of other local partners
- Put in place arrangements to identify and target those individuals who may benefit from particular types of preventative support
- In developing such approaches, local authorities **should** consider the different opportunities for coming into contact with those people who may benefit, including where the first contact may be with another professional outside the local authority
- Prevention **should** be a consistent focus for local authorities in undertaking their care and support functions
- Approaches to identifying those people who may benefit from preventative support **should** consider how to locate people in such circumstances, for example via hospital admission and or discharge
- Where a local authority has put in place mechanisms for identifying people who may benefit from a type of preventative support, it **should** take steps to ensure that the person concerned understands the need for the particular measure, and is provided with further information and advice as necessary
- Provide the person with information as is necessary to enable the person to understand: what needs the person has or may develop, and why the intervention or other action is proposed in their regard
- Where necessary a carer's assessment **should** always be offered
- Consider adopting more proportionate or “light-touch” processes which ensure that charges are only paid by those who can afford to do so and would not in any case leave someone below the national minimum level of income
- Whilst the local authority does have the power to charge for such types of support where it is provided beyond six weeks, local authorities **should** consider continuing to provide it free of charge beyond six weeks in certain circumstances

Information and advice requirements

- The Care Act requires local authorities to provide information and advice to the whole population.
- This briefing covers:
 - What must be provided by the Local Authority
 - How this information and advice should be provided
 - How to engage with people and providers to establish an effective and efficient information and advice service.

Local Authorities Must:

- Ensure information and advice services **cover needs of whole population**, not just those who have eligible needs or are in receipt of care or support which is arranged or funded by the local authority
 - Ensure that information and advice covers **more than just basic information** about care and support, and must avoid a narrow definition of such support.
 - Have regard to identifying people who contact them who may benefit from financial information and advice **independent of the LA** and actively facilitate those people to access to it.
 - Recognise and respond to the specific requirements that **carers** have for both general and personal information and advice.
 - Ensure information and advice is **accessible to all** and must ensure that it has due regard to the needs of people with particular requirements such as people with a sensory impairments.
 - Use wider opportunities to provide **targeted information and advice** at key points in people's contact with the care and support, health and other local services.
 - Include financial information and advice on matters **relevant** to care as part of their information offer
- Provide information to help people **understand** what they may have to pay, and this must include the charging framework for care and support. They must also provide people with information on the availability of different ways to pay for care.
 - Support people to make **informed, and sustainable financial decisions** about their care throughout all stages of their life.
 - Provide information and advice on how to raise concerns about the safety or wellbeing of an adult who has needs for care and support.
 - Provide information and advice on their own local arrangements for receiving and dealing with complaints.
 - Exercise their functions under the Act, including the duty to provide an information and advice service, with a view to **integrating care and support provision** with health.
 - Ensure that their information and advice service has due regard to the needs of these people. These include, but are not limited to:
 - people with sensory impairments;
 - people who do not have English as a first language;
 - people who are socially isolated;
 - people whose disabilities limit their physical mobility;

- people with learning disabilities;
- people with mental health problems
- Include financial information and advice on matters relevant to care. However, the local authority should have an important role in **facilitating access** to independent financial information and advice, where it would not be appropriate for a local authority to provide it directly.

Local Authorities Should:

- Ensure that they **engage widely** with people with care and support needs, carers, the wider public and local providers of information and advice and other types of care and support, to identify what is available and exactly what is needed locally, and how and where it should best be provided
- Consider carefully whether such a service should be provided by the local authority directly or by another agency, including independent providers
- Take account of **information standards** published by the Information Standards Board for Health and Social Care under the provisions of the Health and Social Care Act 2012
- Advice and information **should**, where possible, be **provided in the manner preferred by the person** and will therefore often need to be available in a number of different formats likely to include all of the following:
 - face-to-face contact;
 - use of peer-to-peer contacts;
 - telephone;
 - mass communications, and targeted use of leaflets, posters etc. (e.g. in GP surgeries);
 - use of 'free' media such as newspaper, local radio stations, social media;
- local authority's own and other appropriate internet websites, including support for the self-assessment of needs;
- third party internet content and applications;
- email.

Information and advice – Should Do's:

- Information **should** also address, prevention of care and support needs, finances, health, housing, employment, what to do in cases of abuse or neglect of an adult and other areas where required. In fulfilling this duty, local authorities should consider the people they are communicating with on a case by case basis, and seek to **actively encourage** them towards the types of information and/or advice that may be particularly relevant to them
- Depending on local circumstances, the service **should** therefore include, but not be limited to, information and advice on:
 - available housing and housing-related support options for those with care and support needs;
 - effective treatment and support for health conditions;
 - availability and quality of health services;
 - availability of services that may help people remain independent for longer such as handyman or maintenance services;
 - availability of befriending services and other services to prevent social isolation;
 - availability of intermediate care entitlements such as aids and adaptations;

- eligibility and applying for disability benefits and other types of benefits;
- availability of employment support for disabled adults;
- children's social care services and transition;
- availability of carers' services and benefits;
- sources of independent information, advice and advocacy;
- raise awareness of the need to plan for future care costs;
- practical help with planning to meet future or current care costs.
- The local authority **should** ensure that products and materials (in all formats) are as **accessible** as possible for all potential users.
- Websites **should** meet specific standards such as the Web Content Accessibility Guidelines
- Printed products **should** be produced to appropriate guidelines with important materials available in easy read
- Telephone services **should** also be available to those with hearing impairments
- Local authorities **should** ensure that information supplied is clear. Information and advice should only be judged as clear if it is understood and able to be acted upon by the individual receiving it
- Information and advice provided within the service **should** be accurate, up-to-date and consistent with other sources of information and advice
- Staff providing information and advice within a local authority and other frontline staff **should** be aware of accessibility issues and be appropriately trained
- Local authorities **should** consider when this might most effectively be provided by an independent source rather than by the local authority itself
- The type, extent and timing of information and advice provided **should** be appropriate to the needs of the person
- Local authority **should** enable those providing information and advice to people contacting the local authority to have access to the support of registered social work advice when it is required.
- The LA **should** think about how they are joining up with other providers of information and advice to ensure the coherence of the overall "offer" (integration and cooperation).
- Provide a service that covers this breadth and that facilitates access to the full spectrum of financial information and advice – from basic budgeting tips to regulated advice – to ensure that people within its area who would benefit can access it.
- include the following aspects of financial information and advice:
 - understanding care charges;
 - ways to pay;
 - money management;
 - making informed financial decisions; and
 - facilitating access to independent financial information and advice
 - In the case of top-ups, local authority **should** ensure that sure someone is willing and able to pay for them
- The council **should** help providers and people to understand the role of each information and advice provider and be widely available so people can access the right provider at the right time and not be sent round in circles
- Local authorities **should** ensure frontline staff are able to support and guide people to make good financial decisions

- Information and advice **should** be aligned with wider local authority strategies such as market shaping and commissioning, and with joint area strategies with health
- The development and implementation of a wider plan or strategy on the provision of information and advice on care and support **should** be led by the local authority, acting as the coordinator and where appropriate the commissioners of information and advice services.
- The development of information and advice plans and their implementation **should** be an **ongoing and dynamic** process, involving all relevant stakeholders. As a minimum, the process of developing a local plan should include:
 - **engagement** with people, carers and family members, to understand what is working and not working for them, their preferences and how their information advice and advocacy needs can best be met;
 - adopting a '**co-production**' **approach** to their plan, involving user groups and people themselves, other appropriate statutory, commercial and voluntary sector service providers, and make public the plan once finalised;
 - **mapping** to understand the range of information, advice and advocacy services, including independent financial advice and different providers available;
- **coordination** with other statutory bodies with an interest in care and support, including local Clinical Commissioning Groups, Health and Wellbeing Boards, local Healthwatch and neighbouring local authorities;
- building into the plan opportunities to **record, measure and assess** the impact of information and advice services rather than simply service outputs
- Local authorities should **review and publish** information about the effectiveness of the information and advice service locally, including customer satisfaction and may wish to build these into the local Joint Health and Wellbeing Strategies
- Where appropriate, local authorities **should** signpost or refer people to national sources of information and advice where these are recognised as the most useful source
- Information and advice provided, whether directly by a local authority or by third parties as part of the information and advice service that the local authority provides and maintains, **should** be of a good standard and, where appropriate, delivered by trained or suitably qualified individuals

Information & Advice

Formats:

- face-to-face contact;
- peer-to-peer contacts;
- telephone;
- leaflets, posters
- use of 'free' media such as newspapers, local radio, social media;
- local authority's own and other internet websites
- third party internet content and applications;
- email

Areas to include, but not be limited to:

- housing and housing-related support for those with care and support needs;
- effective treatment and support for health conditions;
- availability and quality of health services;
- availability of services that help people remain independent such as handyman services;
- availability of befriending services and other services to prevent social isolation;
- availability of intermediate care entitlement such as aids and adaptations;
- eligibility and applying for disability benefits and other types of benefits;
- availability of employment support for disabled adults;
- children's social care services and transition;
- availability of carers' services and benefits;
- sources of independent information, advice and advocacy;
- raise awareness of the need to plan for future care costs;
- practical help with planning to meet future or current care costs.

Information and advice provision has due regard to needs of following groups, but not limited to:

- people with sensory impairments;
- people who do not have English as a first language;
- people who are socially isolated;
- people whose disabilities limit their physical mobility;
- people with learning disabilities;
- people with mental health problems

Market shaping and commissioning of adult care and support

This covers the principles which should underpin market-shaping and commissioning activity:

- focusing on outcomes and wellbeing
- promoting quality services, including through workforce development and remuneration and ensuring appropriately resourced care and support
- supporting sustainability
- ensuring choice
- enabling co-production with partners.

Local Authorities Must:

- Facilitate markets to offer continuously improving, high-quality, appropriate and innovative services, including fostering a workforce which underpins the market.
- Ensure their commissioning practices and the services delivered on their behalf comply with the requirements of the Equality Act 2010.
- Consider how to help foster and enhance the social care workforce to underpin effective, high quality services.
- Work to develop markets for care and support that are sustainable over time.
- Encourage a variety of different providers and different types of services
- Have regard to ensuring a sufficiency of provision – in terms of both capacity and capability – to meet anticipated needs for all people in their area needing care and support – regardless of how they are funded.
- Understand local markets and develop knowledge of current and future needs for care and support services, and understand providers' businesses

- Facilitate information and advice to support people's choices for care and support. This **should** include where appropriate through services to help people with care and support needs understand and access the systems and processes involved and to make effective choices.

Local Authorities Should:

- Review the way they commission services, as this is a prime way to achieve effective market shaping and directly affects services for those whose needs are met by the local authority, including where funded wholly or partly by the state.
- Consider the Adult Social Care Outcomes Framework (ASCOF), in addition to any locally-collected information on outcomes and experiences (for example, from local consumer research), when framing outcomes for their locality and groups of people with care and support needs.
- Have regard to guidance from the Think Local Act Personal (TLAP) partnership when framing outcomes for individuals, groups and their local population, in particular the Making It Real "I"

statements, which set out what good personalised care and support should look like from the perspective of people with care and support needs, carers and family members. Outcomes **should** be considered both in terms of outcomes for individuals and outcomes for groups of people and populations.

- Consider analysing and presenting local needs for services in terms of outcomes required.
- Ensure that achieving better outcomes is central to its commissioning strategy and practices, and **should** be able to demonstrate that they are moving to contracting in a way that has an outcome basis at its heart.
- Consider emerging best practice on outcomes-based commissioning.
- In encouraging outcomes-based services, consideration should be given to how services are paid for. Local authorities **should consider** incorporating elements of “payments-for-outcomes” mechanisms, where practical, to emphasise and embed this commissioning approach which is based on specifying the outcomes to be achieved, rather than the service outputs to be delivered.
- Consider working not just with traditional public sector partners like health, but also with a range of other partners to engage with communities to understand how to prevent problems from arising.
- Work to ensure compliance with this Act for services provided in their area that are not arranged and/or paid for by them, when shaping markets for services.
- Encourage services that respond to the fluctuations and changes in people's care and support needs and support the transition of services throughout the stages of their lives to ensure the services provided remain appropriate.
- Consider, in particular, how to encourage training and development for the care and support workforce through, for example, standards recommended by Skills for Care, and the National Skills Academy for Social Care, and have regard to funding available through grants to support the training of care workers in the independent sector.
- Ensure that they themselves have functions to fulfil duties on market shaping and commissioning that are fit for purpose, with sufficient capacity and capability of trained and qualified staff to meet the requirements set out in the Care Act and this statutory guidance.
- Understand the business environment of the providers offering services in their area and seek to help providers facing challenges and understand their risks.
- Consider the impact of their own activities on the market as a whole, in particular the potential impact of their commissioning decisions and where they may also be a supplier of care and support.
- Have effective communications and relationships with providers in their area that should minimise risks of unexpected closures and failures, and have effective interaction and communication with the Care Quality Commission (CQC) about

Service Provision – Local authorities should:

- Encourage a wide range of service provision to ensure that people have a choice of appropriate services; appropriateness is a fundamental part of quality.

- the larger and most difficult to replace providers that CQC will provide financial oversight for.
- Consider supporting providers or directly intervening to promote an appropriate balance of provision between types of provider.
 - Encourage a genuine choice of service type, not only a selection of providers offering similar services, encouraging, for example, a variety of different living options such as shared lives and live-in domiciliary care as alternatives to residential care, and low volume and specialist services for people with less common needs.
 - Encourage choice over the way services are delivered, examples would include: developing arrangements so that care can be shared between an unpaid carer or relative and a paid care worker, a choice over when a service is delivered, choice over who is a person's key care worker, arranging for providers to collaborate to ensure the right provision is available, for example, a private provider and a voluntary organisation working together, choice over when a service is delivered
 - Consider all types of service that are required to provide care and support for the local authority's population, when considering the sufficiency and diversity of service provision.
 - Facilitate the personalisation of care and support services, encouraging services (including more traditional services as well as small, local, specialised and personal assistant services that are highly tailored), to enable people to make meaningful choices and to take control of their support arrangements, regardless of service setting or how their personal budget is managed.
 - Help people who fund their own services or receive direct payments, to 'micro-commission' care and support services and/or to pool their budgets, and should ensure a supporting infrastructure is available to help with these activities.
 - Encourage preventative, enablement and support services, including support for carers to make caring more sustainable, such as interpreters, signers and communicator guides, and other support services such as 'telecare', home maintenance and gardening that may assist people achieve more independence and supports the outcomes they want.
 - Encourage flexible services to be developed and made available that support people who need care and support, and carers who need support, to take part in work, education or training. Services **should** be encouraged that allow carers who live in one local authority area but care for someone in another local authority area to access services easily, bearing in mind guidance on ordinary residence.
 - Pursue the principle that market shaping and commissioning should be shared endeavours, with commissioners working alongside providers and people with care and support needs, carers, family members and the public to find shared and agreed solutions.
 - Have in place published strategies that include plans that show how their legislative duties, corporate plans, analysis of local needs and requirements (integrated with the Joint Strategic Needs Assessment), thorough engagement with people, carers and families, market and supply analysis, market structuring and interventions, resource allocations and procurement and

contract management activities translate (now and in future) into appropriate high quality services that deliver identified outcomes for the people in their area and address any identified gaps

- Publish and make available their local strategies for market shaping and commissioning, to support local accountability and engagement with the provider market and the public.
- Review strategies related to care and support together with stakeholders to ensure they remain fit for purpose, learn lessons, and adapt to incorporate emerging best practice, noting that peer review has a strong track record in driving improvement.
- Consider how their strategies related to care and support can be embedded in wider local growth strategies, for example, engaging care providers in local enterprise partnerships, as in Poole.
- Recognise that changes to adult care and support are taking place at a time of the need to deliver services from constrained resources; so the LA **should** have regard to best practice on efficiency and value for money, in particular the Local Government Association Adult Social Care Efficiency Programme.
- Develop standards on transparency and accountability to ensure citizens are able to contribute to and understand policy and review delivery

Engagement - Local authorities should:

- Engage with a wide range of stakeholders and citizens in order to develop effective approaches to care and support, including through developing the JSNA and a Market

Position Statement or equivalent document.

