



Care Act 2014 Guidance

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CareKnowledge Special Report

Care Act 2014 Guidance

1. Introduction

Consultation on the regulations and guidance that will support the implementation of Part 1 of the Care Act is underway. Organisations and individuals have until the 15th of August to make their views known to government. As is usual, the consultation poses a number of questions on which government is looking for a specific response, but it also encourages wider comment.

The intention is that the new guidance will be finalised in the autumn, with a general implementation date for Part 1 of the Act, in April 2015. The cap on care costs which is also in Part 1 of the Act will not be introduced until 2016/17. That is well after the next general election, and its exact nature may well be reviewed as the next government tackles the wider question of inadequate social care funding.

We produced [a short briefing](#) within a few days of the launch of the consultation which provided detail on the range of materials that had been produced, and on the shape and broad content of the guidance.

The consultation on the guidance and regulations will no doubt result in some significant comments that will alter their exact nature or their tone. But the Act is an Act and the broad thrust of the current guidance gives a fairly accurate picture of what will be expected of the field when the first Part of the Act is implemented.

This Special Report therefore describes what we see as some of the core changes covered by the regulations and guidance, and raises a number of questions about their local policy and practice implications. The Report attempts to provide a concise summary for those whose work will be affected by the Act, but who will not have time, at this stage, to engage in the detail of the consultation documents.

However, in reviewing the draft guidance we were struck by the exacting detail of the requirements it will place on LAs which we were not sure had been fully recognised in the field. We have therefore attempted to give a reasonably full picture of those requirements to illustrate what will be expected. That has inevitably made for a longer report than we might have hoped for.

2. Background

The Act is the current government's attempt to consolidate adult social care legislation into a single framework – a move long considered necessary, and again recommended in a recent review by the Law Commission. The Act is therefore designed to support policy objectives that have been in place for some time, but it also introduces new approaches and responsibilities.

Bearing in mind that the current Government is committed to reducing the bureaucratic burden on local authorities; and that, in other spheres – notably child protection – much effort has gone into shortening official documents, it's perhaps surprising to see that the guidance stretches to 431 pages.

Of course the guidance does cover a major part of a whole Act, but much of its volume is taken up with very specific requirements which will dictate local authority and individual professional activity, at a level of great detail. It is a formidable piece of material to digest – and it is unexpectedly close to what might be seen as a complete practice manual, covering a very large sweep of adult social care activity.

In sharp summary, the Act introduces new duties on, or requirements of, LAs in relation to: embedding individual wellbeing at the heart of all of their care and support arrangements; an enhanced focus on prevention; the initial inclusion of people who do not have eligible needs; strengthened rights for carers; adherence to a new national eligibility system with a minimum threshold; market-shaping and -management; a new adult safeguarding framework; and new duties to act in partnership with others and with a focus on integration with health.

Before moving on to more detailed consideration of the guidance, it's worth re-emphasising that some of the expectations it sets out will be very familiar from the pre-existing policy context. But some of the supporting material reads as if they are entirely new. This is no doubt to ensure the public sees all of this as introduced by the Act.

Although exact requirements and some of the detail may have changed, many local authorities will feel that they have been pursuing parts of the agenda the guidance sets out, for some years. Whether they will recognise the exhaustive detail of the full range of requirements set out in the guidance is another matter.

The guidance is in 6 main parts, covering:

- General responsibilities and universal services
- First contact and identifying needs
- Charging and financial assessment
- Person centred care and support planning
- Adult safeguarding
- Integration and partnership working

There are also sections on moving between areas, sight registers, and transition to the new arrangements.

Each part of the guidance contains a very wide range of exact requirements for local authority practice. These are generally (though not in every case) highlighted throughout the text as must-dos. The guidance also provides local authorities with a very significant number of practice pointers in the form of should do's. As noted

above, across these two categories, the guidance seeks to steer much of adult social care practice at a level of very considerable detail.

A core question, for LAs, in responding to the consultation will be whether they feel it is appropriate to be bound, to such an extent, in practice terms. Given that I assume this will be statutory guidance, LAs will have to consider very carefully, not just the must-do's set out in the guidance, but will have to be fully aware of the should-do's, since they will need valid reasons, if they are found not to have followed the routes recommended in guidance.

