

## CARE ACT 2014

### MEETING NEEDS ASSESSMENT & ELIGIBILITY<sup>1</sup> POWERS & DUTIES TO MEET NEEDS CARE AND SUPPORT PLANNING

#### *Meeting needs for care: Section 8*

1. Under the current regime the object of a community care assessment or a carer's assessment is to determine (amongst other things) whether there is a need for "*services*". The community care statutes provide exhaustive lists of services that can be provided and the Carers and Disabled Children Act 2000 provides a generalised statement as to what a carer's service might be.
2. The Care Act ("*the Act*") repeals these statutes and avoids referring to *services* when describing how a local authority should respond to an identified need. Instead, section 8 contains an illustrative list what may be "*provided*" to an adult in need of care or support or a carer in need of support. Section 8(1) lists examples of "*of what may be provided [by a local authority or others] to meet needs under sections 18 to 20*",<sup>2</sup> namely:
  - (a) *accommodation in a care home or in premises of some other type;*
  - (b) *care and support at home or in the community;*
  - (c) *counselling and other types of social work;*
  - (d) *goods and facilities;*
  - (e) *information, advice and advocacy.*
3. Section 8(2) contains an illustrative list of how a local authority may meet needs under sections 18 to 20:
  - (a) *by arranging for a person other than it to provide a service;*
  - (b) *by itself providing a service;*
  - (c) *by making direct payments.*

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<sup>1</sup> This paper expands on the relevant parts of an earlier paper by David Lock QC.

<sup>2</sup> Sections 18 to 20 of the Care Act 2014 are considered further below under *Powers & duties to meet needs*.

*Assessing needs & determining eligibility*

4. Sections 9 to 13 of the Act are concerned with the assessment of needs for care and support and eligibility for care and support. They are augmented by:
  - a. The Care and Support (Assessment) Regulations 2014 (*“the Assessment Regulations”*);
  - b. The Care and Support (Eligibility Criteria) Regulations 2015 (*“the Eligibility Regulations”*); and
  - c. The *Care and Support Statutory Guidance* of October 2014 (*“the Guidance”*), Chapter 6, *Assessment and eligibility*.

*Assessing needs*

5. The Act deals separately with the assessment of needs for adults in potential need of care and support (a *“needs assessment”*<sup>3</sup>) and for carers with a potential need for support (a *“carer’s assessment”*<sup>4</sup>) in sections 9 and 10 respectively.
6. The assessment of whether an adult has a need for care and support or whether a carer has a need for support comes before the question of whether the person is *eligible* for care and/or support. Eligibility decisions are made after the assessment is completed.

*Assessments generally*

7. The Guidance at 6.3 states that an assessment may come in different formats and can be carried out in various ways, including but not limited to:
  - *A face-to-face assessment between the person and an assessor, whose professional role and qualifications may vary depending on the circumstances, but who must always be appropriately trained and have the right skills and knowledge.*
  - *A supported self-assessment, which should use the same assessment materials as a face-to-face assessment, but where the person completes the assessment themselves and the local authority assures itself that it is an accurate reflection of the person’s*

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<sup>3</sup> Section 9(2)

<sup>4</sup> Section 10(2)

*needs (for example, by consulting with other relevant professionals and people who know the person with their consent).*

- *An online or phone assessment, which can be a proportionate way of carrying out assessments (for example where the person's needs are less complex or where the person is already known to the local authority and it is carrying out an assessment following a change in their needs or circumstances).*
  - *A joint assessment, where relevant agencies work together to avoid the person undergoing multiple assessments (including assessments in a prison, where local authorities may need to put particular emphasis on cross-agency cooperation and sharing of expertise).*
  - *A combined assessment, where an adult's assessment is combined with a carer's assessment and/or an assessment relating to a child so that interrelated needs are properly captured and the process is as efficient as possible.*
8. The process is *"flexible and can be adapted to best fit with the person's needs, wishes and goals"* (para 6.4). The purpose of an assessment is to *"identify the person's needs and how these impact on their wellbeing, and the outcomes that the person wishes to achieve in their day-to-day life"* (para 6.9).