- Engage and cooperate with stakeholders, in particular: provider organisations, people needing care and support themselves and their representative organisations, carers and their representative organisations, health professionals, social care managers and social workers, independent advocates, and wider citizens to reflect the range and diversity of communities and people with specific needs.
- Arrange engagement to include hard-to-reach individuals and groups, including those who have communication issues and involving representatives of those who lack mental capacity.
- Engage with people needing care and support, people likely to need care and support, carers, independent advocates, families and friends. This engagement **should** emphasise understanding the needs of individuals and specific communities, what aspirations people have, what outcomes they would like to achieve, their views on existing services and how they would like services to be delivered in the future.
 - Seek to identify the types of support and resources or facilities available in the local community which may be relevant for meeting care and support needs, to help understand and build community capacity to reinforce the more formal, regulated provider market.
- Consider methods that enable people to contribute meaningfully to:
 - setting the strategic direction for market shaping and commissioning;

- engaging in planning – using methods that support people to identify the problem and the solution, rather than relying on “downstream” consultation;
- identifying outcomes and set priorities for specific services;
- setting measures of success and monitor on-going service delivery;
- playing a leading role throughout tendering and procurement processes, from developing specifications to evaluating bids and selecting preferred providers;
- contributing to reviews of services and strategies that relate to decommissioning decisions and areas for new investment.
- Engagement with service providers **should** emphasise an understanding of the organisation's strategies, risks, plans, and encourage building trusting relationships and fostering improvement and innovation to better meet the needs of people in the area.
- Ensure that active engagement and consultation with local people is built into the development and review of their strategies for market shaping and commissioning, and is demonstrated to support local accountability (for example, via the Local Account).
- Exercise care in engaging with provider organisations to ensure fair play and necessary confidentiality.
- Make available to providers available routes to register concerns or complaints about engagement and commissioning activities.
- Through an engagement process, in concert with commissioners for other services where appropriate, understand and articulate the characteristics of current and future needs for services with underpinning demographics, drivers and trends, the aspirations, priorities and preferences of those who will need care and support, their families and carers, and the care and support needs of people as they progress through their lives. This **should** include an understanding of people with existing care needs drawn from assessment records.
- Have in place robust methods to collect, analyse and extrapolate this information about care and support needs, including multiple and complex needs, and providers' intentions to deliver support, with a view over an appropriate timescale – likely to be at least 5 years into the future, with alignment to other strategic timeframes.
 - Data collection **should** include information on the quality of services provided in order to support local authority duties to foster continuous improvement, including feedback from people who receive care, their families and carers.
 - Include in their engagement and analysis, services and support provided by voluntary, community services and other groups that make up ‘community assets’ and plan strategically to encourage, make best use of and grow these essential activities to integrate them with formal care and support services.
 - Seek to understand trends and changes to the levels of support that come from the invaluable unpaid work of carers, and seek to develop support for and encourage carers.
 - The assessment of needs **should** include an understanding of people who are

or are likely to be wholly or partly state funded, people who are or are likely to be self-funding, and an analysis of those self-funding people who are likely to move to state funding in the future.

- It **should** also include an understanding of the likely demand for state-funded services that the local authority will need to commission directly, and state-funded services likely to be provided through direct payments and require individuals to 'micro-commission' services.
- Consider the extent to which people receiving services funded by the state may wish to 'top up' their provision to receive extra services or premium services.
- Integrate the assessment of needs with the process of developing, refining and articulating a local authority's Joint Strategic Needs Assessment.

Market Shaping – Local authorities should:

- Gather the necessary information to shape its market by engaging with providers (including the local authority itself if it directly provides services) to seek to understand and model current and future levels of service provision supply, the potential for change in supply, and opportunities for change in the types of services provided and innovation possible to deliver better quality services and greater value for money.
- Understand the characteristics of providers' businesses, their business models, market concentration, investment plans etc.
 - Assessment of supply and potential demand **should** include an awareness and

understanding of current and future service provision and potential demand from outside the local authority area where this is appropriate.

- Collaborate with stakeholders and providers to bring together information about needs and demands for care and support together with that about future supply, to understand for their whole market the implications for service delivery.
- Consider how to support and empower effective purchasing decisions by people who self-fund care or purchase services through direct payments
- Ensure that the market has sufficient signals, intelligence and understanding to react effectively and meet demand, a process often referred to as market structuring or signalling.
- Publish, be transparent and engage with providers and stakeholders about the needs and supply analysis to assist this signalling.
- Produce a Market Position Statement or equivalent document. This **should** contain information on:
 - the local authority's direction of travel and policy intent,
 - key information and statistics on needs, demand and trends, (including for specialised services, personalisation, integration, housing, community services, information services and advocacy, and carers' services),
 - information from consumer research and other sources about people's needs and wants, information to put the authority's needs in a national context, an indication of current and future authority resourcing,
 - a summary of supply and demand,

- the authority's ambitions for quality improvements and new types of services and innovations, and
- details or cross-references to the local authority's own commissioning strategies and practices.

Engage with stakeholders and partners to structure their markets as part of developing and publishing a document like a Market Position Statement.

When commissioning services, local authorities should:

- Assure themselves and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce.
- Assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care, that will not undermine the wellbeing of people who receive care and support, or compromise the service provider's ability to meet the statutory obligations to pay at least minimum wages and provide effective training and development of staff.
- Consider Section 3 of the Care Act which places a corresponding duty on local authorities to carry out their care and support functions with the aim of integrating services with those provided by the NHS or other health-related services, such as housing. Local authorities **should** also consider working with appropriate partners to develop integration with services related to care and support such as housing, employment services, benefits and leisure services.
- Prioritise integration activity in areas where there is evidence that effective integration of services materially improves people's wellbeing, for example, end of life care, and be in line with the priorities of the Better Care Fund, for example, reducing the length of stays in hospitals.
- Consider with partners, the enabling activities, functions and processes that may facilitate effective integrated services.
- Consider best practice on commissioning services, for example the NAO guidance to ensure they deliver quality services with value for money.
- Deliver their own commissioning through a professional and effective procurement, tendering and contract management, evaluation and decommissioning process that must be focussed on providing appropriate high quality services to individuals to support their wellbeing and supporting the strategies for market shaping and commissioning.
- Ensure that they understand relevant procurement legislation, and that their procurement arrangements are consistent with such legislation and best practice.
- Ensure that their procurement and contract management systems provide direct and effective links to care service managers and social workers to ensure the outcomes of service delivery matches individual's care and support needs.
- Ensure that where they arrange services, the assessed needs of a person with eligible care and support needs is translated into effective, appropriate commissioned services that are adequately resourced.

- Undertake due diligence about the effectiveness of potential providers to deliver services to agreed criteria for quality, and should assure themselves that any recent breaches of regulatory standards or relevant legislation by a potential provider have been corrected before considering them during tendering processes. For example, where a provider has previously been in breach of national minimum wage legislation, a local authority **should** consider every legal means of excluding them from the tendering process.
 - Ensure contracts incentivise value for money, sustainability, innovation and continuous improvement in quality and actively reward improvement and added social value.
 - Ensure that all services delivered adhere to national quality standards, with procedures in place to assure quality, safeguarding, consider complaints and commendations, and continuing value for money, referencing the CQC standards for quality and CQC quality ratings.
- market shaping and commissioning intentions **should** be cross-referenced to JSNA, and should be informed by an understanding of the needs and aspirations of the population and how services will adapt to meet them.
- Strategies **should** be informed and emphasise preventative services that encourage independence and wellbeing, delaying or preventing the need for acute interventions.
 - Local authority strategies **should** adhere to general standards, relevant laws and guidance, including the Committee of Standards in Public Life principles of accountability, regularity and ensuring value for money alongside quality and the HM Treasury guidance on Managing Public Money.

Local authorities should not:

- Undertake any actions which may threaten the sustainability of the market as a whole – for example, setting standard fee levels below an amount which is sustainable for providers in the long-term.

Additional should do's:

- Since 2007 there has been a duty on local authorities and clinical commissioning groups, through health and wellbeing boards, to undertake Joint Strategic Needs Assessments (JSNA). Therefore,

Managing provider failure and other service interruptions

This covers:

- The LAs' roles and responsibilities in the event of business failure;
- The meaning of 'business failure';
- Service interruptions other than business failure;
- The link with LA duties in respect of market shaping; contingency planning to prepare for managing business failure and other service interruptions

Local Authorities Must:

- Meet people's needs when a provider is unable to continue to carry on the relevant activity in question because of business failure – but how that is done is for the LA to decide.
- Involve the person concerned, any carer that the person has, or anyone whom the person asks the authority to involve, when deciding how needs will be met.
- Meet needs irrespective of whether those needs would meet the eligibility criteria.
- Follow the general duties to cooperate when fulfilling the business failure requirements.

Local Authorities Should:

- Act promptly to meet individuals' needs. The lack of a needs' or carer's assessment or a financial assessment for a person must not be a barrier to action.

Business Failure – How should the local authority act?

- Business failure (as defined) will usually involve an official being appointed e.g. an Administrator to oversee the insolvency proceedings. It is not for local authorities to become involved in the commercial aspects of the insolvency, but they **should** cooperate with the Administrator if requested. Local authorities **should**, insofar as it does not adversely affect people's wellbeing, support efforts to maintain service provision (by, for example, not prematurely withdrawing people from the service that is affected, or ceasing commissioning arrangements).
- When considering action in relation to service interruption or closure, there is a balance to be struck. Local authorities **should** weigh the consequences of their actions before deciding how to respond, in particular, how their actions might impact on the likelihood of the service continuing.
- In summary, each service interruption **should** be considered

- on its facts and assessed by the local authority.
- In anticipating potential service interruptions, there is also a need to know the vulnerabilities in the operation of the market. For example, is there only one local provider of a particular service and no alternatives exist locally, local authorities **should** have knowledge of market vulnerabilities such as this in order to respond effectively to service interruptions.
 - Local authorities **should** understand how providers in their area are coping with the current trading conditions through discussions with the providers themselves and **should** take a proportionate approach to anticipating or getting early warning of business failure.
 - The authority **should** consider how they would respond to different service interruptions and, where the involvement of neighbouring authorities would be essential, ensure effective liaison and information sharing arrangements are set up in advance.
 - Local authorities **should** have the capacity to react quickly to the media consequences of service interruptions, whether large scale or small, if uncertainty and anxiety are to be minimised.
 - Additionally, they **should** consider how to undertake contingency planning most effectively at a local level, to ensure preparedness for possible business failures in the future.

Assessment and Eligibility

Assessment

This covers:

- The purpose of needs and carers' assessments;
- Approaches to conducting assessments;
- What should be done to consider the impact of fluctuating needs, and the whole family issues;
- Approaches to supported self- assessment; the required training, knowledge and experience of assessors;
- The relationship with the eligibility framework;
- The national minimum threshold, how to interpret the eligibility criteria;
- Considering the impact of needs on the person's wellbeing.

Must do's for a needs assessment:

- Local authorities **must** undertake an assessment for any adult who appears to have any level of care and/or support needs, regardless of whether or not the LA thinks the individual has eligible needs.
- Assessments **must** be person-centred, involving the individual and any carer that the adult has, or any other person they might want involved.
- Assessments **must** address the total extent of needs before the LA considers eligibility for care and support and what types of care and support can help to meet those needs. This **must** include looking at the impact of the adult's needs on their wellbeing and whether meeting these needs will help the adult achieve their desired outcomes.
- Where someone lacks the capacity to request an assessment or lacks capacity to express their needs, the LA **must** carry out supported decision making, helping the adult

to be as involved as possible in the assessment, and **must** carry out a capacity assessment and take "best interests" decisions.

- During assessments, LAs **must** consider all of the adult's care and support needs, regardless of any support being provided by a carer.
- Financial assessments should be made after the assessment and **must** not affect the LA's decision to carry out an assessment. LAs should inform individuals that a financial assessment will determine whether or not they pay towards their care and support, but this **must** have **no bearing** on the needs assessment process itself.
- Where an individual provides or intends to provide care for another adult, LAs **must** consider whether to carry out a carer's assessment if it appears that the carer may have any level of needs for support.

Must do's for a carer's assessment:

- Carers' assessments **must** seek to establish not only the carer's needs

for support, but the sustainability of the caring role itself, including such issues as the carer's potential future needs, their willingness to care, the impact of caring on other aspects of their lives.

- LAs **must** assess the ability of those concerned to participate in assessments. Wherever significant difficulty is identified, LAs **must** find someone appropriate and independent to support and represent the person. Where there is no one thought to be appropriate for this role – LAs **must** appoint an independent advocate.
- Where a person has a mental impairment LAs **must** consider whether the person should have a formal assessment of capacity.
- The authority **must** find out whether the person being assessed wishes to co-produce the assessment.
- Assessments **must** consider both how the adult or their support network or the wider community can contribute towards meeting the outcomes they want to achieve, and the effect of their needs on family members or others in their support networks. And LAs **must** consider whether it would be helpful to provide such individuals with advice and information.

Assessments – What should local authorities do?

- Consider the person's own strengths or if any other support might be available in the community to meet those needs.
- Ensure that wherever an individual expresses a need, or any challenges and difficulties they face because of their condition(s), they have established the impact of that on the individual's day-to-day life.
- Decisions about whether an adult or carer has eligible needs **should** be made after the assessment. Likewise, an assessment of the individual's financial situation **should** come after the assessment and must not affect the local authority's decision to carry out an assessment.
- The carer's assessment must also consider the carer's activities beyond their caring responsibilities, and the impact of caring upon those activities. This includes considering the impact of caring responsibilities on a carer's desire and ability to work, to partake in education, training or recreational activities, such as having time to themselves. This impact **should** be considered in both a short-term immediate sense but also the impact of caring responsibilities over a longer term cumulative sense.
- From their very first contact with the local authority, an adult with an appearance of need for care and support – or a carer with an appearance of need for support – **should** be given as much information as possible about the assessment process, prior to assessment wherever practicable. This **should** include detail of what can be expected during the assessment process and allow them to be as involved in the process as possible. From this early stage local authorities **should** consider whether the individual would have substantial difficulty in being involved in the assessment process and if so consider the need for independent advocacy.
- Local authorities **should not**, however, remove people from the process too early.
- Where an individual with urgent needs approaches or is referred to the local authority, the local

authority **should** provide an immediate response and meet the individual's care and support needs. Following this initial response, the individual **should** be informed that a more detailed needs assessment, and any subsequent processes, will follow.