In order to complete this Special Report we have looked at the full range of guidance material, and, in particular at the must-do's covered in each section of the main guidance document. Initially, it seemed it might have been possible to construct a summary report that would highlight at least all of the must-do's in the guidance, but that proved impossible, if the length of our report was to be reasonably contained.

What this report therefore does is provide sharp summary of what each section covers, and an illustrative listing of some of the must-do's that seemed most significant, in each section. Our report also provides more detailed information on must-do's from the sections of the guidance with the most direct bearing on practice.

We have taken this approach to show something of the detailed process and practice assumptions that the guidance will bring to the field. With the best will in the world, this still makes for a lengthy report.

For those who want only a short summary of the broad content and intention of the guidance, the [Government's consultation document](#) gives such an outline. But it does not, in some instances, give much of a picture of the detailed prescription contained in the guidance itself.

Finally, in terms of introductory comment, the guidance takes a somewhat inconsistent approach to its headings and subheadings. We have tried to account for, and simplify that approach in what follows.

3. Section 1 of the guidance

This deals with general responsibilities and universal services and includes material on: promoting wellbeing, preventing, reducing or delaying needs, information and advice, market shaping and commissioning of adult care and support, managing provider failure and other service interruptions.

3.1 Wellbeing

The guidance says that:

LAs **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. The principle is also to apply when LAs are dealing with people who may not have eligible needs.

Promoting wellbeing therefore applies across the guidance as a whole. This does influence the way the guidance is structured and presented – with some themes and specific requirements appearing in more than one section of the guidance.

In its discussion on wellbeing, the guidance says that a key change to be introduced by the Act is that LAs will move away from providing services, to assessing for, and meeting need. That will mean being as flexible as possible in considering both need and available responses.

The guidance sets out a series of supporting principles that must be followed when meeting need including giving weight to the well-being outcomes that each individual sees as important, taking account of preventative impact, and balancing individual rights against the need for protection.

3.2 Preventing, reducing or delaying needs

This covers a definition “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; enabling access to preventative support; charging for preventative services.

The separate DH introduction to this bit of the guidance makes it clear that the intention is not to narrow a local authority’s vision for prevention or the scope of its prevention services, but is intended to provide clarity about the range of preventative interventions, the people who may benefit from them and the circumstances in which a person may benefit.

The introduction also says that a key element of the preventative approach envisaged by the Act is for LAs to support the person to make the most of the resources available to them in their community – for instance, local support networks or voluntary services – as well as to build and develop their own strengths and capabilities. This should apply whatever needs the person has.

The Act, DH says, creates a legal basis for a wide range of preventative approaches, which are referred to as ‘services, facilities or resources’. There is flexibility about how LAs can carry out their duty on prevention. The draft guidance lists a number of services, facilities or resources. The list is not exhaustive.

In a little more detail the guidance itself says:

LA preventive duties apply to all adults, including: people who do not have any current needs; adults with needs for care and support, whether their needs are

eligible and/ or met by the LA or not, and carers, including those who may be about to take on a caring role.

The guidance uses a hierarchy of activity to describe the range of preventative approaches LAs might adopt:

- Prevent: primary prevention/promoting wellbeing – generally universal in nature and aimed at individuals who have no current particular health or care and support needs
- Reduce: secondary prevention/early intervention – more targeted interventions aimed at individuals who have an increased risk of developing needs
- Delay: tertiary prevention – interventions aimed at minimising the effect of disability or deterioration for people with established health conditions, complex care and support needs or caring responsibilities
- Intermediate care and reablement – where the guidance illustrates the different forms such interventions might take, but says these are not set in concrete and should be affected by the greater integration anticipated for health and social care.

Much of the language in this part of the guidance, is framed as ‘should-do’s’ for local authorities, but there are also a number of ‘must-do’s’. These include:

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.

LAs **must** consider the importance of identifying the 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.

LAs **must** promote diversity and quality in provision of care and support services, and ensure that a person has a variety of providers to choose from.

LAs **must** consider how to identify “unmet need”.