#### Advocates

9. The Act contains important provisions relating to the provision of independent advocacy support during (inter alia) needs assessments and carers' assessments; see section 67 and the Guidance at paras 6.23, 6.33-34 and Chapter 7. The Guidance at para 6.23 states that, from the time of first contact, *"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."*

#### Timescale

10. The Guidance states (para 6.29) that 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.”*

Needs assessments: Section 9

11. Section 9(1) makes provision for needs assessments. It provides:

*“Where it appears to a local authority that an adult may have needs for care and support, the authority must assess:*

*(a) whether the adult does have needs for care and support, and*

*(b) if the adult does, what those needs are”*

12. The existing low level of knowledge of possible needs is retained. This is made explicit in section 9(3) which provides:<sup>5</sup>

*“(3) The duty to carry out a needs assessment applies regardless of the authority's view of—*

*(a) the level of the adult's needs for care and support, or*

*(b) the level of the adult's financial resources.”*

13. Section 9(4) provides that a needs assessment must include an assessment of—

*“(a) the impact of the adult's needs for care and support on the matters specified in section 1(2),<sup>6</sup>*

*(b) the outcomes that the adult wishes to achieve in day-to-day life, and*

*(c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes”*

14. In carrying out a needs assessment the local authority must involve the adult who is being assessed, any carer, and “any person whom the adult asks the authority to involve or,

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<sup>5</sup> See also Guidance at para 6.13.

<sup>6</sup> I.e. “(a) personal dignity (including treatment of the individual with respect); (b) physical and mental health and emotional well-being; (c) protection from abuse and neglect; (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided); (e) participation in work, education, training or recreation; (f) social and economic well-being; (g) domestic, family and personal relationships; (h) suitability of living accommodation; (i) the individual's contribution to society.”

where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare” (Section 9(5)).

15. In assessing needs the local authority must disregard any support being provided by a carer (Guidance, para 6.15). Where the adult has a carer:

*...information on the care that they are providing can be captured during assessment, but it must not influence the eligibility determination. After the eligibility determination has been reached, if the needs are eligible or the local authority otherwise intends to meet them, the care which a carer is providing can be taken into account during the care and support planning stage.*

16. When carrying out a needs assessment, a local authority must also consider whether matters other than the provision of care and support might contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and whether the adult may benefit from the provision of “*anything which might be available in the community*” or of anything available under section 2 (measures which have been provided or arranged with a view to preventing, delaying, or reducing needs for care and support) or section 4 (the provision of information and advice) (Section 9(6)).

#### Carers’ assessments: Section 10

17. A carer is defined in section 10(3) read with section 10(9) as an “*adult who provides or intends to provide care for another adult*”, unless the care is provided under or by virtue of a contract or as voluntary work.<sup>7</sup> “*Care*” is to be read for the purposes of section 10 as including “*practical or emotional support*” (section 10(11)).

18. Section 10(1) states:

*“Where it appears to a local authority that a carer may have needs for support (whether currently or in the future), the authority must assess—  
(a) whether the carer does have needs for support (or is likely to do so in the future), and*

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<sup>7</sup> Section 10(1) provides that where the care is provided on that basis (i.e. under a contract, etc) but “*the local authority considers that the relationship between the adult needing care and the adult providing or intending to provide care is such that it would be appropriate for the latter to be regarded as a carer, that adult is to be regarded as such.*” See also the Guidance at para 6.16-6.17 (“*The local authority has the power to carry out an assessment in such cases, if it judges that there is reason to do so.*”)

*(b) if the carer does, what those needs are (or are likely to be in the future)."*

19. As with a needs assessment, the duty to carry out a carer's assessment applies regardless of the authority's view of the level of the carer's needs for support, or the level of the carer's financial resources or of those of the adult needing care (section 10(4)).

20. Section 10(5) provides that a carer's assessment must include an assessment of—

*"(a) whether the carer is able, and is likely to continue to be able, to provide care for the adult needing care,  
(b) whether the carer is willing, and is likely to continue to be willing, to do so,  
(c) the impact of the carer's needs for support on the matters specified in section 1(2),  
(d) the outcomes that the carer wishes to achieve in day-to-day life, and  
(e) whether, and if so to what extent, the provision of support could contribute to the achievement of those outcomes."*

21. A carer's assessment "*must seek to establish not only the carer's needs for support, but also the sustainability of the caring role itself, which includes both the practical and emotional support the carer provides to the adult*" (Guidance, para 6.18). This means that the assessment must include a consideration of "*potential future needs*"

22. A local authority, in carrying out a carer's assessment, must have regard to whether the carer works or wishes to do so, and whether the carer is participating in or wishes to participate in education, training or recreation (section 10(6)). The authority must involve the carer and "*any person whom the carer asks the authority to involve*" (section 10(7)).