- In cases where an individual's needs are easily recognisable an assessment may be carried out over the phone or online. However, local authorities **should** be aware of the risks attached with such an approach.
- An assessment **should** be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs.
- Local authorities **should** inform the individual of an indicative timescale over which their assessment will be conducted and keep the person informed throughout the assessment process.
- Putting the person at the heart of the assessment process is crucial to understanding the person's needs and outcomes, and delivering better care and support. The local authority **should** have processes in place, and suitably trained staff, to ensure the involvement of these parties, so that their perspective and experience supports a better understanding of the needs and circumstances.
- At the point of first contact, request or referral (including self-referral), local authorities **should** recognise the importance of whether an individual is able to be involved in their assessment.
- If they do have significant difficulty, the local authority must find someone appropriate and independent to support and represent the person, for the

purpose of facilitating their involvement. This **should** be done as early as possible in the assessment process so that the individual can be supported throughout the process.

- Where the local authority identifies that an adult is unable to effectively engage in the assessment process independently, it **should** seek to involve somebody who can assist the adult in engaging with the process and helping them to articulate their preferred outcomes and needs
- Some people with mental impairments will nevertheless have capacity to engage in the assessment alongside the local authority. These people with capacity **should** be supported in understanding the assessment process and assisted to make decisions wherever possible.
- Where a person has a mental impairment such as dementia, acquired brain injury or learning disabilities, the local authority must consider whether the person **should** have an assessment of capacity and **should** be assisted under the Mental Capacity Act. They may need extra support to identify their needs and make any subsequent decisions.
- Local authorities **should** consider the benefits of approaches which delay or prevent the development of needs in individuals who would otherwise require care and support in the future.
- In considering what else might help, authorities **should** consider the person's own strengths and capabilities, and what support might be available from their wider support network or within the community.
- The assessment must be person-centred throughout. Local authorities must find out whether the

- person being assessed wishes to co-produce the assessment and **should** as far as is practicable do so, as the person is the expert on their own condition(s).
- An assessment **should** be a collaborative process and it is therefore essential that the process is transparent and understandable so that the individual is able to:
 - develop an understanding of the assessment process;
 - develop an understanding of the implications of the assessment process on their condition(s) and situation;
 - understand their own needs and outcomes they want to achieve to allow them to engage effectively with the assessment process;
 - start to identify the options that are available to them to meet those outcomes and to support their independence and wellbeing;
 - understand the basis on which decisions are reached.

Eligibility

- The national eligibility criteria introduce a **minimum threshold** establishing what level of needs must be met by local authorities.
- All local authorities **must comply** with this national threshold.

Local Authorities Must:

- Consider during assessments whether the people concerned would benefit from some type of preventive service or intervention.
- Comply with the newly inaugurated national eligibility threshold.
- Provide a written record of their decision about a person's eligibility and the reasons for coming to that decision.
- Identify any children involved in the provision of care and where relevant, must consider whether to undertake a young carer's assessment or a child's assessment
- Offer the individual the choice of a supported self-assessment if the adult or carer is able and willing to undertake it and **must** also assure themselves that the person's self-assessment is an accurate and complete reflection of their needs.
- Inform an individual of their eligibility judgement and why the LA has reached the eligibility determination that it has. They **must** also discuss what needs are eligible and how these might be met.
- Consider an individual's care and support history over a suitable period of time, to capture both the frequency and degree of fluctuation in need.
- Agree a local disputes resolution process, with the CCG, to resolve cases where there is a dispute between them about eligibility for NHS CHC.
- Ensure that their staff have the required skills, knowledge and competence to undertake assessments, and that this is maintained.
 - Where an assessor does not have the relevant knowledge when carrying out an assessment for a specific condition, they **must** consult someone who has experience of the condition.

Eligibility Assessment- Must Do's:

- In considering whether someone is eligible for care and support, LAs **must** consider whether their needs are due to a physical or mental impairment or illness, and the effect those needs have on the individual's ability to achieve a range of specified outcomes.
- LAs' eligibility determinations **must** be made without consideration of whether the adult has a carer, or what needs may be being met by a carer. The determination **must** be based solely on the adult's needs, and if an adult does have a carer, the care they are providing will be taken into account when considering whether the needs must be met. (Local authorities are not required to meet any eligible needs which are being met by a carer, but

those needs should be recognised and recorded as eligible during the assessment process)

- Where LAs have determined that a person has any eligible needs, they **must** meet these needs, subject to meeting the financial criteria.
- Where LAs decide that someone has needs which are not eligible, they **must** provide information and advice on what support might be available in the wider community or what preventative measures might be taken to prevent or delay the condition progressing.
- Where LAs decide that an individual does not have any eligible needs they **must** provide advice and information on what services are available in the community that could support the person in meeting the needs that are not eligible.
- When assessing carers' needs, LAs **must** consider whether they need support in the caring role and what impact the caring role is having on their own wellbeing.
- Following their assessments, individuals **must** be given a record of their needs or carer's assessment, including their own views.

Independent advocacy requirements

- A key requirement of the Care Act is that people should be active partners in arranging their care and support.
- Where a person has substantial difficulty being involved, the local authority must provide an independent advocate to represent the person.

Local Authorities Must:

- Provide independent advocacy to facilitate people's care involvement where an individual would experience substantial difficulty in understanding or using information given, or in communicating their views, wishes or feelings and where there is nobody else appropriate to do so.
- Observe 4 key areas that must be addressed in assessing someone's capacity to interact with care and support processes: understanding information, retaining information, weighing-up information, and communicating views and feelings
- Must ensure that there is sufficient provision of independent advocacy to meet their obligations under the Act.
- Must consider the need for an advocate to facilitate someone's involvement in the review of a care and support plan, and appoint one if necessary.
- Must ensure advocates are able to properly represent the people in whose case they may be involved: they cannot be involved in existing care arrangements (including being an employee of the LA), and must have relevant experience and training, and possess a range of personal characteristics set out in the guidance.
- Must meet their duties in relation to working with an Independent Mental Capacity Advocate provided under the Mental Capacity Act as well as those in relation to an advocate under the Care Act.
- Involve an independent advocate where someone has substantial difficulty in being actively involved in the

assessment and / or review, and where there are no family or friends to help them being engaged.

- Arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult Review where the adult has 'substantial difficulty' in being involved in the process and where there is no other appropriate adult to help them
- Take all reasonable steps to involve the people concerned and their representatives (or advocates) in preparing care and support plans.

Should do's for capacity assessments:

- If the local authority decides that they are required to appoint an independent advocate as the person does not have friends or family who can facilitate their involvement, the local authority **should** usually still consult with those friends or family members, when appropriate.
- Where a potential DOLs is identified, a full exploration of the alternative ways of providing the care and/or treatment **should** be undertaken with those responsible for care planning, in order to identify any less restrictive ways of providing that care which will avoid a deprivation of liberty
- Where a person has capacity, the advocate **should** ask their consent to look at their records and to talk to their family, friends, paid carers and others who can provide information about their needs and wishes, their beliefs and values

Local Authorities Should:

- Consider including the identification and referral of those people likely to benefit from independent advocacy (during assessment, care and support planning and review) through the care and support services they may commission
 - Take reasonable steps to assist the advocate in carrying out their role
 - Be aware of and build on the current availability of independent advocacy services in its local area.
-
- Advocacy **should** be seamless for people who qualify, so that they can benefit from the support of one advocate for their whole experience of care.

Charging and financial assessment

- The Care Act 2014 provides a single legal framework for charging for care and support.
- It enables a local authority to decide whether or not to charge a person when it is arranging to meet a person's care and support needs or a carer's support needs

Local Authorities Must:

- Where LAs decide to charge, they **must** carry out a financial assessment of what the person can afford to pay and, once complete, must give a written record of that assessment to the person.
- If the authority believes someone lacks capacity, they **must** check if there is someone else dealing with their affairs that **must** then be consulted (for example, an Enduring Power of Attorney).
- Where the care planning process has determined that a person's needs are best met in a care home LAs **must** provide for people's preferred choice of accommodation, subject to certain conditions.
- Offer at least one option that is affordable within someone's personal budget. However, people **must** also be able to choose alternative options, including a more expensive setting, where a third party or in certain circumstances, the resident, is willing and able to pay the additional cost ('top-up').
- Where care at home is agreed, the council's **must** exclude the value of the property which they occupy as their main or only home.
- Take steps to make people aware that they have the right to request the LA to meet their needs, even when they have resources above the financial limits and would not be

entitled to financial support with charges.

- Are not obliged to charge carers for their own support, but when they decide to do so they **must** do so in accordance with the non-residential charging rules.

Local Authorities Must Not:

- Charge for certain types of service specified in the guidance including: intermediate care up to 6 weeks; aids and minor adaptations; care and support provided to people with Creutzfeldt-Jacob Disease; and after-care services/support provided under section 117 of the Mental Health Act 1983.
- Charge more than the cost that they incur in meeting the assessed needs of the person.
- Charge carers for care and support provided directly to people they care for under any circumstances.

Local Authorities Should:

- The overarching principle is that people should only be required to pay what they can afford. People will be entitled to financial support based on a means-test and some will be entitled to free care. The framework is therefore based on the following principles that local

authorities **should** take into account when making decisions on charging.

- Ensure that people are not charged more than it is reasonably practicable for them to pay;
 - Be comprehensive, to reduce variation in the way people are assessed and charged;
 - Be clear and transparent, so people know what they will be charged;
 - Promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;
 - Support carers to look after their own health and wellbeing and to care effectively and safely;
- Be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs;
 - Apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings;
 - Encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so;
 - Be sustainable for local authorities in the long-term.

Deferred payment agreements

- The establishment of the universal deferred payment scheme will mean that people should not be forced to sell their home in their lifetime to pay for their care.
- By taking out a deferred payment agreement, a person can 'defer' or delay paying the costs of their care and support until a later date.
- Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging (or even a crisis point) for them and their loved ones as they make the transition into residential care.

Background – Must Do's:

- Deferred payment agreements are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. Local authorities **must** offer them to people who meet the criteria below and who are able to provide adequate security (see section entitled 'Obtaining Security' below). They **must** offer them to people who have local authority arranged care and support, and also people who arrange and pay for their own care, subject to these criteria. The regulations specify that someone is eligible for and so **must** be offered a deferred payment agreement if they meet all three of the following criteria at the point of applying for a deferred payment agreement:
 - anyone whose needs are to be met by the provision of residential care. This is determined when someone is assessed as having eligible needs which the local authority decides should be met through residential care. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences;
 - who has less than £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
 - whose home is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).
- A local authority **must** offer a deferred payment to someone meeting the criteria governing eligibility for deferred payment agreements (DPAs) and who is able to provide adequate security for the debt.
- where someone wishes to defer a larger amount than they can provide security for. In these situations, a local authority **must** still offer a deferral but should be guided by principles in the section entitled 'how much to defer'.

Information and Advice- Must Do's:

- The local authority **must** provide information in a way which is clear and easy to understand
- If a LA identifies someone who may benefit from or be eligible for a DPA or a person approaches them for information, the local authority **must** tell them about the DPA scheme and how it works.
- This information and advice **must** be provided in formats that ensure compliance with the requirements of the Equality Act 2010 (in particular, the LA **must** ensure where appropriate that the information is accessible to the sensory impaired, people with learning disabilities, and people for whom English is not their first language).
- The local authority **must** advise if it intends to place conditions on how the property is maintained whilst the DPA is in place.

Agreeing the DPA – Must Do's:

- In principle, a person eligible for a deferred payment should be able to defer the entirety of their care home costs, the care home costs to be deferred **must** be agreed between the local authority and the person and set out clearly and unambiguously in the agreement.
- When considering the *equity available*, local authorities **must** set an 'upper limit' for the total amount that can be deferred and seek to ensure that the amount deferred does not rise above this agreed upper limit. When calculating progress towards the upper limit, the local authority **must** also include any interest or fees to be deferred.

- If the person intends to secure their deferred payment agreement with a property, local authorities **must** secure a valuation of the property.
- Where a local authority is required to offer a deferred payment agreement, the upper limit **must** be set at a maximum loan-to-value (LTV) ratio of the security provided as set out in regulations.
- LAs may require a contribution towards fees from a person's income, but **must not** leave the person with less than the disposable income allowance.
- In principle, people should be able to defer their full care home costs including any top-ups. At a minimum, when local authorities are required to offer a deferred payment agreement they **must** allow someone to defer the care costs.
- To ensure sustainability of the deferral, local authorities will have discretion over the amount people are permitted to top-up. Local authorities **must** consider any request for top-ups, but retain discretion over whether or not to agree to a given top-up.
- When agreement has been reached between a person and the local authority as to how much they want to defer, the local authority **must** ensure this is clearly and unambiguously set out in the deferred payment agreement.
- A local authority **must** have adequate security in place when entering into a deferred payment agreement. The regulations set out some forms of security that local authorities **must** accept.
- A Council **must** accept a legal mortgage charge as adequate security – and local authorities **must** offer a deferred payment to someone who meets the eligibility criteria for the scheme where the local authority is able to secure a

legal mortgage charge on the property.

- In cases where an agreement is to be secured with a jointly-owned property, local authorities **must** seek both owners' consent (and agreement) to a charge being placed on the property.
- A local authority has full discretion in individual cases to refuse a deferred payment agreement if it is not satisfied that adequate security is in place even if someone otherwise meets the criteria. The exception to this is in the case of legal mortgage charges, which a local authority **must** accept as adequate security.

Charging – Must Do's:

- Local authorities can also recoup the administrative costs associated with DPAs, including legal and ongoing running costs, via administration charges. Administration charges and interest accrued will usually be added on to the total amount deferred as they are accrued although a person may request to pay these separately if they choose. The deferred payment agreement **must** clearly set out that all fees deferred, alongside any interest and administrative charges incurred, must be repaid by the person in full.
- Where local authorities charge interest this **must not** exceed the maximum amount specified in regulations. Local authorities **must** inform people before they make the agreement if interest will be charged and what this will be.
- An administration charge **must** be set at a reasonable level, and this level **must** reflect actual costs incurred by the local authority in provision of the Universal Deferred

Payment Scheme, as set out in regulations.

- A hardcopy of the deferred payment agreement must be provided to the person.

The Agreement must clearly set out:

- What the interest rate will be and how interest will be calculated against the amount deferred;
- conditions for the termination of the agreement by someone, including a requirement on the person to notify the local authority if they intend to sell their property or repay from an alternative mechanism (see the section entitled 'terminating the agreement' below);
- circumstances in which the local authority could refuse to defer further fees (for example if the person has already deferred up to their 'upper limit', as set out in the 'how much can be deferred' and 'permission to refuse' sections above);
- that the local authority will secure their debt either by placing a legal (Land Registry) charge against the property, or by some other means specified;
- The means of redress if either party feels the other has broken the terms of the agreement;
- A clear explanation of the consequences of taking out a DPA for the person and their property, including anybody who may reside in the property; and
- What the deferred amount or loan can be spent on. This would usually be restricted to care or care home costs.