LAs **must** ensure the integration of care and support provision, including prevention, with health and health-related services, which includes housing.

LAs **must** cooperate with each of their relevant partners and the partners must cooperate with local authorities.

LAs **must** set up arrangements between their relevant partners and individual departments in relation to their care and support functions, including prevention.

LAs **must** establish and maintain a service for providing people with information and advice relating to care and support.

Where a person refuses resources offered under preventative arrangements, but continues to appear to have needs for care and support then the local authority **must** proceed to offer the individual an assessment.

In assessing individual needs, LAs **must** consider whether those concerned would benefit from the preventative services, facilities or resources provided by them or which might be available in the community.

Regulations will specify that some services – for example, reablement provided up to six weeks, or minor aids and adaptations up to the value of £1,000 – **must** be provided free of charge.

3.3 Information and advice

This covers the duty placed on LAs to ensure the availability of information and advice services for all people in its area; the audience for the information and advice service; the LA role with respect to financial information and advice; the accessibility and proportionality of information and advice; and the development of plans/strategies to meet local needs.

DH's introduction says that the Act requires LAs to establish and maintain an information and advice service in their areas. The information and advice service **must** cover the needs of all of the population, not just those who have eligible needs and/or are in receipt of care or support which is arranged or funded by the local authority.

Alongside the basic requirement to establish an information and advice service for all, the other must-do's include:

LAs **must** take an active role in pursuing their information and advice objectives.

LAs **must** ensure that information and advice services cover more than just basic information about care and support, and **must** also avoid a narrow definition of such support.

LAs **must** 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.

LAs **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.

LAs **must** recognise and respond to the specific requirements that carers have for both general and personal information and advice.

LAs **must** ensure their 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 sensory impairments.

LAs **must** 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.

LA information services **must** include financial information and advice on matters relevant to care.

LAs **must** 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.

LAs **must** support people to make informed, and sustainable financial decisions about their care throughout all stages of their life.

LAs **must** provide information and advice on how to raise concerns about the safety or wellbeing of an adult who has needs for care and support.

LAs **must** provide information and advice on their own local arrangements for receiving and dealing with complaints.

LAs **must** 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.

3.4 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.

This part of the guidance also deals with the steps which LAs should take to develop and implement local approaches to market-shaping and commissioning:

- designing strategies that meet local needs
- engaging with providers and local communities
- understanding the market

- facilitating the development of the market
- integrating their approach with local partners
- securing supply in the market and assuring its quality through contracting

DH's introduction says that the Act imposes new duties on LAs to facilitate a vibrant, diverse and sustainable market for high quality care and support in their area, for the benefit of their whole local population, regardless of how the services are funded. It also says LA's own commissioning and procurement practices should take account of these wider 'market shaping' duties.

There aren't quite so many must-do's in this part of the guidance, but they include:

LAs **must** facilitate markets to offer continuously improving, high-quality, appropriate and innovative services, including fostering a workforce which underpins the market.

LAs **must** ensure their commissioning practices and the services delivered on their behalf comply with the requirements of the Equality Act 2010.

LAs **must** consider how to help foster and enhance the social care workforce to underpin effective, high quality services.

LAs **must** work to develop markets for care and support that are sustainable over time.

LAs **must** encourage a variety of different providers and different types of services

LAs **must** 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.

LAs **must** understand local markets and develop knowledge of current and future needs for care and support services, and understand providers' businesses

3.5 Managing provider failure and other service interruptions

This covers 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

DH's introduction lays particular emphasis on the duty imposed on the Care Quality Commission (CQC) to assess the financial sustainability of those providers that local authorities would find it difficult to replace should they fail financially.

The introduction says CQC will take measures to ensure that a provider who is in financial difficulty is working to return to financial sustainability, warn LAs of imminent provider failure, and work with the LAs affected to coordinate a response. CQC is due to consult on its detailed proposals in relation to the duty in autumn of this year.

The LA must-do's in this part of the guidance include the following.

LAs **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.

When deciding how needs will be met, LAs **must** involve the person concerned, any carer that the person has, or anyone whom the person asks the authority to involve.