23. As with a needs assessment, the authority must consider whether matters other than the provision of support could contribute to the achievement of the outcomes that the carer wishes to achieve in day-to-day life, and whether the carer would benefit from the provision of anything under section 2 or 4 or of anything which might be available in the community (section 10(8)).

*Further provisions relating to assessments*

24. Section 12 makes further provision for needs assessments and carers assessments under sections 9 and 10. It includes the following important provisions:

- A requirement to provide a written record of a needs assessment to the adult to whom the assessment relates, any carer (if the adult asks the authority to do so), and any other person to whom the adult asks the authority to give a copy (section 12(3));
- A requirement to provide a written record of a carer’s assessment to the carer to whom the assessment relates, the adult needing care (if the carer asks the authority to do so), and any other person to whom the carer asks the authority to give a copy (section 12(4))<sup>8</sup>;
- Provisions for combined assessments (e.g. needs assessment and carer’s assessment conducted at the same time) (section 12(5) and 12(6));<sup>9</sup>
- Provisions for joint assessments (where relevant agencies work together) (section 12(7)).<sup>10</sup>

#### Supported self-assessment

25. The Assessment Regulations make provision at Regulation 2 for “*Supported self-assessment*”. A local authority proposing to conduct an assessment must ascertain whether the person to whom it relates wishes it to be a supported self-assessment (Reg 2(2)), and if so, the assessment must take that form, so long as the person to whom it relates has capacity to engage (Reg 2(3)). Supported self-assessments are addressed in the Guidance at paras 6.44 to 6.53.

26. Once the person has completed the assessment, “*the local authority must ensure that it is an accurate and complete reflection of the person’s needs, outcomes, and the impact of needs on their wellbeing. The process of a supported self-assessment begins with first contact and is only complete when this assurance has been secured*” (Guidance, para 6.46). The Guidance continues (para 6.47):

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<sup>8</sup> The Guidance at 6.9 gives the example of a GP or a district nurse.

<sup>9</sup> See Guidance at para 6.3, 6.74, 15.14.

<sup>10</sup> See Guidance at para 6.3.

*In assuring self-assessments local authorities may consider it useful to seek the views of those who are in regular contact with the person self-assessing, such as their carer(s) or other appropriate people from their support network, and any professional involved in providing care such as a housing support officer, a GP, a treating clinician, a district nurse, a rehabilitation officer or relevant prison staff.*

Appropriate and proportionate; participation

27. Regulation 3(1) requires that a local authority carry out an assessment in a manner which (a) is appropriate and proportionate to the needs and circumstances of the individual to whom it relates; and (b) ensures that the individual is able to participate in the process as effectively as possible.

28. In seeking to ensure that an assessment is carried out in an appropriate and proportionate manner, a local authority must have regard to: (a) the wishes and preferences of the individual to whom it relates; (b) the outcome the individual seeks from the assessment; and (c) the severity and overall extent of the individual's needs (Reg. 3(2)). Further guidance on ensuring that an assessment is appropriate and proportionate is set out in the Guidance at 6.35 to 6.43.

Fluctuating needs

29. Regulation 3(3) makes specific provision for individuals with fluctuating needs. It provides that, in a case where the level of the individual's needs fluctuates, the local authority must take into account the individual's circumstances over such period as it considers necessary to establish accurately the individual's level of needs. Fluctuating needs are further addressed in the Guidance at paras 6.58 and 6.59.

Refusal of assessment

30. A local authority need not carry out a means assessment where the person whose assessment is proposed refuses an assessment (section 11(1)). However, section 11(2) provides that the local authority must carry out the assessment where:

*“(a) the adult lacks capacity to refuse the assessment and the authority is satisfied that carrying out the assessment would be in the adult's best interests, or*

*(b) the adult is experiencing, or is at risk of, abuse or neglect”*



31. Where a needs or carer's assessment is refused and an assessment requested at a later date the obligations in section 9(1) and 10(1) arise again, and the local authority is required to conduct an assessment: section 11(3) and 11(5). Where circumstances change the obligations under section 9(1) and 10(1) arise again (see section 11(4) and 11(7)).