Following the agreement:

- Local authorities must ensure at a minimum that people sign or clearly and verifiably affirm they have received adequate information on options for paying for their care.
- Under Clause 78 of the Care Act, local authorities may delegate responsibility for deferred payment agreements to another body. If a local authority chooses to exercise their powers for delegation, the local authority **must** satisfy itself that the body taking on responsibility for DPAs is complying with all appropriate regulations and guidance.
- An authority **must** at a minimum provide people with an annual written update of the amount of fees deferred, of interest and administrative charges accrued to date, and of the total amount due and the equity remaining in the home. The update **must** set out the amount deferred during the previous year, alongside the total amount deferred to date, and **must** also include a projection of how quickly someone would deplete all equity remaining in their chosen form of security up to their 'upper limit'.
- Local authorities may also offer services/products to help the person meet the requirements for maintenance and insurance, but **must not** compel a person to take on their product. Local authorities **must** accept reasonable alternative maintenance and insurance services.

Terminating the DPA – Must Do's:

- On termination, the full amount due (including care home charges, any interest accrued and any administrative or legal fees charged) **must** be paid by the person to the local authority.
- If a person decides sell their home, they **must** notify the local authority at an early stage during the sale process
- A person may decide to repay the amount due to the local authority from another source, or a third party. In either case, the local authority **must** be notified of the person's/the third party's intention in writing, and the local authority **must** relinquish the charge on the property on receipt of the full amount due.
- If the deferred payment is automatically terminated by a person's death, the amount due to the local authority **must** be either paid out of the estate or paid by a third party. The local authority **must** accept an alternative means of payment in this case, provided this payment covers the full amount due to the local authority.
- In whichever circumstance an agreement is terminated, the full amount due to the local authority **must** be repaid to cover all costs accrued under the agreement, and the person **must** be provided with a full breakdown of how the amount due has been calculated.

Care and support planning

- Care and support should **put people in control** of their care, with the support that they need to enhance their wellbeing and improve their connections to family, friends and community.
- A vital part of this process for people with eligible ongoing needs is the care and support plan or support plan in the case of carers

Local Authorities Must:

- Actively involve people and ensure their influence throughout the planning process (and should be free to take ownership of the development of the plan if they wish)
- Clearly explain their ability to meet needs by taking a direct payment to service users.
- Provide a care and support plan following the needs and carer's assessment and determination of eligibility.
- Take all reasonable steps to involve the people concerned and their representatives (or advocates) in preparing care and support plans.
- Understand that people have the right to make what others might regard as an unwise or eccentric decision.
- Where LAs are not required to meet an individual's needs, and decide not to use their powers to meet non-eligible needs, they **must** give the person concerned a written explanation for taking this decision.

A care and support plan must always include:

- The needs identified by the assessment.
- Whether, and to what extent, the needs meet the eligibility criteria.
- The needs that the LA is going to meet, and how it intends to do so.
- For a person needing care, for which of the desired outcomes care and support could be relevant.
- For a carer, the outcomes the carer wishes to achieve, and their wishes around providing care, work, education and recreation where support could be relevant.
- The personal budget.
- Information and advice on what can be done to reduce the needs in question, and to prevent or delay the development of needs in the future.
- Where needs are being met via a direct payment, the needs to be met via the direct payment and the amount and frequency of the payments.

Personal Budgets

- Personal budgets are a key part of the Government's aspirations for a **person-centred care and support** system.
- Independent research shows that where implemented well, personal budgets **can improve outcomes and deliver better value** for money.
- The Act places personal budgets into law for the first time, making them the norm for people with care and support needs

Must Do's:

- Everyone whose needs are met by LAs, whether those needs are eligible, or if the authorities have chosen to meet other needs, **must** receive a personal budget as part of the care and support plan, or support plan.
- The personal budget **must** always be an amount sufficient to meet the person's care and support needs.
- Overall care and support costs **must** be broken down into the amount the person must pay, following the financial assessment, and the remainder of the budget that the authority will pay.

Local Authorities Must:

- Ensure that however the personal budget is used, the decision is recorded in the care and support plan and the person is given as much flexibility as is reasonably practicable in how their needs are met.
- Ensure the process and practice for personal budgets follows the key principles of self-directed support.

Direct Payments

- Direct payments are monetary payments made to individuals who request to receive one to meet some or all of their **eligible** care and support needs.
- The legislative context for direct payments is set out in the Care Act, Section 117(2C) of the Mental Health Act 1983 (the 1983 Act) and the *Care and Support (Direct Payments) Regulations 2014*.

Local Authorities Must:

- Inform people at the care planning stage of the needs that could be met via direct payments, but LAs **must** also consider requests for direct payments made at any time, and have clear and swift processes in place to respond to the requests.
- Be satisfied that direct payments are being used to meet eligible care and support needs.
- Review the making of direct payments initially within six months, and thereafter every 12 months, but **must not** design systems that place a disproportionate reporting burden upon the individual.
- Have regard to where direct payments can be integrated with other forms of public funding, such

as personal health budget direct payments.

- Ensure there is no gap in the provision of care support when terminating direct payments.

Local Authorities Must Not:

- Allow the necessary accountability processes involved in administering and monitoring direct payments to restrict choice or stifle innovation.
- Force people to take a direct payment against their will.
- Allow pre-paid cards used in association with direct payments to be linked solely to an online marketplace that only contains selected providers in which to choose from.

Review of Care and Support Plans

- Ensuring all people with a care and support plan, or support plan have the opportunity to reflect on what's working, what's not working and what might need to change is a an important part of the planning process.
- It ensures that plans are **kept up to date and relevant** to the person's needs and aspirations, will provide confidence in the system, and mitigate the risk of people entering a crisis situation.

Review Must Do's:

- The review process (including the revision of the care plan) **must** involve the person needing care and the carer where feasible, and consideration **must** be given on whether to involve an independent advocate.
- If in receipt of a request to conduct a review, local authorities **must** consider this and judge the merits of conducting a review.
- Where someone has substantial difficulty in being actively involved in the review, and where there are no family or friends to help them being engaged, an independent advocate **must** be involved.

Reviews Must Not:

- Be used as a mechanism to arbitrarily reduce the level of a person's personal budget.
If in receipt of a request to conduct

Safeguarding

Adult safeguarding means **protecting** a person's right to live in safety, free from abuse and neglect. This section of the guidance sets out a series of principles to inform **all adult safeguarding** work focusing on:

- Empowerment
- Prevention
- Proportionality
- Protection
- Partnership

Local Authorities Must:

- Make enquiries, or ensure others do so, if it believes an adult is, or is at risk of, abuse or neglect – such enquiries should establish whether any action needs to be taken to stop prevent abuse or neglect, and if so, by whom
- Set up a Safeguarding Adults Board
- Arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult review where the adult has 'substantial difficulty' in being involved in the process and where there is no other appropriate adult to help them
- Co-operate with each of its relevant partners (as set out in section 6 of the Act) in order to protect adults experiencing or at risk of abuse or neglect.

All Staff Must:

- Keep accurate records, clearly stating what the facts are and what are the known opinions of professionals and others.

Safeguarding Adults Board (SAB) must:

- Publish a strategic plan for each financial year that sets how it will meet its main objectives and what the members will do to achieve these objectives.
 - The plan **must** be developed with local community involvement, and the SAB **must** consult the Local Healthwatch organisation
- Publish an annual report detailing what the SAB has done during the year to achieve its main objective and implement its strategic plan, and what each member has done to implement the strategy, as well as detailing the findings of any Safeguarding Adults Reviews or any on-going reviews
- Conduct any necessary safeguarding Adults Reviews.

Integration Cooperation and Partnerships

- For people to receive **high quality health and care and support**, local organisations need to work in a more joined-up way, to eliminate the disjointed care that is a source of frustration to people and staff, and which often results in poor care, with a negative impact on health and wellbeing.
- The vision is for **integrated care and support** that is person-centred, **tailored** to the needs and preferences of those needing care and support, carers and families.

Local Authorities Must:

- Carry out their care and support responsibilities with the aim of promoting greater integration with NHS and other health-related services.
- Carry out [all] their care and support responsibilities with the aim of joining-up the services provided or other actions taken with those provided by the NHS and other health-related services (for example, housing or leisure services)
- Have integration as an aim in their strategic work including on joint needs assessment and joint health and wellbeing strategies.
- Co-operate with each of their relevant partners, and the partners must also co-operate with the LAs, in relation to relevant functions – partners **must** co-operate when requested unless to do so would be incompatible with the partner's own functions or duties.
- Co-operate with the local offices of the Department for Work and Pensions, when exercising functions which are relevant to care and support. This is partly related to the requirement that when working to promote a diverse market under section 5, LAs **must** consider the importance of enabling people to

undertake work, education and training

Local Authorities and their partners must:

- Co-operate generally in performing their functions related to care and support
- Co-operate where this is needed in the case of specific individuals who have care and support needs.

Local authorities must provide information and advice:

- The guidance includes detailed discussion on the importance of including housing in efforts to improve integration and particularly makes clear that LA duties to provide information on care and support **must** include advice on relevant housing and housing services which meet care and support needs.

Transition to Adult Care and Support

- **Effective person-centred transition planning is essential** to help young people and their families prepare for adulthood.
- Transition to adult care and support comes at a time when a lot of change can take place in a young person's life.
- It can also mean changes to the care and support they receive from education, health and care services, or involvement with new agencies such as those who provide support for housing, employment or further education and training.

Transition Assessments – Must Do's:

- A transition assessment **must** take account of the wellbeing of each young person or carer so that planning is based around the individual needs, wishes, and outcomes which matter to that person.
- The assessment **must** be of significant benefit to the young person or carer, and should not be carried out at inappropriate times such during exams.
- A young person or carer, or someone acting on their behalf, has the right to request a transition assessment. LAs **must** consider such requests and whether the likely need and significant benefit conditions apply – and if so they **must** undertake a transition assessment. If the LA thinks these conditions do not apply and refuses an assessment on that basis, it **must** provide its reasons for this in writing in a timely manner, and it **must** provide information and advice on what can be done to prevent or delay the development of needs for support.
- The guidance implies rather than states that a transition assessment **must** be carried out.

Local Authorities Must:

- Assess the needs of a child's carer where there is a likely need for support after the child turns 18 and it is of significant benefit to the carer to do so.
- Assess the needs of young carers as they approach adulthood. Transition assessments and planning **must** consider how to support young carers to prepare for adulthood and how to raise and fulfil their aspirations.
- Give an indication of which needs are likely to be eligible needs, after completing a transition assessment, and for any needs that are not eligible under the adult statute, LAs **must** provide information and advice on how those needs can be met, and how they can be prevented from getting worse.
- Have a Staying Put policy to ensure transition from care to independence and adulthood that is similar for care leavers to that which most young people experience, and is based on need and not on age alone.

Local Authorities Must Not:

- Allow a gap in necessary care and support when young people and carers move from children's to adult services.

Prisons, Approved Premises and Bail Accommodation

- People in custody or custodial settings who have needs for care and support should be **able to access the care they need**, just like anyone else.
 - In the past, the responsibilities for meeting the needs of prisoners have been unclear, and this has led to confusion between local authorities, prisons and other organisations.
 - On occasion, this has meant that people's eligible needs have gone unmet, with an impact on their health and wellbeing, as well as on their longer-term rehabilitation.
- People bailed to a particular address in criminal proceedings are, like those in prison or approved premises, treated for the purposes of the Care Act as ordinarily resident in the local authority where they are required to reside and the provisions in the Care Act apply accordingly.

Prisons and Approved Premises - Must Do's:

- Not all local authority areas contain prisons or approved premises. Those that do will assume responsibility for the eligible needs of the people residing in these sites. However, all local authorities will be responsible for continuity of care for offenders with a package of care coming into their area on release from prison. Similarly local authorities **must** support continuity of care for any of their residents moving into custody.
- Where a local authority is made aware that an adult in a custodial setting may have care and support needs, they **must** carry out an assessment as they would for someone in the community.
- Once a local authority has assessed an individual in custody as needing care and support they **must** then determine if some or all of these needs meet the eligibility criteria.
 - Where an individual does not meet the eligibility criteria, the local authority **must** then give him or her written information about:
 - what can be done to meet or reduce needs and what services are available; and
 - what can be done to prevent or delay the development of needs for care and support in the future.
 - For any needs that are not eligible under the Act, local authorities **must** provide information and advice to the individual on how those needs can be met, and how they can be prevented from getting worse

Care and Support Plans – Must Do's:

- Where a local authority is required to meet needs it **must** prepare a care and support plan for the person concerned and involve the individual to decide how to have their needs met.

- Whilst every effort should be made to put people in control of their care and for them to be actively involved and influential throughout the planning process, local authorities **should** make it clear to individuals that the custodial regime may limit the range of care options available, and some, such as direct payments do not apply in a custodial setting. However, the plan **must** contain the elements defined in the Act, including the personal budget. This will ensure that the person is clear of the needs to be met, and the cost attributed to meeting those needs.

Continuity of Care – Must Do's:

- Individuals in custody with care and support needs **must** have continuity of care where they are moved to another custodial setting or where they are being released from prison

and are moving back in to the community.

- Where the new custodial setting or the community, if being released, is in a different local authority area (second authority), the first authority **must** inform the second authority of the move once it has been told by the prison.
- Both local authorities **must** share the relevant information as set out in chapter 20 on continuity of care, including their care and support plan.
- The second authority **should** assess the individual before they are moved, but this may not always be possible as the authority could be informed of the transfer at short notice. In such circumstances the second authority **must** continue to meet the care and support needs that the first authority was meeting. It **must** continue to meet these needs until it has carried out its own assessment.

Delegation of Local Authority Functions

- Part 1 of the Care Act sets out local authorities' functions and responsibilities for care and support. Sometimes external organisations might be better placed than the local authority itself to carry out some of its care and support functions.
 - For instance, an outside organisation might specialise in carrying out assessments or care and support planning for certain disability groups, where the local authority does not have the in-house expertise.
 - External organisations might also be able to provide additional capacity to carry out care and support functions.
- The Care Act allows local authorities to delegate some, **but not all**, of their care and support functions to other parties.

Must Do's:

- Since care and support functions are public functions, they **must** be carried out in a way that is compatible with all of the LA's legal obligations.
- Since the local authority **must** be one of the members of SABs, and it **must** take the lead role in adult safeguarding, it may not delegate these statutory functions to another party.

Must Not Do's:

- The care and support functions which **must not** be delegated are:
 - The duties on integration and co-operation
 - The main requirements under adult safeguarding – although specific associated tasks may be delegated
 - The power to charge

Moving Between Areas

- Many of the local authority's care and support responsibilities relate to the entire local population (for instance, in relation to information and advice or preventive services).
- However, when it comes to determining which individuals have needs which a local authority is required to meet, the local authority is only required to provide needs in respect of an adult who is **ordinarily resident** in their area.