LAs **must** meet needs irrespective of whether those needs would meet the eligibility criteria.

LAs **must** follow the general duties to cooperate when fulfilling the business failure requirements.

4. Section 2 of the guidance

This deals with first contact and identifying needs, and includes material on needs and carers' assessments, eligibility, and independent advocacy.

4.1 Assessment and eligibility

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.

DH's introduction says that the Act imposes a duty on LAs to carry out a needs assessment or carer's assessment wherever it appears that an adult, or a carer, has care and/or support needs. These assessments are to be carried out regardless of the LA's view of the level of those needs or of the person's financial resources.

The introduction also says that assessment must be a collaborative process that involves the people concerned and must consider their needs and desired outcomes and how care and support could improve the wellbeing of the person.

The introduction confirms that, to make access to LA care and support clearer and more equal across England, and to ensure a minimum level of need which must always be met, a national minimum eligibility threshold is to be established.

The LA must-do's in this section include the following.

LAs **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.

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.

LAs **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.

LAs **must** 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.

LAs **must** 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.

LAs **must** 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.

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.

LAs **must** 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.

LAs and CCGs in each local area **must** agree a local disputes resolution process to resolve cases where there is a dispute between them about eligibility for NHS CHC.

Following their assessments, individuals **must** be given a record of their needs or carer's assessment, including their own views.

LAs **must** 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.

4.2 Eligibility

Note: The guidance provides detailed material on interpreting the eligibility criteria, including a discussion of needs and the inability to achieve outcomes.

During assessments LAs **must** consider whether the people concerned would benefit from some type of preventive service or intervention.

LAs **must** comply with the newly inaugurated national eligibility threshold.

LAs **must** provide a written record of their decision about a person's eligibility and the reasons for coming to that decision.

Where LAs have determined that a person has any eligible needs, they **must** meet these needs, subject to meeting the financial criteria.

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)

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.

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

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.

4.3 Independent Advocacy

The DH introduction on this part of the guidance says that it brings in a new requirement that LAs **must** arrange independent advocacy for people who either have substantial difficulty in being involved in these processes or in being fully involved in these processes, and there is no one available to act on the person's behalf.

This part of the guidance covers LA's responsibilities to provide independent advocacy; matters LAs must consider in deciding whether an individual would experience substantial difficulty in engaging with the care and support 'process'; circumstances in which an advocate must be provided; the role of the advocate and how independent advocates are to carry out their functions.

The guidance says there are 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.

Other must-dos in this part of the guidance include the following.

LAs **must** ensure that there is sufficient provision of independent advocacy to meet their obligations under the Act.

LAs **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.

LAs **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.

LAs **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.

The section also contains a number of must-do's for advocates themselves.

5. Charging and financial assessment.

This part of the guidance covers: common issues for charging; charging for care and support in a care home; choice of accommodation when arranging care in a residential setting; making additional payments for preferred accommodation; charging for home care and support in a person's own home; charging for support to carers; requesting local authority support to meet eligible needs.

The DH introduction to this part of the guidance says that its revised framework does not represent a major change to the current system and does not extend the ability to charge from the current position. However, it notes that this is a complex part of the system and one that is not often well understood, so DH is taking the opportunity to clarify the framework that will be in place for 2015/16 in new guidance.

Must-do's for LAs in this part of the guidance include confirmation of the following.

LA's **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.

LAs **must not** charge more than the cost that they incur in meeting the assessed needs of the person.

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 LAs believe 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.

LAs **must** 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, LA's **must** exclude the value of the property which they occupy as their main or only home.

LAs **must not** charge carers for care and support provided directly to people they care for under any circumstances.

LAs 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.

LAs **must** 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.

5.1 Deferred payments

This part covers: who should be offered a deferred payment; provision of information and advice; how much can be deferred, and security for the agreement; the interest rate for the deferral and administrative charges; making the agreement, responsibilities while the agreement is in place and termination of the agreement.

The DH introduction to this part of the guidance says that the establishment of the universal deferred payment scheme will mean that people should not be forced to sell their home to pay for their care.