Delegation of assessments

32. Section 79(1) of the Act provides that a local authority “*may authorise a person to exercise on its behalf a function*” including, *inter alia*, assessments under sections 9 and 10; see the Guidance at para 6.99 and Chapter 18.

***Eligibility: Section 13***

***Adults who need care and support***

33. Having assessed whether an adult has “needs” the next question is whether he or she has “eligible needs”. Section 13(1) provides:

*“Where a local authority is satisfied on the basis of a needs or carer’s assessment that an adult has needs for care and support or that a carer has needs for support, it must determine whether any of the needs meet the eligibility criteria”*

34. The introduction of a single national eligibility threshold is a significant development which will in principle regional variations in approach.

35. Where a determination is made under section 13(1), a written record of the determination and the reasons for it must be given to the adult concerned: section 13(2).

***Eligibility threshold: adults needing care and support***

36. The eligibility threshold for adults with care and support needs and for carers with support needs is set out in Eligibility Regulations. The approach is one of identifying how a person’s needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing (as to which, see section 1, considered elsewhere).

37. The eligibility threshold for adults needing care is set out in Regulation 2 in the following terms:

*(1) An adult’s needs meet the eligibility criteria if—*  
*(a) the adult’s needs arise from or are related to a physical or mental impairment or illness;*  
*(b) as a result of the adult’s needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and*  
*(c) as a consequence there is, or is likely to be, a significant impact on the adult’s well-being.*

38. All three conditions must be met.

39. For the purposes of Condition (b), Regulation 2(3) defines being *unable* broadly:

*For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—*

- (a) is unable to achieve it without assistance;*
- (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;*
- (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or*
- (d) is able to achieve it without assistance but takes significantly longer than would normally be expected.*

40. The “outcomes” to which Condition (b) refers are set out in Regulation 2(2):

*(2) The specified outcomes are—*

- (a) managing and maintaining nutrition;*
- (b) maintaining personal hygiene;*
- (c) managing toilet needs;*
- (d) being appropriately clothed;*
- (e) being able to make use of the adult's home safely;*
- (f) maintaining a habitable home environment;*
- (g) developing and maintaining family or other personal relationships;*
- (h) accessing and engaging in work, training, education or volunteering;*
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and*
- (j) carrying out any caring responsibilities the adult has for a child.*

41. The Guidance considers each outcome at para 6.107.

42. Condition (c) is that, as a consequence of an identified inability in relation to two of the outcomes identified in Regulation 2(2), “*there is, or is likely to be, a significant impact on the adult's well-being.*” Wellbeing is defined in section 1 of the Act, and considered in detail in Chapter 1 of the Guidance. The Guidance discusses condition (c) at paras 6.108 to 6.114. Consideration should be given to the cumulative effect of the difficulties identified not to each matter in isolation (para 6.109). In considering condition (c) local authorities should also consider whether:

- *the adult's inability to achieve the outcomes [in Reg. 2(2)] impacts on at least one of the areas of wellbeing (as described in Section 1 of the Act and chapter 1 of this guidance) in a significant way; or,*
- *the effect of the impact on a number of the areas of wellbeing mean that there is a significant impact on the adult's overall wellbeing.*

43. “*Significant*” is not defined in the Regulations and, by para. 6.110 of the Guidance, “*must therefore be understood to have its everyday meaning*”. A significant impact is an impact which has an “*important, consequential effect on [a person’s] daily lives, their independence and their wellbeing.*”

44. Needs met by carers are not to be taken into account when determining eligibility (see Guidance at para 6.119):

*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. This is to ensure that should there be a breakdown in the caring relationship, the needs are already identified as eligible, and therefore local authorities must take steps to meet them without further assessment.*

45. Regulation 2(4) addresses the approach to fluctuating need when determining eligibility. It provides that in cases of fluctuating need, “*in determining whether the adult’s needs meet the eligibility criteria, the local authority must take into account the adult’s circumstances over such period as it considers necessary to establish accurately the adult’s level of need.*”<sup>11</sup>