Must Do's:

- When someone moves home within a local authority area, the LA **must** continue to meet their needs. When they move out of area the two LAs concerned **must** work together to ensure that there is no interruption to their care and support.
- When an adult with care and support needs and any carer who is moving with the adult, are contemplating the possibility of moving, they **must** be provided with information and advice about the care and support available in the new area.
- When the person has confirmed their intention to move to the second LA, that LA **must** assure itself that the person's intention is genuine. Once certain of the intention the second LA **must** inform the first LA. At that stage, both LAs should identify a named staff member to lead on the case and be the on-going contact during the move.
- The second LA **must** contact the adult and the carer to carry out an assessment and to discuss how arrangements might be made, and **must** keep the first LA informed of progress.

Sight Registers

- The Certificate of Vision Impairment (CVI) formally certifies someone as being sight impaired or as severely sight impaired.
- When a local authority receives a CVI they cannot immediately add the individual to the sight register unless the person has given specific consent.

Must Do's:

- LAs **must** keep a register of people who are severely sight impaired and sight impaired.
- When someone who is sight impaired, and is receiving services, decides to move, Local authorities **must** follow the arrangements to ensure continuity of care.

Transition to the New Legal Framework

- The Care Act provides an **updated legal framework** for care and support, and introduces a number of new rights, responsibilities and processes.
- It will be crucial to the experience of people who use care and support, carers and their families, as well as those who provide and work in the system, that the transition to the new legal framework from April 2015 onwards is **smooth and effectively-managed** by local authorities.
- How people currently in contact with the care and support system move into the new system will affect their ability to achieve their outcomes, and it will also impact on local authorities' ability to deliver their obligations.

New Legal Framework - Must Do's:

- Where someone is already receiving care and support under existing legislation, their first review after April 2015 **must** consider whether their existing plan fulfils the requirements set out in Chapter 10 of this guidance and take any steps necessary to bring it into line.
- The assessment carried out **must** meet the same legal obligations as for any other needs assessment.
- Having carried out an assessment, the local authority **must** determine whether the individual has eligible needs for care and support
- Where the local authority has carried out an assessment and pre-determined eligible needs, it **should** contact the person concerned around April 2016 to satisfy itself that the needs or other circumstances (e.g. the person's financial resources) have not changed. The person may ask the local authority to review their needs, and the local authority should respond to such a request. If the needs or circumstances have not changed, or if no request for a review is made, then the authority may take the record of the needs and costs as accurate, and provide an independent personal budget and start the care account on that basis. This **must** be communicated to the individual in writing.
- Where local authorities consider that there will be a change in practice which affects the amount of charges people will pay, for example as a result of changes to the upper capital limits, they **must** take steps to ensure that individuals concerned are subject to the correct charges. This may include carrying out new financial assessments where circumstances have changed and a new assessment is required.
- To ensure that needs continue to be met between the Care Act coming into force and the point of review, existing legislation underpinning service provision will be saved for a period of one year. However, local authorities **must not** use existing legislation to underpin care and support planning after April 2015 – the purpose of this saving is only to continue existing provision until a review can take place, at which point the person would transfer under the provisions of the Care Act.

- In particular, the plan will need to include a personal budget for all people whose needs the local authority is meeting, including carers. Where the person has not previously received a personal budget, this **must** be provided and explained during the review, to align the plan with the Act's requirements.
- At the same point, people should be made aware if they have a right to a direct payment under the Care Act if this has not been discussed before. Where someone is currently receiving a direct payment, the direct payment should continue, but local authorities **must** use the first review after April 2015 to establish a personal budget and thereafter use this as the basis for the direct payment.
- Where a local authority has entered into a deferred payment agreement (DPA) with a person prior to April 2015, that DPA **must** remain in place until such a time as it would expire under the existing agreement. The DPA **must** continue subject to the same terms and conditions as have been agreed between the local authority and the person concerned. Local authorities **must not** remake an old DPA into a new one via the new regulations, but should use the provisions in the Care Act to make all future agreements after April 2015.
- From April 2015, local authorities **must** only use the debt recovery powers under Section 69 of the Care Act in order to recover any debts from the date the Act comes into force, including for debts that were incurred before that date.
- On 30 June 2015, the ILF will close to its users, and both funding and responsibility will transfer to local authorities in England. Local authorities **will have to** meet all former ILF users' eligible needs from 1 July 2015.
- The assessment process under the Care Act 2014 requires authorities to consider the person's needs, their well-being and their desired outcomes. The adult, their carer and anybody else they wish to involve, **must** be involved throughout the process, and the local authority **must** give them a written record of their needs assessment.
- Local authorities **must** also consider the impact of a person's needs on their family and others in their support network. Many ILF users have multiple and complex needs, and may be receiving care from family members as well as employed Personal Assistants. Where a local authority finds that a person is providing care and has an appearance of needs for support, they **must** offer a carer's assessment.
- Local authorities **must** involve the person in the care and support planning process, and take steps to agree the final plan with them.

New Legal Framework - Should Do's:

- A carer who has been previously assessed will not automatically require a separate carer's assessment under the Care Act. However, local authorities **should** consider the fact that the new duty for assessment of carers under the Care Act means that a significant number of carers are likely to have a right to assessment under the Act that have not been assessed previously. Local authorities should consider whether and how they need to increase their expertise and capacity to fulfil this duty.

- Local authorities **should** review their previous local approach to eligibility, and consider how this relates to the minimum threshold. Local authorities must meet needs at least at this threshold, though they will remain able to meet needs locally at more generous levels. It may be the case that no further action is required, and the authority is satisfied that it will meet needs at the minimum threshold without further change. Where this review indicates that local authorities have not previously met needs which are described in the minimum threshold, they will need to take steps to identify and review the needs of any individuals who may be affected.
- Local authorities **should** adopt a targeted approach to reviewing the needs of any individuals who may be affected by the implementation of the minimum eligibility threshold. Where the local authority considers that a person whose needs have been met by the local authority in the past will continue to have eligible needs under the Care Act, it need not take any specific steps in relation to that person, if there has been no change. However, where a local authority identifies an individual or a specific cohort who may become eligible, it **should** target an assessment of needs at those individuals in order to determine whether they now have eligible needs which must be met.
- Local authorities **should** determine whether and how to use their powers to meet needs beyond the level of the minimum threshold. Where local authorities have previously provided care and support to people with lower level needs, they **should** consider carefully any proposal to restrict local eligibility to only those needs described within the minimum threshold, and **should** consult with their local population before making such a change.
- In relation to support for carers, local authorities **should** review existing local policies in light of the new national minimum eligibility threshold for carers. Where this indicates individuals or groups who may have become eligible as a result, then a carer's assessment **should** be offered.
- Local authorities **should** review the operation of their local charging framework, to ensure that this is consistent with the obligations set out by the Care Act and associated regulations, and the provisions set out in chapter 8. Where local authorities are satisfied that their approach to charging follows the detail required by the Act and regulations, they do not need to take further steps to review funding arrangements for individuals or to carry out new financial assessments, unless other circumstances have changed. Local authorities **should** consider the need to consult with their local population, but should not be expected to consult formally if their approach to charging has not changed as a result of the Act.
- Where a local authority is providing a service under previous legislation, it **should** ensure that the person's needs continue to be met through these new arrangements, as part of the usual process of review. "Passporting" people into the new legislation should normally take place at the point of that regular review, when the authority satisfies itself that the needs are being met.
- Where a local authority has entered into a deferred payment agreement (DPA) with a person prior to April

2015, that DPA must remain in place until such a time as it would expire under the existing agreement. The DPA must continue subject to the same terms and conditions as have been agreed between the local authority and the person concerned. Local authorities must not remake an old DPA into a new one via the new regulations, but **should** use the provisions in the Care Act to make all future agreements after April 2015.

- Local authorities **will need to** plan for the transfer of adults currently receiving ILF payments to ensure that their care and support continues and is not interrupted during this period.

Transfer Review and Support Programme:

- A Transfer Review and Support Programme (TRSP), run by the ILF, to support users and local authorities in their preparations will be in place until transfer on 1st July 2015. Under the TRSP, all ILF users receive a face-to-face meeting with an ILF assessor and, where consent has been granted, if possible, a local authority representative. The outcome of this meeting is to provide the adult with an individual, outcome-focused support plan detailing their current level of support and to discuss any concerns about transfer. This Transfer Review and Support Plan will assist adults when discussing with local authorities the outcomes they wish to achieve in their day-to-day lives. As a matter of good practice, local authorities **should** take the person's Transfer Review and Support Plan into

consideration during their assessment.

- Local authorities **will need to** be aware that the majority of ILF users will already have arrangements in place to meet their needs. For example, many ILF users employ Personal Assistants. Prior to transfer the ILF will provide each user with an information pack regarding the transfer, which will include an 'employer support' leaflet for those users who are employers.
- If the adult's personal budget changes or it is agreed that their needs should be met in a different way, the adult will need to consider how this might impact on any contractual arrangements they have in place. Local authorities **should** take reasonable steps to make the adult aware of the potential consequences of any change in the amount of the adult's personal budget, and any obligations the adult may have as a consequence.
- ILF recipients receive their ILF as a direct payment and the majority of these will also have a direct payment from their local authority to meet their care and support. However, a small number of ILF recipients may not be receiving a direct payment from their local authority. Where an adult within this small group requests a direct payment, local authorities **will need to** consider if they meet the criteria, and if so, put the necessary processes and arrangements in place (see chapter 12 on direct payments).

Preparing for funding reform

Summary of 2016/17 reforms

- April 2016 will see the introduction of the biggest funding reforms to care and support in over 65 years with more people than ever before contacting their local authority. It is vital that every local authority starts to plan and prepare for these changes now to ensure that people are able to benefit immediately.
- Local authorities **should** take steps now to understand the additional likely demand for support as a result of the funding reforms. It is anticipated that a significant number of people who would previously have arranged and paid for their own care may approach the local authority for support in accessing care, or for an assessment of their needs. This is needed so that the local authority can record the cost of meeting their eligible needs for the purposes of establishing their care account, and counting costs towards their cap.
- In order to prepare for the implementation of the capped costs system, local authorities **should** take steps to identify the number of “self-funders” (i.e. people who arrange and pay for their own care and support) in their local area. This group are unlikely to currently be in contact with the local authority, and local authorities **should** work with other partners who may be better placed to scope the local population, including for example the local NHS, provider organisations and the voluntary sector.
- In identifying people who currently arrange their own care, local authorities **should** consider
 - specific groups who would benefit most from the introduction of the cap on care costs, and may be most likely to approach the authority – for example:
 - People who currently arrange their own care and support, and would be likely to have eligible needs if assessed by the local authority. People already living in care homes who are not funded by the local authority may be most likely to fall into such a category, and may be reasonably estimated using CQC registration data or information available from providers themselves.
 - People with modest assets, who would benefit from the rise in the upper capital limit, and may become eligible for financial support from the local authority.
 - Working-age adults whose needs for care and support are likely to meet the eligibility criteria.
 - In estimating the impact of additional demand, local authorities **should** take into account other factors in their local population which may influence the likelihood of individuals seeking care and support. For example, information on existing access to universal services by self-funders (e.g. any universal reablement service) may provide a useful indication of the willingness of such groups to contact the local authority. Similarly, information derived from contact centres or existing information and advice services may also indicate the preferences of such groups. Other local services (e.g. local GPs) may also have information and experience with the same groups.
 - Local authorities **should** take steps to raise awareness of the reforms,

in keeping with their obligations for providing information and advice on the care and support system (see chapter 3). In order to predict and manage additional demand, local authorities **should** seek out groups, for example those identified above, for targeted communications and the local approach to implementation. Local authorities **should** consider how to contact any specific groups who may benefit from earlier information, for example individuals who may be at risk of losing mental capacity in the near future. In targeting information and communications, local authorities **should** follow the same factors of proportionality and appropriateness as in providing any other information and advice.

- Where local authorities have identified groups who would be likely to approach them for support under the capped costs system, they **should** consider carrying out the relevant processes early in order to manage capacity and workload over a longer period. For example, early needs assessments may be carried out in order to pre-determine eligible needs and record the cost of meeting those needs for people who would benefit.
 - Local authorities **should** consider which groups of individuals may benefit most from such an approach. One such example may be those self-funding people with eligible needs who are in the most settled populations, where needs are least likely to change before April 2016, such as care home residents. However, groups that are difficult to reach or particularly vulnerable may also benefit from early assessment given the potential challenges thereafter; and
- it may be helpful for local authorities to understand the practicalities of these assessments well in advance of April 2016 to ensure that they have robust processes in place.
- If needs change, the local authority will be required to carry out a further assessment, and authorities **should** consider how to mitigate such risks in the approach adopted. Local authorities **should** consider when would be an appropriate time to begin to carry out assessments solely for the purpose of preparing for the capped costs system, bearing in mind the likelihood of needs changing before April 2016.
 - The assessment carried out should meet the same legal obligations as for any other needs assessment (see chapter 6). However, where a local authority carries out such an assessment, this should be assumed to be on the basis that the person does not wish for the authority to meet the person's needs at that time (because the purpose of the assessment is to pre-determine eligible needs and care costs, in advance of April 2016, and not to seek local authority support) and this should be made clear to the person. However, if the person subsequently asks the local authority to meet their eligible needs, then the usual obligations under the Care Act would apply and the local authority would be required to do so. The local authority **should** make this clear to the individual at the outset.
 - Having carried out an assessment, the local authority must determine whether the individual has eligible needs for care and support. The local authority **should** provide the individual with a written record, which includes:

- a record of the assessment and eligibility determination setting out the needs assessed, and of those which needs are eligible;
- the cost to the local authority of meeting the eligible needs. This should use the processes which the local authority will already have in place for calculating indicative personal budgets, in order to provide an interim cost of meeting the needs; and,
- information and advice on how to prevent or delay needs, how to access financial advice, and the anticipated process for confirming their care account from April 2016.
- The cost of meeting the person's eligible needs which is calculated at this point may form their independent personal budget from April 2016, provided that their needs do not change. The costs will not start counting towards the cap and their care account will not begin before this date. This **should** be made clear to the person, and if appropriate their family, in the manner in which the information above is provided.
- Where the local authority has carried out an assessment and pre-determined eligible needs, it **should** contact the person concerned around April 2016 to satisfy itself that the needs or other circumstances (e.g. the person's financial resources) have not changed. The person may ask the local authority to review their needs, and the local authority **should** respond to such a request.
- Local authorities **should** consider the steps that could be taken to manage capacity issues associated with early assessments as described above, as well as additional assessments after April 2016.
- Local authorities **should** develop a clear understanding of their current workforce and future needs in determining their approach to delivering additional assessments. They may consider a role for strategic partners in the voluntary sector or others who are already in touch with some of the people concerned and who would be open to being trained to carry out assessments on the authority's behalf. Where authorities pursue such an approach, they **should** consider the effect on other elements of the care and support process and how to manage interactions between the organisations.
- Where a person carries out a self-assessment, the local authority **should** consider how the self-assessment is verified and how this links with subsequent steps, such as calculating the cost of meeting eligible needs.
- All these changes will place new requirements on local information systems and processes. Local authorities **should** review the impact on their information systems in conjunction with their suppliers and consider whether new systems and technology is required and carefully consider their procurement approach. In particular, local authorities **should** take into account the wider health and care technology strategy, including use of open APIs, when making decisions in this area. Local authorities **should** also consider whether business processes also need to be reviewed and changed in parallel to changes in systems.
- Authorities **should** consider how digital approaches can put citizens in control by making systems open and accessible, including online assessment, care planning, access

to records and care accounts. Local authorities **will also need to** consider how systems can be made open and accessible to people where digital internet systems are not accessible, or even not permitted, such as in prison.