The exact requirements on LAs in this section are bound in by a series of detailed conditions that make a short summary of must-do's impossible, but, in shorthand, there are a range of circumstances in which LAs **must** offer deferred payments, subject to those conditions being met.

6. Person-centred care and support planning

This section covers when and how to undertake care and support planning; production of the plan; involving the person; authorising others; care planning for people who lack capacity; minimising and authorising a deprivation of liberty (DOL) for people who lack capacity; combining plans; sign-off and assurance; personal budgets; direct payments; and review of care and support plans.

LA must-do's in this section of the guidance include the following.

LAs **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)

The ability to meet needs by taking a direct payment **must** be clearly explained to service users.

Following the needs and carer's assessment and determination of eligibility, a care and support plan **must** be provided.

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 number of issues **must** always be included in care and support plans:

- 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

LAs **must** take all reasonable steps to involve the people concerned and their representatives (or advocates) in preparing care and support plans.

LAs **must** understand that people have the right to make what others might regard as an unwise or eccentric decision.

6.1 Personal Budgets

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.

LAs **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.

LA process and practice for personal budgets **must** follow the key principles of self-directed support (a link to In-control is provided).

This section of the guidance also provides information and requirements on personal budgets and carers.

6.2 Direct Payments

The necessary accountability processes involved in administering and monitoring direct payments **must** not restrict choice or stifle innovation.

LAs **must not** force people to take a direct payment against their will.

LAs **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.

LAs **must** be satisfied that direct payments are being used to meet eligible care and support needs.

LAs **must** 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.

LAs **must** have regard to where direct payments can be integrated with other forms of public funding, such as personal health budget direct payments.

Pre-paid cards used in association with direct payments **must not** be linked solely to an online market-place that only contains selected providers in which to choose from.

When terminating direct payments, LAs **must** ensure there is no gap in the provision of care support.

The section includes detailed guidance on the circumstances in which direct payments must be suspended. It also notes that direct payments cannot currently be used to secure long-term residential care. However, the Government confirms that it is testing the use of direct payments in residential care, with the aim of introducing this in 2016.

6.3 Review of care and support plans

This part of the guidance covers: keeping plans under review; planned and unplanned review; considering requests for a review; considering a review; revision of the care and support plan; timeliness and regularity of reviews.

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.

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 a review, LAs **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.

7. Adult safeguarding

This section covers: adult safeguarding and why it matters; abuse and neglect; recognising the different types and patterns of and the circumstances in which they may take place; criminal offences and adult safeguarding; the LA's safeguarding role; adult safeguarding procedures including multi-agency working; carrying out safeguarding enquiries; safeguarding and advocacy; the role of Safeguarding Adults Boards; safeguarding adults reviews; sharing information; roles, responsibilities and training of local authorities, NHS and the police; and protecting property for adults being cared for away from home.

The section confirms that the Act requires that each local authority **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

The section also sets out a series of principles to inform all adult safeguarding work focusing on:

- Empowerment
- Prevention
- Proportionality
- Protection
- Partnership

- Accountability

Unlike earlier sections there are relatively few additional must-dos associated with this part of the guidance. Instead there is a discussion of the topics highlighted in the introduction above and a series of practice suggestions to accompany them. The remaining must-dos include the following.

All staff **must** keep accurate records, clearly stating what the facts are and what are the known opinions of professionals and others.

Safeguarding Adults Boards (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

Again, the paragraphs on SABs are relatively light on must-dos but do contain a wide range of should-dos that Boards and their partners will need to take account of in planning and managing their safeguarding approaches.

8. Integration and partnership working

This covers integrating care and support with other local services; strategic planning; integrating service provision and combining and aligning processes; the co-operation of partner organisations; the general duty to co-operate; who must co-operate; co-operation within local authorities; co-operating in specific cases; working with the NHS; the boundary between the NHS and care and support; delayed transfers of care from hospitals; working with housing authorities and providers; and working with welfare and employment support.

DH's introductory material on this section says that the Act sets out the limits on what LAs may provide by way of healthcare and so, in effect, sets the boundary between the responsibilities of LAs for the provision of care and support, and those of the NHS for the provision of health care, and so also reflects the policy on the provision of NHS continuing healthcare. DH says The Act is not intended to change the current boundary between what LAs may provide and what it is for the NHS to provide.