#### Eligibility threshold: Carers

46. Regulation 3(1) sets out the national eligibility threshold for carers. Three conditions must be met:

*A carer’s needs meet the eligibility criteria if—*  
*(a) the needs arise as a consequence of providing necessary care for an adult;*  
*(b) the effect of the carer’s needs is that any of the circumstances specified in paragraph (2) apply to the carer; and*  
*(c) as a consequence of that fact there is, or is likely to be, a significant impact on the carer’s well-being.*

47. Importantly, carers can be eligible for support even where the person for whom they are caring does not have eligible needs (see Guidance at para 6.123). To be eligible, the carer must be providing “*necessary*” care (Guidance, 6.124). The Guidance states that, if the carer is providing care and support “*for needs which the adult is capable of meeting themselves*” the carer may not be providing necessary support.

48. Reg 3(2) sets out the circumstances referred to in Reg 3(1)(b). It is in the following terms:

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<sup>11</sup> See further the Guidance at paras 6.117-118.

(2) *The circumstances specified in this paragraph are as follows—*

(a) *the carer's physical or mental health is, or is at risk of, deteriorating;*

(b) *the carer is unable to achieve any of the following outcomes—*

(i) *carrying out any caring responsibilities the carer has for a child;*

(ii) *providing care to other persons for whom the carer provides care;*

(iii) *maintaining a habitable home environment in the carer's home (whether or not this is also the home of the adult needing care);*

(iv) *managing and maintaining nutrition;*

(v) *developing and maintaining family or other personal relationships;*

(vi) *engaging in work, training, education or volunteering;*

(vii) *making use of necessary facilities or services in the local community, including recreational facilities or services; and*

(viii) *engaging in recreational activities.*

49. Reg 3(3) defines “unable” for the purposes of Reg 3(2) as follows:

*For the purposes of paragraph (2) a carer is to be regarded as being unable to achieve an outcome if the carer—*

(a) *is unable to achieve it without assistance;*

(b) *is able to achieve it without assistance but doing so causes the carer significant pain, distress or anxiety; or*

(c) *is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the carer, or of others.*

50. Condition (c) is that as a consequence of one or more of the matters identified in Reg 3(2) applying to the carer “*there is, or is likely to be, a significant impact on the carer's well-being*”. As to the meaning of “*significant*”, see para [x] above, and paras 6.129 to 6.134 of the Guidance.

51. Reg. 3(4) addresses fluctuating need. In cases of fluctuating need, “*the local authority must take into account the carer's circumstances over such period as it considers necessary to establish accurately the carer's level of need.*”

#### After the eligibility determination

52. Section 13(3) provides that, where at least some of an adult's needs for care and support meet the eligibility criteria, the local authority must:

a. consider what could be done to meet those needs that do;

- b. ascertain whether the adult wants to have those needs met by the local authority in accordance with this Part; and
- c. establish whether the adult is ordinarily resident in the local authority's area.

53. Section 13(4) makes similar provision in relation to carers. Where at least some of a carer's needs for support meet the eligibility criteria, the local authority must (a) consider what could be done to meet those needs that do; and (b) establish whether the adult needing care is ordinarily resident in the local authority's area.

54. Where none of the needs of the adult concerned meet the eligibility criteria, the local authority must give him or her written advice and information about (a) what can be done to meet or reduce the needs; and (b) what can be done to prevent or delay the development of needs for care and support, or the development of needs for support, in the future (Section 13(5)).

*Powers & duties to meet needs: Sections 18-20*

55. Section 18 of the Act sets out the circumstances in which the local authority is under a duty to meet an eligible need for care and support. Section 19 identifies circumstances in which an authority has a power to meet needs for care and support in relation to which no duty arises. Section 20 addresses the circumstances in which a local authority has a duty or a power to meet the needs of a carer.

*Duties to meet needs for care and support: section 18*

56. The provisions of section 18 interlock with the provisions on charging in sections 14 and 15 which will be the subject of separate consideration in Part 2 of this seminar.