- Local authorities should consider the training needs of staff, and in particular the needs of those who carry out the relevant assessments to ensure that there is sufficient understanding of the new system. Where local authorities propose to commission or delegate some activities to other organisations, they should ensure that staff are trained to the same standard. Practical learning and development modules to support the training of staff to implement the technology are required. Local authorities should start early conversations with suppliers to identify the changes required Care Act are under development to support this process.
- Local authorities **should** also review their provision of financial advice and relationships with existing local independent providers. Local authorities **should** take steps to identify sources of independent advice which are accessible to local people, and make arrangements for future signposting.

Annex A: Choice of accommodation and additional payments

- A person's ability to make an informed choice is a key element of the care and support system. This **must** extend to where the care and support planning process has determined that a person needs to live in a specific type of accommodation to meet their care and support needs.
- Local authorities **must** also remember that the regulations and guidance on choice of accommodation and additional costs apply equally to those entering care for the first time, those who have already been placed by a local authority, and those who have been self-funders, but because of diminishing resources are on the verge of needing local authority support.

Must Do's:

Choice of Accommodation

Where a local authority is responsible for meeting a person's care and support needs and their needs have been assessed as requiring a particular type of accommodation in order to ensure that they are met, the person **must** have the right to choose between different providers of that type of accommodation provided that:

- the accommodation is suitable in relation to the person's assessed needs;
- to do so would not cost the local authority more than the amount specified in the adult's personal budget for accommodation of that type;
- the accommodation is available; and
- the provider of the accommodation is willing to enter into a contract with the local authority to provide the care at the rate identified in the person's personal budget on the local authority's terms and conditions.

This choice **must not** be limited to those settings or individual providers with which the local authority already contracts with or operates, or those that are within that local authority's geographical boundary. It **must** be a genuine choice across the appropriate provision.

If a person chooses to be placed in a setting that is outside the local authority's area, the local authority **must** still arrange for their preferred care. In doing so, the local authority should have regard to the cost of care in that area when setting a person's personal budget.

Suitability of Accommodation

In exercising a choice, a local authority **must** ensure that the accommodation is suitable to meet a person's assessed needs and identified outcomes established as part of the care and support planning process.

Cost

The care and support planning process will identify how best to meet a person's needs. As part of that, the local authority **must** provide the person with a personal budget, except in cases or circumstances set out in the Care Act (Personal Budget) Regulations. The Personal Budget is an important tool that provides clear information on the cost of meeting the person's needs.

The personal budget is defined as the cost to the local authority of meeting the person's needs which the local authority chooses or is required to meet. However, the local authority should take into consideration cases or circumstances where this 'cost to the local authority' may need to be adjusted to ensure that needs are met. For example, a person may have specific dietary requirements that can only be met in specific settings. In all cases the local authority must have regard to the actual cost of good quality care in deciding the personal budget to ensure that the amount is one that reflects local market conditions. This should also reflect other factors such as the person's circumstances and the availability of provision. In addition, the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care. Guidance on market shaping and commissioning is set out in Chapter 4. Local authorities **must** also have regard to the guidance on personal budgets in Chapter 11, and in particular paragraph 11.23 on calculating the personal budget.

A person **must not** be asked to pay a 'top-up' towards the cost of their accommodation because of market inadequacies or commissioning

failures and must ensure there is a genuine choice. The local authority therefore **must** ensure that at least one option is available that is affordable within a person's personal budget and should ensure that there is more than one. If no preference has been expressed and no suitable accommodation is available at the amount identified in a personal budget, the local authority **must** arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met. In such circumstances, the local authority **must not** ask for the payment of a 'top-up' fee. Only when a person has chosen a more expensive accommodation can a 'top-up' payment be sought.

Availability

In some cases, a short wait may be unavoidable, particularly when a person has chosen a particular setting that is not immediately available. In such cases, the local authority **must** ensure that in the interim adequate alternative services are provided and set out how long the interim arrangement may last for. In establishing any temporary arrangements, the local authority **must** provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan.

Where a person contributes to the cost of their care following a financial assessment they **must not** be asked to pay more than their assessment shows they can afford.

In some cases a person may decide that they wish to remain in the interim setting, even if their preferred setting subsequently becomes available. If the setting where they are temporarily resident is able to accommodate the

arrangement on a permanent basis this should be arranged and they should be removed from the waiting list of their original preferred setting. Before doing so, the local authority **must** make clear any consequences of that choice, including any financial implications.

Choice that cannot be met and refusal of arrangements

Whilst a local authority should do everything it can to meet a person's choice, inevitably there will be some instances where a choice cannot be met, for example if the provider does not have capacity to accommodate the person. In such cases, a local authority **must** set out in writing why it has not been able to meet that choice and should offer suitable alternatives. It should also set out the detail of the local authority's complaints procedure and if and when the decision may be reviewed.

A local authority **must** do everything it can to take into account a person's circumstances and preferences when arranging care. However, in all but a very small number of cases, such as where a person is being placed under guardianship under Section 7 of the Mental Health Act 1983, a person has a right to refuse to enter a setting whether that is on an interim or permanent basis. Where a person unreasonably refuses the arrangements, a local authority is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the person in writing that as a result they need to make their own arrangements. This should be a step of last resort and local authorities should consider the risks posed by such an approach, for both the authority itself and the person concerned. Should the person contact

the local authority again at a later date, the local authority should reassess the needs as necessary and re-open the care and support planning process.

Additional costs or 'top-up' payments

In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the accommodation in the personal budget. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost. In such cases, the local authority **must** arrange for them to be placed there, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost.

Agreeing a 'top-up' fee

The local authority **must** ensure that the person paying the 'top-up' is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future. Therefore it must ensure that the person paying the 'top-up' enters into a written agreement with the local authority, agreeing to meet that cost. The agreement **must**, as a minimum, include the following:

- the additional amount to be paid;
- the amount specified for the accommodation in the person's personal budget;
- the frequency of the payments;
- to whom the payments are to be made;
- provisions for reviewing the agreement;

- a statement on the consequences of ceasing to make payments;
- a statement on the effect of any increases in charges that a provider may make;
- a statement on the effect of any changes in the financial circumstances of the person paying the 'top-up'.

Before entering into the agreement, the local authority **must** provide the person paying the 'top-up' with sufficient information and advice to ensure that they understand the terms and conditions, including actively considering the provision of independent financial information and advice.

The amount to be paid

For the purposes of agreeing a 'top-up' fee the local authority **must** consider what personal budget it would have set at the time care and support is needed. It should not automatically default to the cheapest rate or to any other arbitrary figure.

Frequency of payments

In agreeing any 'top-up' arrangement, the local authority **must** clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis.

Provisions for reviewing the agreement

As with any financial arrangement, an agreement to make a 'top-up' payment **must** be reviewed. A local authority **must** set out in writing details of how the arrangements will be reviewed, what may trigger a review, and

circumstances when any party can request a review.

Consequences of ceasing to make payments

The local authority **must** make clear in writing the consequences should there be a break down in the arrangement to meet the cost of the 'top-up'. This should include that the person may be moved to an alternative accommodation where this would be suitable to meet their needs and affordable within the personal budget or local mental health after-care limit. As with any change of circumstance, a local authority **must** undertake a new assessment before considering this course of action, including consideration of a requirement for an assessment of health needs, and have regard to the person's wellbeing.

Price increases

Arrangements will need to be reviewed from time to time, for example in response to any changes in circumstances of the cared for person, the person making the 'top-up' payments (if this is different from the cared for person), local authority commissioning arrangements or a change in provider costs. However, these changes may not occur together and a local authority **must** set out in writing how these changes will be dealt with.

The local authority **must** clearly set out in writing to the person or persons concerned its approach to how any increased costs may be shared. This should also include details of how agreement will be reached on the sharing of any price increases. This should also state that there is no guarantee that these increased costs

will automatically be shared evenly should the provider's costs rise more quickly than the amount the local authority would have increased the personal budget or local mental health after-care limit and there is an alternative option that would be affordable within that budget.

Consequences of changes in circumstances of the person making the 'top-up' payment

The person making the 'top-up' payment could see an unexpected change in their financial circumstances that will impact their ability to continue to pay the 'top-up' fee.

The local authority **must** set out in writing how it will respond to such a change and what the responsibilities of the person making the 'top-up' payment are in terms of informing the local authority of the change in circumstances.

Self-funders who ask the local authority to arrange their care

The Care Act 2014 enables a person who can afford to pay for their own care and support in full to ask the local authority to arrange their care on their behalf. Where the person requires care in a care home to meet their needs, the local authority may choose to respond to the person's request by meeting their needs. Where the person requires some other type of care, including other types of accommodation to which the right to a choice applies, the local authority **must** meet those needs. In such circumstances, whether because the authority chooses to meet needs in a care home, or is required to meet needs in some other type of accommodation, the same rules on choice **must** apply.

Choice of accommodation and mental health after-care

Where the cost of the person's preferred accommodation is more than the local authority would provide in a personal budget or local mental health after-care limit to meet the person's needs, then the local authority **must** arrange for them to be placed there, provided that either the person or a third party is willing and able to meet the additional cost.

Information and advice

Under Section 4 of the Care Act 2014 a local authority **must** establish and maintain a service for providing people in its area with information and advice in relation to care and support. This must include information and advice about the different care providers available in the local area to enable choice as well as information and advice to help people to understand care charges, different ways to pay and money management.

Where a 'top-up' arrangement is being entered in to, all parties should fully understand their responsibilities, liabilities and the consequences of the arrangements. A local authority **must** provide the third party with sufficient information and advice to support them to understand the terms of the proposed written agreement before entering in to it. Local authorities **must** also have regard to the general guidance on Information and Advice set out in Chapter 3.

Annex B: Treatment of Capital

- This section of the guidance applies where a local authority has chosen to charge a person for the services it is arranging and therefore **must** undertake a financial assessment. When doing so, it **must** assess the income and capital of the person.
- This Annex covers the treatment of capital and should be read in conjunction with Annex C on the treatment of income. The details of the sources capital which local authorities **must** disregard are set out the regulations.
- In assessing what a person can afford to contribute a local authority **must** apply the upper and lower capital limits. The upper capital limit is currently set at £23,250 and the lower capital limit at £14,250.

Must Do's:

Defining Capital

Who owns the capital?

In some cases a person may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property **must not** be taken into account.

Calculating the value of capital

A local authority will need to work out what value a capital asset has in order to take account of it in the financial assessment. Other than National Savings Certificates, valuation **must** be the current market or surrender value of the capital asset, e.g. property, whichever is higher, minus:

- 10% of the value if there will be any actual expenses involved in selling the asset. This **must** be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale,

but legal fees to sell a property would be;

And

- any outstanding debts secured on the asset, for example a mortgage.

Capital limits

Upper and lower capital limits

The capital limits set out at what point a person is able to access local authority support and how much support they receive. The local authority **must** apply the capital limits. The capital limits for 2015/16 are:

- Upper capital limit: £23,250;
- Lower capital limit: £14,250.

The capital which a person has below the lower capital limit **must** be disregarded in the calculation of tariff income (see below).

Tariff income

Where a person has assets between the lower and upper capital limits the local authority **must** apply tariff income. This assumes that for every £250 of capital, or part thereof, a person is able to afford to contribute

£1 per week towards the cost of their eligible care needs.

Notional capital

Notional capital may be capital which:

- (a) would be available to the person if they applied for it;
- (b) is paid to a third party in respect of the person;
- (c) the person has deprived themselves of in order to reduce the amount of charge they have to pay for their care.

Where a person has been assessed as having notional capital, the value of this **must** be reduced over time. The rule is that the value of notional capital **must** be reduced weekly by the difference between the weekly rate the person is paying for their care and the weekly rate they would have paid if notional capital did not apply.

Capital disregarded

The following capital assets **must** be disregarded:

- (a) Property in specified circumstances (see paragraph 34);
- (b) The surrender value of any:
 - (i) Life insurance policy;
 - (ii) Annuity.
- (c) Payments of training bonuses of up to £200;
- (d) Payments in kind from a charity;
- (e) Any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid care and support charges
- (f) Any capital which is to be treated as income or student loans;
- (g) Any payment that may be derived from:
 - (i) The Macfarlane Trust;
 - (ii) The Macfarlane (Special Payments) Trust;
 - (iii) The Macfarlane (Special Payment) (No 2) Trust;

- (iv) The Caxton Foundation;
- (v) The Fund (payments to non-haemophiliacs infected with HIV);
- (vi) The Eileen Trust;
- (vii) The MFET Trust;
- (viii) The Independent Living Fund (2006);
- (ix) The Skipton Fund;
- (x) The London Bombings Relief Charitable Fund.
- (h) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds;

- (i) The value of a right to receive:
 - (i) Income under an annuity;
 - (ii) Outstanding instalments under an agreement to repay a capital sum;
 - (iii) Payment under a trust where the funds derive from a personal injury;
 - (iv) Income under a life interest or a life-rent;
 - (v) Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
 - (vi) An occupational pension;
 - (vii) Any rent. Please note however that this does not necessarily mean the income is disregarded. Please see Annex C for guidance on the treatment of income.
- (j) Capital derived from an award of damages for personal injury which is administered by a court or which can only be disposed of by a court order or direction;
- (k) The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in

consequence of a personal injury and any surrender value of such an annuity;

(l) Periodic payments in consequence of personal injury pursuant to a court order or

agreement to the extent that they are not a payment of income and are treated as

income (and disregarded in the calculation of income);

(m) Any Social Fund payment;

(n) Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;

(o) Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;

(p) Payments from the Department of Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;

(q) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;

(r) Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);

(s) Community charge rebate/council tax rebate;

(t) Money deposited with a Housing Association as a condition of occupying a dwelling;

(u) Any Child Support Maintenance Payment;

(v) The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's imprisonment or internment by the Japanese during the Second World War;

(w) Any payment made by a local authority under the Adoption and

Children Act 2002 (under section 2(b)(b) or 3 of this act);

(x) The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;

(y) Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);

(z) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);

(aa) Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section;

(ab) Any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital.

Property disregards

In the following circumstances the value of the person's *main or only* home **must** be disregarded:

(a) Where the person is receiving care in a setting that is not a care home;

(b) If the person's stay in a care home is temporary and they:

(i) intend to return to that property and that property is still available to them; or

(ii) are taking reasonable steps to dispose of the property in order to acquire another

more suitable property to return to.