The guidance provides more detailed discussion on these issues including how the health/care boundary applies to individuals; and how LA duties should be implemented in relation to delayed transfers and hospital discharges.

Sections 3, 6 and 7 of the Act require that: LAs **must** carry out their care and support responsibilities with the aim of promoting greater integration with NHS and other health-related services.

This general duty is reinforced at several points in this section of the guidance.

LAs **must** 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)

LAs **must** have integration as an aim in their strategic work including on joint needs assessment and joint health and wellbeing strategies.

LAs and their partners **must** co-operate generally in performing their functions related to care and support

And LAs and their partners **must** co-operate where this is needed in the case of specific individuals who have care and support needs.

LAs **must** 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.

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.

LAs and local offices of the Department for Work and Pensions **must** co-operate 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.

8.1 Transition from children's to adults' services

This section of the guidance provides extensive material on transition from children's to adults' services, including:

- When a transition assessment must be carried out
- Identifying young people who are not already receiving children's services
- A child's carers and young carers
- Features of a transition assessment
- Co-operation between professionals and organisation
- Providing information and advice once a transition assessment is completed
- Provision of age appropriate local services and resources

- After the young person in question turns 18
- Combining Education Health and Care plans with care and support plans after the age of 18
- Continuity of care after the age of 18
- Safeguarding after the age of 18
- Ordinary residence and transition to higher education
- Transition from children's to adult NHS Continuing Health Care

LAs **must not** allow a gap in necessary care and support when young people and carers move from children's to adult services.

The guidance implies rather than states that a transition assessment **must** be carried out.

Transition assessments **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.

Transition assessments **must** be of significant benefit to the young person or carer, and should not be carried out at inappropriate times such as 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.

LAs **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.

LAs **must** 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.

After completing a transition assessment, LAs **must** give an indication of which needs are likely to be eligible needs, 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.

LAs **must** 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.

The section on integration also covers arrangements in relation to prisons, approved premises and bail accommodation.

8.2 Delegation of local authority functions

This section covers: an overview of the policy; says that LAs retain ultimate responsibility for how functions are carried out; the importance of contracts; which functions may not be delegated; the difference between outsourcing a legal function and activities relating to the function; conflicts of interest.

The guidance notes that the Act allows LAs to delegate some, **but not all**, of their care and support functions to other parties, and points out that delegation does not absolve LAs of their legal responsibilities.

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.

The care and support functions which cannot 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

9. Remaining sections

These deal with moving between areas, including material on inter-LA, and cross-border issues, ordinary residence and continuity of care; and 'other provisions' including material on sight registers and transitions to the new legislation.

From these sections, the following seemed the most important to highlight.

9.1 Moving between areas

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.

This section of the guidance makes it clear that assessment and other activity around LA moves must follow the general requirements set out in other relevant sections.

It also makes specific reference to the following additional points.

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.

Note: Much has been made elsewhere about the end to the postcode lottery. It is perhaps interesting that the guidance on moving between authorities does not make specific, repeated mention (that we could see) of the way in which national eligibility thresholds are intended to tackle that problem.

9.2 Sight Registers

The section on sight registers contains detailed guidance – mostly in the form of extensive ‘should dos – on: registration; certification; transferring and retaining the Certificate of Vision Impairment; making contact; continuity of care; care planning; rehabilitation; and care and support for deaf-blind children and adults.

The guidance says that 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, LAs **must** follow the arrangements to ensure continuity of care, set out elsewhere in the guidance.

9.3 Transition to the new legal framework

The section on transition to the new legal framework in 2015/16 deals with: the status of previous assessments and eligibility determinations under the Act; the role of care planning and review in implementation; preparing for funding reforms in 2016/17; understanding likely demand; awareness raising; carrying out early assessments and managing capacity; and other systems implications.