57. Where a local authority has conducted a needs assessment under section 9 and made a determination under section 13(1) that an adult has eligible needs for care and support, it must meet the adult's needs for care and support which meet the eligibility criteria in the following circumstances:

- a. Under section 18(1), where (a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence; (b) the adult's accrued costs do not exceed the cap on care costs, and (c) there is no charge<sup>12</sup> under section 14 for meeting the needs or, in so far as there is, either:
  - i. (Condition 1) the local authority is satisfied on the basis of the financial assessment it carried out (under section 17) that the adult's financial resources are at or below the financial limit,<sup>13</sup>
  - ii. (Condition 2) the local authority is satisfied on the basis of the financial assessment it carried out that the adult's financial resources are above the financial limit, but the adult nonetheless asks the authority to meet the adult's needs; or

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<sup>12</sup> Section 18(6) makes clear that the reference to there being “no charge” under section 14 “is a reference to there being no such charge because (a) the authority is prohibited by regulations under section 14 from making such a charge, or (b) the authority is entitled to make such a charge but decides not to do so.”

<sup>13</sup> As to which, see section 17(8), (9), and (10) and the Care and Support (Charging and Assessment of Resources) Regulations 2014/2672, Regulations 10 and 12.

iii. (Condition 3) the adult lacks capacity to arrange for the provision of care and support, but there is no person authorised to do so under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.

b. Under section 18(5) if (a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and (b) the adult's accrued costs exceed the cap on care costs.

58. Importantly, no duty arises under section 18(1) or section 18(5) in relation “*to such of the adult's needs as are being met by a carer*”: section 18(7).

*Powers to meet needs for care and support: section 19*

59. Section 19(1) creates a power to meet an adult’s needs for care and support which fall below the eligibility criteria where (a) the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence, and (b) the authority is satisfied that it is not required to meet the adult's needs under section 18.

60. Section 19(2) creates a power for a local authority to meet the eligible needs of an adult ordinarily resident in the area of another local authority. The Care Act Manual notes (1-245) that the power in section 19(2) “*does not allow a local authority to meet the needs of a person who is ordinarily resident elsewhere and which do not satisfy the minimum eligibility threshold.*”

61. Section 19(3) provides a power to meet urgent care and support needs, regardless of the adult’s place of ordinary residence, before the local authority has (a) carried out a needs assessment or a financial assessment, or (b) made an eligibility determination under section 13(1).

*Duty to meet carers’ need for support: Section 20(1)*

62. A duty to meet a carer’s needs for support arises under section 20(1) where the assessed needs meet the eligibility criteria, and:



- a. the adult needing care [i.e. not the carer] is ordinarily resident in the local authority's area or is present in its area but of no settled residence;
- b. in so far as meeting the carer's needs involves the provision of support to the carer, there is no charge under section 14 for meeting the needs or, in so far as there is,
  - i. *“the local authority is satisfied on the basis of the financial assessment it carried out that the carer's financial resources are at or below the financial limit”*<sup>14</sup> or
  - ii. *“the local authority is satisfied on the basis of the financial assessment it carried out that the carer's financial resources are above the financial limit, but the carer nonetheless asks the authority to meet the needs in question”*,<sup>15</sup> and
- c. in so far as meeting the carer's needs involves the provision of care and support to the adult needing care there is no charge under section 14 for meeting the needs and the adult needing care agrees to the needs being met in that way, or in so far as there is
  - i. *“the local authority is satisfied on the basis of the financial assessment it carried out that the financial resources of the adult needing care are at or below the financial limit, and the adult needing care agrees to the authority meeting the needs in question by providing care and support to him or her”*<sup>16</sup> or
  - ii. *“the local authority is satisfied on the basis of the financial assessment it carried out that the financial resources of the adult needing care are above the financial limit, but the adult needing care nonetheless asks the*

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<sup>14</sup> I.e. Condition 1 in section 20(2) is met.

<sup>15</sup> I.e. Condition 2 in section 20(3) is met.

<sup>16</sup> I.e. Condition 3 in section 20(4) is met.

*authority to meet the needs in question by providing care and support to him or her.”<sup>17</sup>*

*Power to meet carers' need for support: Section 20(6)*

63. Where no duty arises under section 20(1), section 20(6) creates a power to meet a carer's need for support. In so far as meeting the carer's needs involves the provision of care and support to the adult needing care, this is only permissible “*if the adult needing care agrees to the needs being met in that way*”.

64. A local authority may meet some or all of a carer's needs for support in a way which involves the provision of care and support to the adult needing care, even if the authority would not be required to meet the adult's needs for care and support under section 18: section 20(7).

*Exceptions to the powers and duties in sections 18 to 20*

65. Section 21 creates exceptions to the duties and powers arising under sections 18 to 20 in relation to persons subject to immigration control.