(c) Where the person no longer occupies the property but it is occupied in part or whole as their main or only home by any of the people listed below, the mandatory disregard only applies where the property has been continuously occupied since before the person went into a care home (for discretionary disregards see below):

- (i) the person's partner, former partner or civil partner, except where they are estranged;
- (ii) a lone parent who is the person's estranged or divorced partner;
- (iii) a relative as defined in paragraph 35 of the person or member of the person's family who is:
 - (1) Aged 60 or over, or
 - (2) Is a child of the resident aged under 18, or
 - (3) Is incapacitated.

A property **must** be disregarded where the relative meets the qualifying conditions (i.e. is aged 60 or over or is incapacitated) and has occupied the property as their main or only home since before the resident entered the care home.

12-week property disregard

A key aim of the charging framework is to prevent people being forced to sell their home at a time of crisis. The regulations under the Care Act 2014 therefore create space for people to make decisions as to how to meet their contribution to the cost of their eligible care needs. A local authority **must** therefore disregard the value of a person's *main or only* home when the value of their non-housing assets is below the upper capital limit for 12 weeks in the following circumstances:

- (a) when they first enter a care home as a permanent resident; or
- (b) when a property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home.

26-week disregard

The following capital assets **must** be disregarded for at least 26 weeks in a financial assessment. However, a local authority may choose to apply the disregard for longer where it considers this appropriate. For example where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

- (a) Assets of any business owned or part-owned by the person in which they were a self-employed worker and has stopped work due to some disease or disablement but intends to take up work again when they are fit to do so. Where the person is in a care home, this should apply from the date they first took up residence. [Schedule 2 Paragraph 9]
- (b) Money acquired specifically for repairs to or replacement of the person's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received. [Schedule 2 Paragraph 12]
- (c) Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced. [Schedule 2 Paragraph 22]
- (d) Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the

date the person takes action to effect the repairs. [Schedule 2 Paragraph 21]

(e) Capital received from the sale of a former home where the capital is to be used by the person to buy another home. This should apply from the date of completion of the sale. [Schedule 2 Paragraph 6]

(f) Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited. [Schedule 2 Paragraph 11]

(g) Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received. [Schedule 4 Paragraph 22]

52-week disregard

The following payments of capital **must** be disregarded for a maximum of 52 weeks from the date they are received.

(a) The balance of any arrears of or any compensation due to non-payment of:

- (i) Mobility supplement
- (ii) Attendance Allowance
- (iii) Constant Attendance Allowance
- (iv) Disability Living Allowance / Personal Independence Payment
- (v) Exceptionally Severe Disablement Allowance
- (vi) Severe Disablement Occupational Allowance
- (vii) Armed forces service pension based on need for attendance
- (viii) Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance
- (ix) Income Support/Pension Credit

- (x) Minimum Income Guarantee
- (xi) Working Tax Credit
- (xii) Child Tax Credit
- (xiii) Housing Benefit
- (xiv) Universal Credit
- (xv) Special payments to pre-1973 war widows.

2-year disregard

Local authorities **must** disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- (a) A member of the victim's family for 2 years from the date of death of the victim (or from the date of payment from the trust if later); or
- (b) A dependent child or young person until they turn 18. [Schedule 2 Paragraph 27]

Treatment of investment bonds

Where an investment bond includes one or more element of life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights **must** be disregarded as a capital asset in the financial assessment.

Capital treated as income

The following capital payments should be treated as income. Local authorities therefore **must** have regard to Annex C before conducting their assessments.

- (a) Any payment under an annuity.
- (b) Capital paid by instalment where the total of:
 - (i) the instalments outstanding at the time the person first becomes liable to pay for their care, or in the case of a person in temporary care whom the local authority had previously

decided not to charge, the first day on which the local authority decided to charge; and
(ii) the amount of other capital held by the resident is over £16,000. If it is £16,000 or less, each instalment should be treated as capital. [Regulation 16]

Earnings

Any income of the person derived from employment **must** be treated as earnings and not taken into account in the financial assessment.

Annex C: Treatment of Income

- This section of the guidance only applies where a local authority has chosen to charge a person for the services it is arranging and therefore **must** undertake a financial assessment. When doing so, it **must** assess the income and capital of the person.
- There are differences in how income is treated in a care home and in all other settings. Charging a person in a care home is provided for in a consistent national framework. When charging a person in all other settings, a local authority has more discretion to enable it to take account of local practices and innovations. The guidance sets out the common issues and then those particular to each setting. Local authorities **must** read this guidance in all circumstances.
- This annex covers the treatment of income and should be read in conjunction with Annex B on the treatment of capital. The detail of the sources of income which local authorities **must** disregard are set out in the regulations which accompany this guidance.

Must Do's:

Benefits

Local authorities may take most of the benefits people receive into account. Those they **must** disregard are listed below. However, they need to ensure that in addition to the minimum guaranteed income or personal expenses allowance – details of which are set out below – people retain enough of their benefits to pay for things to meet those needs not being met by the local authority.

Any income from the following sources **must** be fully disregarded:

- (a) Direct Payments;
- (b) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme;
- (c) The mobility component of Disability Living Allowance; The mobility component of Personal Independence Payments.

Any income from the following benefits **must** be taken fully into account when considering what a person can afford to pay towards their care from their income:

- (a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
 - (b) Bereavement Allowance
 - (c) Carers Allowance
 - (d) Disability Living Allowance (Care component)
 - (e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit
 - (f) Income Support
 - (g) Industrial Injuries Disablement Benefit or equivalent benefits
 - (h) Jobseeker's Allowance
- 428 Care and Support Statutory Guidance
- (i) Maternity Allowance
 - (j) Pension Credit

- (k) Personal Independence Payment (Daily Living component)
- (l) State Pension
- (m) Universal Credit
- (n) Working Tax Credit.

Annuity and pension income

An annuity is a type of pension product that provides a regular income for a number of years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income. While the capital is disregarded, any income from an annuity **must** be taken fully into account except where it is:

- (a) purchased with a loan secured on the person's main or only home; or
- (b) a gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

Where a person is in a care home and paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner the local authority **must** disregard 50% of its value.

In order to qualify for the disregard, one of the annuitants **must** still be occupying the property as their main or only home. This may happen where a couple has jointly purchased an annuity and only one of them has moved into a care home. If this is not the case, the disregard **must not** be applied.

Before applying the disregard, the following conditions **must** be met:

- (a) The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;

(b) The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;

(c) The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;

(d) The person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made;

(e) The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and

(f) The person who obtained the loan or one of the other annuitant occupies the property as their main or only home at the time the interest is paid.

Where the person is using part of the income to repay the loan, the amount paid as interest **must** be disregarded. If the payments the person makes on the loan are interest only and the person qualifies for tax relief on the interest they pay, disregard the net interest. Otherwise, disregard the gross interest.

Mortgage protection insurance policies

Any income from an insurance policy is usually taken into account. In the case of mortgage protection policies where the income is specifically intended to support the person to acquire or retain an interest in their main or only home or to support them to make repairs or improvements to

their main or only home it **must** be disregarded. However, the income **must** be being used to meet the repayments on the loan. The amount of income from a mortgage protection insurance policy that should be disregarded is the weekly sum of:

- (a) The amount which covers the interest on the loan; plus
- (b) The amount of the repayment which reduced the capital outstanding; plus
- (c) The amount of the premium due on the policy.

Other income that must be fully disregarded

Any income from the following sources **must** be fully disregarded:

- (a) Armed Forces Independence Payments and Mobility Supplement
- (b) Child Support Maintenance Payments and Child Benefit
- (c) Child Tax Credit
- (d) Council Tax Reduction Schemes where this involves a payment to the person
- (e) Disability Living Allowance (Mobility Component) and Mobility Supplement
- (f) Christmas bonus
- (g) Dependency increases paid with certain benefits
- (h) Discretionary Trust
- (i) Gallantry Awards
- (j) Guardian's Allowance
- (k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme
- (l) Income frozen abroad
- (m) Income in kind
- (n) Pensioners Christmas payments
- (o) Personal Independence Payment (Mobility Component) and Mobility Supplement

(p) Personal injury trust, including those administered by a Court

- (q) Resettlement benefit
- (r) Savings credit disregard
- (s) Social Fund payments (including winter fuel payments)
- (t) War widows and widowers special payments
- (u) Any payments received as a holder of the Victoria Cross, George Cross or equivalent
- (v) Any grants or loans paid for the purposes of education; and
- (w) Payments made in relation to training for employment.
- (x) Any payment from the:

- (i) Macfarlane Trust
- (ii) Macfarlane (Special Payments) Trust
- (iii) Macfarlane (Special Payment) (No 2) Trust
- (iv) Caxton Foundation
- (v) The Fund (payments to non-haemophiliacs infected with HIV)
- (vi) Eileen Trust
- (vii) MFET Limited
- (viii) Independent Living Fund (2006)
- (ix) Skipton Fund
- (x) London Bombings Relief Charitable Fund.

Charitable and voluntary payments

Charitable and voluntary payments that are made regularly **must** be fully disregarded.

Notional income

In some circumstances a person may be treated as having income that they do not actually have. This is known as notional income. This might include for example income that would be available on application but has not been applied for, income that is due

but has not been received or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care. For guidance on deprivation of assets, see Annex E. In all cases the local authority **must** satisfy itself that the income would or should have been available to the person.

However, there are some exemptions and the following sources of income **must not** be treated as notional income:

- (a) Income payable under a discretionary trust;
- (b) Income payable under a trust derived from a payment made as a result of a personal injury where the income would be available but has not yet been applied for;
- (c) Income from capital resulting from an award of damages for personal injury that is administered by a court;
- (d) Occupational pension which is not being paid because:
 - (i) The trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources; or
 - (ii) The trustees or managers of the scheme have insufficient resources available to them to meet the scheme's liabilities in full.
- (e) Working Tax Credit.

Care homes

Personal expenses allowance

The local authority **must** leave the person with a minimum amount of income. This is known as the Personal Expenses Allowance (PEA) and the amount is set out in regulations and updates sent via a local authority circular. Anything above this may be taken into account in determining charges.

The PEA is not a benefit but the amount of a person's own income that they **must** be left with after charges have been deducted. However, where a person has no income, the local authority is not responsible for providing one.

The purpose of the PEA is to ensure that a person has money to spend as they wish.

It **must not** be used to cover any aspect of their care and support that have been contracted for by the local authority and/or assessed as necessary to meet the person's eligible needs. This money is for the person to spend as they wish and any pressure from a local authority or provider to do otherwise is **not permitted**

There may be some circumstances where it would not be appropriate for the local authority to leave a person only with the personal expenses allowance after charges.

For example:

*Where a person is paying half their occupational or personal pension or retirement annuity to a spouse or civil partner who is not living in the same care home, the local authority **must** disregard this money.*

All other settings

As all earnings **must** be disregarded, this leaves other sources of income such as benefits, pensions and payments from other products.

Minimum income guarantee

Local authorities **must** ensure that a person's income is not reduced below a specified level after charges have been deducted. This must be at least the equivalent of the value of Income Support or the Guaranteed Credit element of Pension Credit plus a minimum buffer of 25%. The amounts are set out in the Care and Support (Charging and Assessment of Resources) Regulations.

The purpose of the minimum income guarantee is to promote independence and social inclusion and ensure that they have sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. This **must** be after any housing costs such as rent and council tax net of any benefits provided to support these costs – and after any disability related expenditure.

Annex D: Recovery of Debts

- The Care Act 2014 introduces a modern legal framework for the recovery of any debts that may have accrued as a result of a local authority meeting a person's eligible care and support needs.
- Section 22 of the Health and Social Services and Social Security Act (HASSASSA) 1983 is revoked from April 2015 and no new debts can be recovered under that provision.
- New powers are provided under Section 69 of the Care Act that provides equal protection to both the local authority and the person.
- Section 70 of the Care Act also provides a local authority with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying charges for care and support.

Must Do's:

Principles underpinning the approach to debt recovery

The recovery of debts from those who are receiving care and support is a sensitive issue given the potentially vulnerable nature of the client group and local authority's ultimate responsibility to meet needs. There could also be a variety of reasons why the person has not paid the assessed charge, for example, there could be issues around diminishing capacity. Given this, local authorities will want to bear in mind the following principles when approaching the recovery of debts:

- Possible debts **must** be discussed with the person or their representative;
- The local authority **must** act reasonably;
- Repayments **must** be affordable

Local authorities should also bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act in accordance with human rights legislation, as well as the wellbeing principle set out in the Care Act. Given this, a local authority will wish to consider all other reasonable

avenues before utilising the powers provided under the Act.

Options to recover debt

The local authority must establish whether the person has the mental capacity to make financial decisions. This is important as a person who lacks capacity to make financial decisions is in a different legal position from someone who has capacity. While both may be liable for their debt, the way to proceed to recover the debt is different.

Recovering debt and deferred payment agreements

Where a debt has accrued and a person could be offered a deferred payment agreement (DPA), the local authority **must** offer the person or their attorney or deputy the option of repaying the debt through a DPA as set out in Section 69(2) of the Care Act 2014. A person could be offered a DPA if they are receiving care in a care home or are renting an extra care property, and the person has a form of security adequate to cover the DPA

(usually a property). If a DPA is agreed upon, a local authority **must** have regard to the guidance set out in Chapter 9.

Issuing a claim and subsequent enforcement through the County Court

In order for a local authority to claim interest on the debt, they **must** include the following text from leaflet EX302: in the section of the form entitled 'Particulars of claim':

The claimant claims interest under section 69 of the County Courts Act 1984 at the rate of [8]% a year from [date when the money became owed to you] to [date you are issuing the claim] of £[amount] as well as interest, at the same rate, up to the date of judgment or when the money is paid (if this is earlier) at a daily rate of [daily rate of interest].'

Complaints

A person may wish to make a complaint about any aspect of the way a local authority uses its powers under the Care Act. A local authority **must** therefore make clear what its complaints procedure is and provide information and advice on how to lodge a complaint and set out details of how to contact the Local Government Ombudsman.

Annex E: Deprivation of Assets

- The Care Act 2014 introduces a modern legal framework for the recovery of any debts that may have accrued as a result of a local authority meeting a person's eligible care and support needs.
- Section 22 of the Health and Social Services and Social Security Act (HASSASSA) 1983 is revoked from April 2015 and no new debts can be recovered under that provision.
- New powers are provided under Section 69 of the Care Act that provides equal protection to both the local authority and the person.
- Section 70 of the Care Act also provides a local authority with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying charges for care and support.

Must Do's:

Setting the context

A local authority can choose whether or not to charge a person where it is meeting needs. Where it thinks it would charge the person for meeting at least some of the needs, it **must** carry out a financial assessment which may be a light touch assessment where appropriate.

The financial assessment will need to look across all of a person's assets – both capital and income – decide which is which and assess those assets according to the regulations and guidance. A local authority therefore **must** also refer to Annex C on the treatment of income and Annex B on the treatment of capital before conducting a financial assessment.

What is meant by deprivation of assets?

Deprivation of assets means where a person has *intentionally* deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they **must** have known that they

needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support.

Where this has been done to remove a debt that would otherwise remain, even if that is not immediately due, this **must not** be considered as deprivation.