The guidance says that:

- where a service user (or carer) has received an assessment under the previous legislation, LAs will not be required to re-assess their needs purely because of the new duties around assessment
- LAs should adopt a targeted approach to reviewing the needs of any individuals who may be affected by the implementation of the minimum eligibility threshold
- LAs should review the operation of their local charging framework, to ensure that this is consistent with the obligations set out by the Act and associated regulations
- after April 2015, all care plans will have to include a personal budget

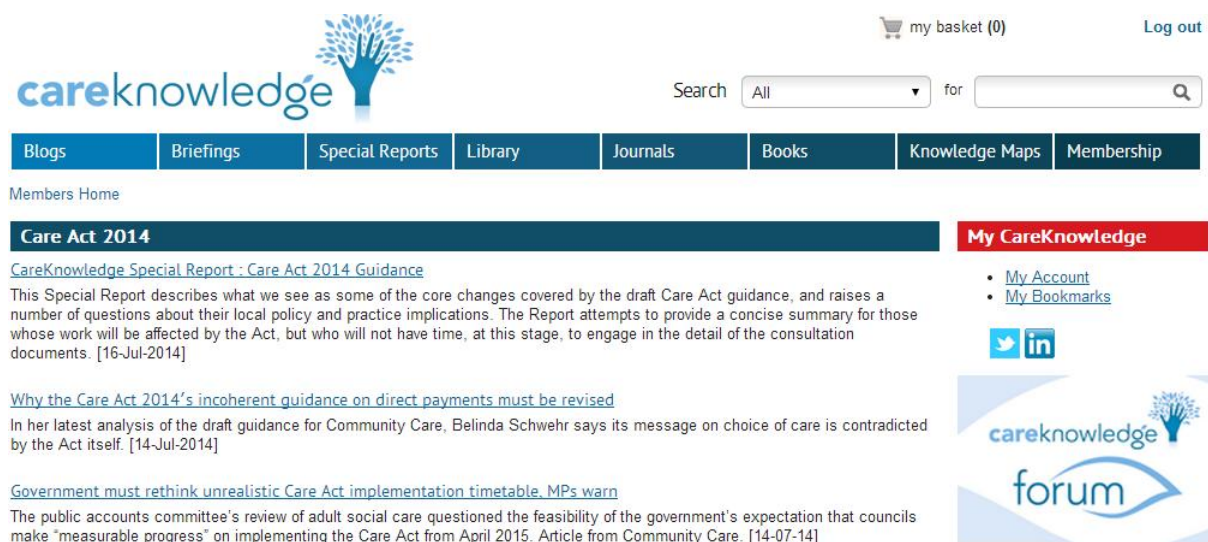
- LAs should take steps now to understand the additional likely demand for support as a result of the planned 2015/16 funding reforms
- LAs should take steps to raise awareness of the reforms, in keeping with their obligations for providing information and advice on the care and support system, and with a particular eye to the needs of target groups such as those likely to approach them for support under the capped costs system
- LAs should review their training and IT systems requirements (the latter with suppliers) to ensure that their staff and processes are prepared for new Care Act responsibilities

10. Conclusion

We hope this Special Report has given a strong flavour of the changes implied in the draft Guidance. We also hope it has given an indication of just how extensively the new guidance will bear down on LA and professional practice. That is a point even more strongly reinforced if you begin to look at the vast range of 'should-dos' that we have mostly been unable to cover in this report.