66. Section 22 creates an exception where meeting the adult's needs would involve the provision of a service or facility which is available under the National Health Service Act 2006<sup>18</sup> or the provision of nursing care by a registered nurse.<sup>19</sup>

67. Section 23 provides that a local authority may not meet needs under sections 18 to 20 by doing anything which it or another local authority is required to do under the Housing Act 1996 or “*any other enactment specified in regulations.*”

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<sup>17</sup> I.e. Condition 4 in section 20(4) is met.

<sup>18</sup> Section 22(1).

<sup>19</sup> Section 22(3).

*Care and support planning*

68. Sections 24 to 30 of the Act focus on *Next steps after assessments*. This paper is limited to considering the provisions as they relate to the planning of care and support.

69. Section 24 provides that where a local authority is obliged to, or decides to, meet needs under section 18, 19 or 20 it must:

- a. prepare a care and support plan or a support plan for the adult concerned;
- b. tell the adult which (if any) of the needs that it is going to meet may be met by direct payments; and
- c. help the adult with deciding how to have the needs met.

70. Section 24(2) sets out the steps a local authority must take where an assessment has taken place and it has been decided there is no duty to meet needs, and a decision is taken not to do. It must provide written reasons for the decision and advice and information on meeting / reducing / delaying the development of the needs

Care and support plans, support plans

71. Section 25(1) provides that a care and support plan or, in the case of a carer, a support plan is a document prepared by a local authority which—

- a. specifies the needs identified by the needs assessment or carer's assessment,
- b. specifies whether, and if so to what extent, the needs meet the eligibility criteria,
- c. specifies the needs that the local authority is going to meet and how it is going to meet them,

- d. specifies to which of the matters referred to in section 9(4)<sup>20</sup> the provision of care and support could be relevant or to which of the matters referred to in section 10(5) and (6)<sup>21</sup> the provision of support could be relevant,
- e. includes the personal budget for the adult concerned,<sup>22</sup> and
- f. includes advice and information about
  - i. what can be done to meet or reduce the needs in question;
  - ii. what can be done to prevent or delay the development of needs for care and support or of needs for support in the future.

72. The purpose of the care and support planning process “*is to agree how a person’s needs should be met, and therefore how the local authority will discharge its duty, or its power, to do so*” (Guidance 10.10). The Guidance includes detailed discussion on what it means to “*meet needs*” from 10.10 to 10.19. Section 8 of the Act gives indicative examples (see paras 1 to 3 above) but is not exhaustive. Needs may be met through traditional “*service*” options such as care homes or home care, but the Guidance (at 10.12) emphasises the scope for other types of support “*such as assistive technology in the home or equipment/adaptations*” and states that approaches to meeting needs should be inclusive of “*less intensive or service-focused options*”.

#### Where needs met by a carer

73. As addressed above, an authority is not under an obligation to meet needs that are being addressed by a carer. Where this is the case, however, it should be recorded in the plan,

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<sup>20</sup> Section 9(4) refers to “(a) the impact of the adult’s needs for care and support on the matters specified in section 1(2), (b) the outcomes that the adult wishes to achieve in day-to-day life, and (c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.”

<sup>21</sup> Sections 10(5) refers to “(a) whether the carer is able, and is likely to continue to be able, to provide care for the adult needing care, (b) whether the carer is willing, and is likely to continue to be willing, to do so, (c) the impact of the carer’s needs for support on the matters specified in section 1(2), (d) the outcomes that the carer wishes to achieve in day-to-day life, and (e) whether, and if so to what extent, the provision of support could contribute to the achievement of those outcomes.” Section 10(6) refers to “(a) whether the carer works or wishes to do so, and (b) whether the carer is participating in or wishes to participate in education, training or recreation.”

<sup>22</sup> Addressed in section 26 and Chapter 11 of the Guidance.

and consideration given to putting in place plans to respond to any breakdown in the caring relationship (Guidance, para. 10.27).

#### Direct payments

74. Section 25(2) requires that where some or all of the needs are to be met by making direct payments, the plan must also specify (a) the needs which are to be so met, and (b) the amount and frequency of the direct payments. Direct payments are to be the subject of a separate paper in Part 2 of this seminar.

