



Devon County Councils response to the Care Act Consultation – August 2014

1. Does the draft guidance provide local authorities with the information they need to embed wellbeing into the way that they work?

The challenge will be the consistent application of wellbeing as a principle not only across the country but across individual local authorities particularly in terms of the national eligibility criteria and the degree to which wellbeing is impacted upon

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

Yes, but further clarity is sought in defining what an unmet need is.

4. Is the list of examples of preventative 'services, facilities or resources' helpful? What else should be included?

When looking to provide or arrange preventative services, authorities will look to fund the VCS as a way of delivering this duty and to ensure that services can be provided across their areas in order to meet needs.

This allows authorities to maintain an element of control of the services and opportunities that people are able to choose from to meet their needs.

Through this process authorities can ensure that there is equity of provision across their areas rather than pockets of excellence and innovation and also areas devoid of opportunities to prevent, reduce or delay needs.

With diminishing resources being continually stretched further, the ability for authorities to maintain control by funding specific types of services with reach across their areas will also diminish. VCS cannot provide services without financial input, there will need to be an incentive.

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

Guidance is clear the role the LA needs to play in supporting people's access to good financial information

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

Yes, but the challenge will come in the definition of 'significant' and 'essential' that will require case law

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

It would appear from the draft criteria that a medical diagnosis may be required in order to determine eligibility. Clarity is sought on this

20. Do the regulations and guidance provide a clear modern framework for charging that will enable local authorities to maintain existing flexibilities in how people contribute to the cost of meeting their care needs? Are there any particular areas that are not clear?

We feel the regulations and guidance provide a clear framework for charging

We remain concerned that the ease with which the charging for care provisions can be defeated, often by the use of the discretionary trust. We feel that the provisions should allow for a full review of the way in which funds came to be held in discretionary trust over a period of say, 6 years.

We also feel there should be a clear regulatory regime regarding deprivation of capital. At present, it appears far too easy for service users to avoid paying for care and far too hard for Local Authorities to prove deprivation of capital. If change is not made, it is feared that more service users will seek to defeat the charging for care provisions which is likely to lead to financial instability for LAs.

21. Is there anything from the current rules that has not been re-created that you feel should have been? If so, please list along with a brief explanation of why.

We are disappointed that the opportunity wasn't taken to ensure a consistent approach towards charging for non-residential care services nationwide which would have meant the post code lottery was eliminated. In addition people would have been clearer about how charges for these services are calculated

22. Do you agree that we should adjust the operation of the 12 week property disregard to better support those most at risk?

Yes we are in agreement

23. Would you prefer to see the current approach retained?

No as we are in agreement to the changes

24. Do you agree that this proposal is cost neutral for local authorities? If it is not, please provide evidence.

We don't believe this can be cost neutral as the regulations expand the numbers to whom a 12 week disregard will apply although it will be at the margins

25. Do you think these bonds should be taken account of in the financial assessment? What are the risks and costs to local authorities and Individuals?

Yes we are in agreement that these bonds should be taken into account in the financial assessment. If this disregard continues then LA's will lose money as what is being created with these products is a legal way to pay reduced accommodation charges. We don't believe there is any risk to individuals

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

Yes we are in agreement with the proposal and the size of the plan should be limited to between £3k & £4k

27. Does the guidance need to particularly cover these types of accommodation? If so, what would it be helpful to discuss?

Yes we are in agreement that this would seem to increase a person's choice of accommodation but it might be that the LA would be exposed to more risk which needs to be discussed and researched

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

There are financial risks to the LA and the risk to the person might be that they have to leave their choice of accommodation which may have a negative emotional impact. In terms of mitigation there must be absolute certainty around affordability and sustainability which all needs to be done before any move to preferred accommodation and regulations and guidance should support this.

The service user, their attorney or deputy need to understand that if funds deplete to the point where they can no longer afford the additional cost of preferred accommodation, the Local Authority will not be obliged

to take responsibility for meeting the additional cost. The service user needs to understand at the consequence of this is that they may need to move. Perhaps standardised publicity documents could be produced to explain this difficulty in order that the service user can make an informed decision about whether they will live in accommodation which incurs additional cost. A standard written agreement could also be provided to be used in these circumstances.