11. Other CareKnowledge Care Act content

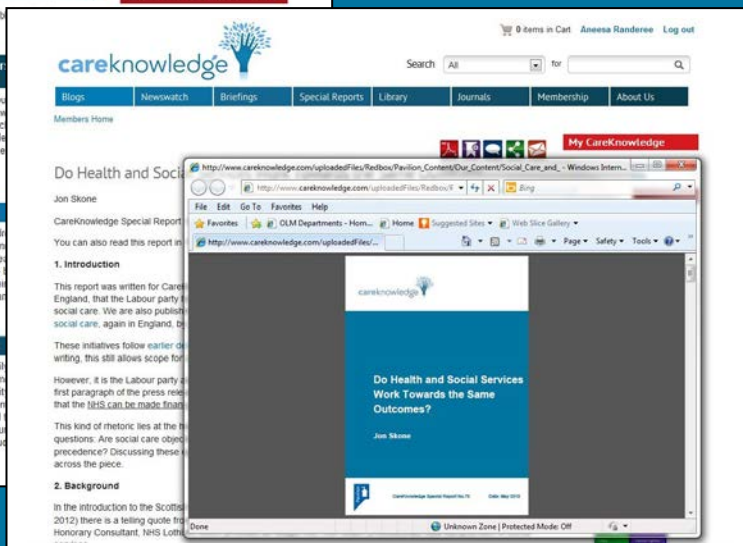
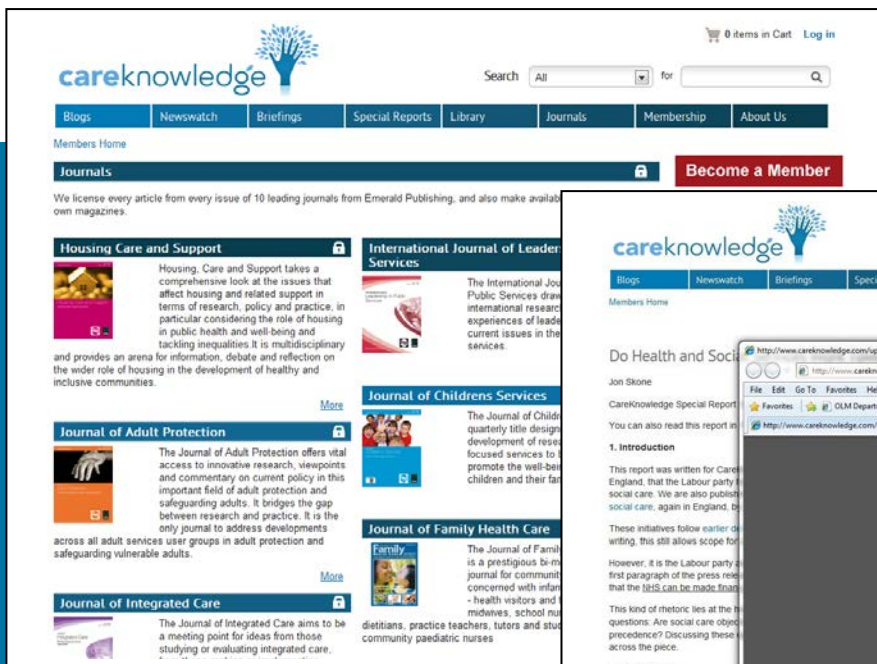
To keep up to date with the latest on The Care Act 2014 and its implementation, go to http://www.careknowledge.com/Care_Act_2014.aspx



The screenshot shows the CareKnowledge website interface. At the top right, there is a shopping basket icon labeled 'my basket (0)' and a 'Log out' link. The main navigation bar includes 'careknowledge' with a tree logo, a search bar with a dropdown menu set to 'All', and a search button. Below the navigation bar is a horizontal menu with categories: Blogs, Briefings, Special Reports, Library, Journals, Books, Knowledge Maps, and Membership. Underneath this menu is a 'Members Home' link. The main content area features a 'Care Act 2014' section with three articles:

- [CareKnowledge Special Report : Care Act 2014 Guidance](#): This Special Report describes what we see as some of the core changes covered by the draft Care Act guidance, and raises a number of questions about their local policy and practice implications. The Report attempts to provide a concise summary for those whose work will be affected by the Act, but who will not have time, at this stage, to engage in the detail of the consultation documents. [16-Jul-2014]
- [Why the Care Act 2014's incoherent guidance on direct payments must be revised](#): In her latest analysis of the draft guidance for Community Care, Belinda Schwehr says its message on choice of care is contradicted by the Act itself. [14-Jul-2014]
- [Government must rethink unrealistic Care Act implementation timetable, MPs warn](#): The public accounts committee's review of adult social care questioned the feasibility of the government's expectation that councils make "measurable progress" on implementing the Care Act from April 2015. Article from Community Care. [14-07-14]

 On the right side of the page, there is a 'My CareKnowledge' section with links for 'My Account' and 'My Bookmarks', and social media icons for Twitter and LinkedIn. At the bottom right, there is a logo for 'careknowledge forum'.



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