Has deprivation of capital occurred?

It is up to the person to prove to the local authority that they no longer have the asset. If they are not able to, the local authority **must** assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:

- (a) A trust deed;
- (b) Deed of gift;
- (c) Receipts for expenditure;
- (d) Proof that debts have been repaid.

As with any other debt, the local authority can use the County Court process to recover debts, but this should only be used after other avenues have been exhausted. When pursuing the recovery of charges from a third party, a local authority **must** read Annex D on debt recovery.

Annex F: Temporary and Short Term Residents in Care Homes

- Following an assessment of a person's eligible care and support needs a decision may be taken that the person would benefit from a temporary stay in a care home. This could be for a number of reasons such as providing respite care to a carer or to provide a period of more intense support owing to an additional, but temporary, care need.
- The financial assessment of what they can afford to contribute to the cost of their care and support needs **must** be undertaken with regard to the following guidance.
- The financial assessment **must** be based on the individual resources of the person. However a local authority should give regard to any partner or spouse remaining at home and ensure they are left with a basic level of income support or pension credit to which they may be entitled in their own right.

Must Do's:

Who is a temporary resident?

A temporary resident is defined as a person whose need to stay in a care home is *intended* to last for a limited period of time and where there is a plan to return home. The person's stay should be unlikely to exceed 52 weeks, or in exceptional circumstances, unlikely to substantially exceed 52 weeks. A decision to treat a person as a temporary resident **must** be agreed with the person and/or their representative and written into their care plan.

Assessing ability to pay

Once a local authority has decided to charge a person and it has been agreed that they are a temporary resident, the local authority **must** undertake the financial assessment in accordance with the following guidance.

Capital

The person's *main or only* home **must** be disregarded where the person:

(a) Intends to return to that property as their main or only home and it remains available to them; or

(b) Has taken steps to dispose of the home in order to acquire one that is more suitable and intends to return to that property.

Any other capital assets should be treated in the same way as for permanent residents.

Income and earnings

Both income and earnings should be treated in the same way as for permanent residents, as set out in Annex C on income. However, any additional amounts the person may need so they can maintain their home during their temporary stay so that it is in a fit condition for them to return to **must** be disregarded. Such expenses may include, but are not limited to, ground rent, service charges, water rates or insurance premiums.

Annex G: The Process for Managing Transfers of Care from Hospital for Patients with Care and Support Needs

The Care and Support (Discharge of Hospital Patients) Regulations 2014 set out:

- the details of what the NHS body responsible for a relevant patient **must** include in the assessment notice that it issues, so that the local authority can then comply with its requirements to undertake assessments and put in place any arrangements necessary for meeting any of the patient's care and support needs or where applicable the carer's needs;
- the **minimum** period that the local authority has to undertake the assessment;
- the details of what **must** be included in the discharge notice;
- the **minimum** period of notice that the NHS must give the local authority in terms of a relevant patient's discharge;
- the circumstances when an assessment notice and a discharge notice **must** be withdrawn;
- the period and amount of any reimbursement liability which a local authority may be required to pay the NHS for any delayed discharge.

Must Do's:

Legibility of notices

All notices issued by the relevant NHS body **must** be provided in writing to Local Authorities. This means that each notice (whether an assessment notice, discharge notice or withdrawal notice) must be in a legible form capable of being reproduced (e.g. capable of being photocopied, emailed or faxed). Any notice which is not reasonably legible would therefore not be valid.

Assessment notices

The NHS is required to issue a notice to the local authority where they consider that an NHS hospital patient in receipt of acute care may need care and support as part of supporting a transfer from an acute setting

regardless of whether they intend to claim reimbursement. The relevant local authority who the NHS **must** notify is the one in which the patient is ordinarily resident or, if it is not possible to determine ordinary residence, the local authority area in which the hospital is situated.

The relevant NHS body **must** issue an assessment notice where it considers that a patient may require care and support on discharge and the local authority **must** or may be required to meet such needs. Before issuing any assessment notice, the NHS **must** consult with the patient and, where applicable, the carer. This is to avoid unnecessary assessments where, for example, the patient wishes to make private arrangements for care and support without the involvement of the local authority. Before issuing an assessment notice, the NHS body

must have also completed any assessment of the potential Continuing Health Care needs of the patient and if applicable made a decision on what services the NHS will be providing.

Timescales for NHS to issue an assessment notice

An assessment notice **must not** be issued more than 7 days before the patient is expected to be admitted into hospital. This is so the notice is not provided too far in advance of admission to avoid the risk of wasting preliminary planning in the event that the patient's condition changes.

Content of assessment notice

The assessment notice **must** state that it is an assessment notice given under paragraph 1(1) of Schedule 3 to the Care Act. This is so the local authority is aware of the consequences that could flow from the receipt of the assessment notice (i.e. that it **has** to take steps to assess the patient and (where applicable) the patient's carer and put in place any arrangements to meet those needs it proposes to meet.

The assessment notice **must** include the following:

- the name of the patient;
- the patient's NHS number;
- if given before the patient's admission, the expected date of admission and the name of the hospital in which the patient is being accommodated;
- an indication of the patient's discharge date, if known
- a statement:
 - (a) that the NHS body by whom the assessment notice has been given ("the NHS body") has complied with the requirement to consult the

patient and, where feasible, any carer the patient has;

(b) that the NHS body has considered whether or not to provide the patient with NHS continuing health care and the result of that consideration. So, where the NHS considers that the patient may have needs for continuing health care to be met by the NHS after discharge, then it must have:

- (i) carried out a continuing health care assessment first and
- (ii) made a decision as to what (if any) services the NHS is to provide to the patient after discharge and

(iii) informed the local authority of these details.

(c) as to whether the patient or carer has objected to the giving of the notice;

(d) the name and contact details of the person at the hospital who will be responsible for liaising with the local authority in relation to the patient's discharge from that hospital. This **must** be one or a combination of the person's telephone number and/or their work based E-mail address.

Timescales for local authorities' responsibilities to carry out assessments

On receiving an assessment notice, the local authority **must** carry out a needs assessment of the patient and (where applicable) a carer's assessment so as to determine, in the first place, whether it considers that the patient and where applicable, carer has needs. If so, the local authority **must** then determine whether any of these identified needs meet the

eligibility criteria and if so, then how it proposes to meet any (if at all) of those needs. The local authority **must** inform the NHS of the outcome of its assessment and decisions.

To avoid any risk of reimbursement liability, the local authority **must** carry out a needs assessment and put in place any arrangements for meeting such needs that it proposes to meet in relation to a patient and, where applicable, carer, before “the relevant day”. The relevant day is either the date upon which the NHS proposes to discharge the patient (as contained in the discharge notice – see below) or the minimum period, whichever is the later.

The minimum period is 2 days after the local authority has received an assessment notice or is treated as having received an assessment notice.

Assessment notice withdrawal

There are a number of circumstances when the NHS **must** withdraw an assessment notice. These are where:

- The NHS body considers that it is likely to be safe to discharge the patient without arrangements being put in place for the meeting of the patient's needs for care and support or (where applicable) the carer's needs for support;
- The NHS body considers that the patient's on-going need is for NHS Continuing Health Care;
- Following the decision as to which (if any) services the relevant local authority will make available to the patient or (where applicable) carer, the NHS body still considers that it is unlikely to be safe to discharge the patient from hospital unless further arrangements are put in place
- for the meeting of the patient's care and support needs or (where

applicable) the carer's needs for support;

- The patient's proposed treatment is cancelled or postponed;
- The NHS body has become aware that the relevant authority is not required to carry out any assessment because the patient has refused a needs assessment or (where applicable) the carer has refused a carer's assessment;
- The NHS body becomes aware that either:
 - the patient's ordinary residence has changed since the assessment notice was given; or
 - the notice was given to a local authority other than the one in whose area the patient is ordinarily resident.

The regulations do not prescribe what a withdrawal notice must contain. However, it

must be in writing, and local systems should be established to ensure that the withdrawal notice provides sufficient information for both the NHS and local authority to be clear as to which patient and assessment notice the withdrawal notice refers to, and the reason(s) as to why the assessment notice is being withdrawn.

Discharge notices

Where the NHS has issued an assessment notice to a local authority it **must** also give written notice to the local authority of the proposed date of the patient's discharge notwithstanding that it included the proposed discharge date in the assessment notice. This is known as a discharge notice and its purpose is to confirm the discharge date.

Content of a discharge notice

A discharge notice **must** contain:

- The name of the patient;
- The patient's NHS number;
- The name of the hospital in which the patient is being accommodated;
- The name and contact details (telephone and/or email) of the person at the hospital who is responsible for liaising with the relevant authority in relation to the patient's discharge from hospital;
- The date on which it is proposed that the patient be discharged;
- A statement confirming that the patient and, where appropriate, the carer has been informed of the date on which it is proposed that the patient be discharged;
- A statement that the discharge notice is given under paragraph 2(1)(b) of Schedule 3 to the Act. This is to make it clear that the notice is a formal "discharge notice" for the purposes of the Discharge of Hospital Patient provisions.

Timing of discharge notice

To ensure that a local authority receives fair advance warning of the discharge, the NHS body **must** issue a discharge notice indicating the date of the patient's proposed discharge. The minimum discharge notification allowed is at least one day before the proposed discharge date. Again, where the discharge notice is issued after 2pm, it will not be treated as having been served until the next day.

The NHS body **is required** to inform the local authority, by way of a withdrawal notice withdrawing the discharge notice, when it considers that it is no longer likely to be safe to discharge the patient on the proposed discharge date for any reason other than the fact that it would be likely to

be unsafe to discharge the patient because the local authority has not taken the required steps. So, for example, the NHS **must** inform the local authority of changes in circumstances affecting the discharge date, for instance if the patient's medical condition changes or the patient dies.

Withdrawal of discharge notice

The NHS body which issued the discharge notice to a local authority may withdraw that discharge notice at any time. Such a withdrawal **must** also be in writing.

A discharge notice **must** be withdrawn where the NHS body considers that it is no longer likely to be safe to discharge the patient from hospital on the proposed discharge date.

Ordinary residence

The NHS should serve the assessment notice on the local authority where the patient is ordinarily resident or where the patient has no settled address, the local authority in which the hospital is located. Where a local authority disputes the assertion that they are responsible for that individual based on ordinary residence, they **must** in the period of dispute still comply with the requirements of the Regulations in terms of providing an assessment and any care and support provision which is identified as being needed to secure a safe transfer from one care setting to another.

Dispute resolution

Where any dispute arises because a local authority disputes that the patient is ordinarily resident in its area (so that it should not be the local authority to

whom an assessment notice is given), then that local authority **must** accept provisional responsibility and undertake the steps required under the discharge of hospital patient provisions. If no agreement can be reached on ordinary residence, it **must** then seek a determination as the patient's ordinary residence from the Secretary of State or an appointed representative.

Sign-off of data between the NHS and local authority

As set out in existing guidance, the NHS organisation **must** ensure that before reporting days attributable to care and support that it has verified their accuracy with the local authority, irrespective of whether the NHS body is seeking reimbursement or not.

Reporting of all DTOC (Delayed Transfer of Care) days

Irrespective of whether the delayed days fall into the reimbursement category or not, they **must** be reported by the relevant NHS body. These days include any person with a delayed discharge at any point in the given month, as well as that those patients who meet the DTOC definition on the last Thursday of each month.

Annex H: Ordinary Residence

- This provides additional information regarding the details to be considered by the local authority when defining ordinary residence.

Must Do's:

Annex H1 – People with “urgent needs”

A person who is ordinarily resident in one local authority area may become in urgent need of accommodation whilst they are in another local authority area. The Care Act provides local authorities with powers to meet the person's needs in such urgent cases, if the adult (or in the case of a carer, the adult for whom they care) is known to be ordinary resident in the area of another local authority.

On rare occasions, a person with urgent needs who has been provided with accommodation by the local authority of the moment may be unable to return to their own local authority because of a change in circumstances. In this situation, decisions relating to ordinary residence **must** be made on an individual basis: the local authority of the moment and the person's local authority of ordinary residence would need to consider all the facts of the case to determine whether the person's ordinary residence had changed.

Annex H3 – People who are accommodated under the 12 week property disregard

A key aim of the charging framework is to prevent people being forced to sell their home at a time of crisis. The

framework therefore creates the space for people who are at risk of needing to sell their home to meet the cost of their care to make informed decisions on how best to do that. This means that a local authority **must** disregard the value of a person's main or only home when the value of their non-housing assets are below the upper capital limit of £23,250 for a period of 12 weeks from when a person:

- First enters a care home; or
- Where an alternative property disregard is unexpectedly lost.

A local authority also has discretion to choose to apply the disregard where a person has a sudden and unexpected change in their financial circumstances. In doing so, it **must** consider the individual circumstances of the case.

Annex H4 – People who are arranging and paying for their own care

A person who has sufficient financial means to pay for their own care, but who has eligible needs, may ask the local authority to meet their needs. This may be, for instance, where a person has capacity, but lacks the skills or confidence to arrange their own care, and would benefit from the local authority's support in managing a contract with a provider. If such a person asks the local authority to do so, then the authority **must** meet their needs.

Annex H8 – Young people in transition from children’s services to adult care and support

In order to provide care leavers with the assistance they need to achieve their aspirations, local authorities **must** allocate a personal adviser and work with a care leaver to maintain a pathway plan that sets out the support and services available (which may include assistance with education or training).

Annex H9 – Other provisions under which an ordinary residence determination can be sought

Schedule 3 to the Care Act 2014

Where it is not likely to be safe to discharge a hospital patient unless arrangements for meeting their care and support are put in place, the NHS body **must** notify the patient’s local authority of this. Under the Act, it is the local authority in which the patient appears to the NHS body to be ordinarily resident. Or where a person is not ordinarily resident in any local authority, i.e. a person of “no settled residence”, the Care Act provides that it is the local authority in which the hospital is situated that the NHS body **must** notify. Once notification has been received, the local authority **must** arrange for an assessment of the person’s need for care and support to be carried out and for the provision of any services.

If a local authority receives notification from the NHS body of a person who it believes is ordinarily resident in another local authority area, it should inform the NHS body that has issued the notification immediately. If the NHS body agrees that the person is ordinarily resident elsewhere, it should withdraw the notification and re-issue it

to the correct local authority. If the NHS body does not agree that the person is ordinarily resident elsewhere, the local authority in receipt of the notification **must** proceed with carrying out the assessment and arranging for the provision of any necessary care and support.

The Mental Capacity Act 2005 Deprivation of Liberty Safeguards

Under the MCA DoLS, the “managing authority” of a hospital or care home **must** request a standard authorisation from a local authority (a “supervisory body”) if they believe an adult will, or will be likely to be, deprived of their liberty in hospital or care home setting within the next 28 days.

In most cases, it should be possible to obtain a standard authorisation in advance of deprivation of liberty occurring. Where this is not possible and a person needs to be deprived of their liberty in their own best interests before the standard authorisation process can be completed, the managing authority **must** give itself an urgent authorisation and apply to the supervisory body for a standard authorisation to be issued within 7 calendar days.