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

Don't know the detail but would seem to be a potential for people to be able to reduce their capital and income prior to the need for care and consequently LA's will pick up the costs. Regulations should revisit the deprivation provisions but how effective these can be when this may occur many years before a person needs care is debateable

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

Feels like the right thing to do but concerns exist over the volume and how we would process these and what pressures to financially underwrite these loans

31. Do you think we should seek to introduce a scheme which is compliant with Sharia law at a later date?

No. If we have to provide loans then we will be charged interest to service these and we should be able to pass on that cost otherwise there would be an additional financial burden to the LA.

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

Yes we are in agreement with the maximum LTV falling between 70% & 80% however, we have no available evidence to support a particular amount within that range.

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

No we feel people should pay as much ongoing towards their accruing debt as possible to reduce the burden on the LA

34. Do you have any views or evidence to suggest how much rental income people should be able to keep to incentivise them to rent their property out?

Apart from costs to maintain the condition of the property all available income should be used to reduce the amount be deferred

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

No as there will be potential uncertainties about recovering monies and this will lead to added complexity in the assessment process i.e. reviewing up to date mortgage and secured loan statements to ensure sufficient equity remains to maintain the 70-80% loan to value figure described above

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

Yes, we are in agreement with the recommendations

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

Yes, we are in agreement with the recommendation

41. Is this definition clear and does it conform to your understanding of intermediate care and reablement? Is there any way it can be improved?

The definition is helpful and conforms to existing understanding. A further addition would be a reference that an outcome of intermediate care is to reduce the need for on-going support.

The key to greater integration and co-ordination will be a single definition across health and social care; it is not clear from the guidance whether the draft definitions will be adopted by Health colleague. In Devon the challenge is to work in a more integrated way to make greater use of qualified staff across health and social care, to this end the definition is helpful.

44. Will the easing of the restriction to pay family members living in the same household for administration/management of the direct payment increase uptake of direct payments?

Devon has developed support systems which assist people to consider and plan who will facilitate these functions on behalf of the individual. This is unlikely to result in a significant overall increase. People with a learning disability are likely to be the main beneficiaries of this change where finding a Suitable Person who isn't directly providing a service may be a challenge.

Will this create implementation issues for local authorities?

Yes, it will need to be clarified whether the payment is additional to the budget or if a specific allowance is being made for this. Issues such as consistency of value with current administrative solutions would need to be considered and resolved. There is a risk vulnerable people may be placed at risk of being disempowered by family members who may see this as an opportunity for additional income. Overall the gain from this change in respect of uptake is minor compared to the impact that it will make in terms of implementation.

45. The draft direct payment regulations decreases the time period to conduct a review of the direct payment from 12 months to 6 months – is this workable?

Yes, Devon reviews (via the DP support service) at approx. 8 weeks. Care Manager's review at 12 months and the achievement of a shorter timescale will be dependent on the capacity of Care Management to undertake this which is likely to be challenging.

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

Monitoring is dependent on each LA having a clear application of policy with regard outcomes and time and task specifications. A number of Local Authorities aspire to outcome based planning and conversely operate systems which focus on hourly rates. Some Authorities enable people to plan with an indicative budget others modify it via a financial tool. How a LA interprets these issues will impact on the monitoring process. The regulations are non specific and can be interpreted in a variety of ways and not as important as setting the foundation right in terms of the aforementioned points

59. We would welcome views and transferable good practice examples about the application of care and support to custodial settings. In particular about information and advice, advocacy, financial assessment, personal budgets, the sharing of information between agencies, and joint commissioning arrangements between custodial establishments, local authorities and health services.

We are keen to understand how peer support is currently approached across the country and whether under the Care Act prisoners can be deemed as carers and have carers entitlement whilst in a custodial setting.

Source: Social Care Commissioning – Change Delivery