#### Involvement / Advocacy

75. In preparing a care and support plan, the local authority must involve the adult for whom it is being prepared, any carer that the adult has, and “*any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare*” (section 25(3)).

76. In preparing a support plan, the local authority must involve the carer for whom it is being prepared, the adult needing care, if the carer asks the authority to do so, and any other person whom the carer asks the authority to involve (section 25(4)).

77. The Guidance at 10.2 states:

*The person must be genuinely involved and influential throughout the planning process, and should be given every opportunity to take joint ownership of the development of the plan with the local authority if they wish, and the local authority agrees. There should be a default assumption that the person, with support if necessary, will play a strong pro-active role in planning if they choose to. Indeed, it should be made clear that the plan ‘belongs’ to the person it is intended for, with the local authority role to ensure the production and sign-off of the plan to ensure that it is appropriate to meet the identified needs.*

78. Where the person has substantial difficulty in being actively involved with the planning process, and they have no family and friends who are able to facilitate the person's involvement in the plan, the local authority “*must provide an independent advocate to represent and support the person to facilitate their involvement*” (see section 67 of the Act, and the Guidance at 10.34, 10.52 and Chapter 7).

Fluctuating needs

79. Where a person has fluctuating needs the plan “*should make comprehensive provisions to accommodate for this, as well as indicate what contingencies are in place in the event of a sudden change or emergency*” (Guidance, para 10.44)

Agreement

80. The local authority must take all reasonable steps to reach agreement with the adult or carer for whom the plan is being prepared about how the authority should meet the needs in question (section 25(5)). See further the Guidance at 10.81 to 10.87.

Copies to be provided

81. Sections 25(9) and (10) require copies of a care and support plan and a support plan respectively to be given to the people specified therein. It must be “*in a format that is accessible to the person for whom the plan is intended, any other person they request to receive a copy, and their independent advocate if they have one and the person agrees*” (Guidance, 10.87).

Combined plans

82. Section 25(11) makes provision for combining care and support / support plans with other plans, under Part 1 of the 2014 Act and otherwise. The Guidance at para 10.73 – 10.74 states:

*Local authorities should not develop plans in isolation from other plans (such as plans of carers or family members, or Education, Health and Care plans) and should have regard to all of the person’s needs and outcomes when developing a plan, rather than just their care and support needs...*

*The local authority should attempt to establish where other plans are present, or are being conducted and seek to combine plans, if appropriate. For example, this may be where the plan can be combined with a plan being developed to meet other needs, or where a plan might usefully be combined with that of a carer, or family member.*

Personal budgets

83. Section 26 makes provision for personal budgets, which are further addressed in Chapter 11 of the Guidance. A personal budget is defined in section 26(1) as “*a statement which*

*specifies (a) the cost to the local authority of meeting those of the adult's needs which it is required or decides to meet as mentioned in section 24(1), (b) the amount which, on the basis of the financial assessment, the adult must pay towards that cost, and (c) if on that basis the local authority must itself pay towards that cost, the amount which it must pay.”*

### Review of plans

84. Section 27 makes provision for review of care and support / support plans. These must be kept under review generally (section 27(1)(a)). They must also be reviewed upon a reasonable request being made (section 27(1)(b)). Periodic review is “*is vital to ensure that the plan remains relevant to [the person’s] goals and aspirations*” (Guidance, para 13.10). Unplanned reviews will be necessary where a potentially material change in circumstances becomes known to the local authority (Guidance, 13.19). The review process should not be overly complex or bureaucratic, and should address the following broad elements:<sup>23</sup>

- Have the person’s circumstances and/or care and support or support needs changed?
- What is working in the plan, what is not working, and what might need to change?
- Have the outcomes identified in the plan been achieved or not?
- Does the person have new outcomes they want to meet?
- Could improvements be made to achieve better outcomes?
- Is the person’s personal budget enabling them to meet their needs and the outcomes identified in their plan, and
- Is the current method of managing it still the best one for what they want to achieve, e.g. should direct payments be considered?
- Is the personal budget still meeting the sufficiency test?
- Are there any changes in the person’s informal and community support networks which might impact negatively or positively on the plan?
- Has there been any changes to the person’s needs or circumstances which might mean they are at risk of abuse or neglect?
- Is the person, carer, independent advocate satisfied with the plan?

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<sup>23</sup> Guidance, 13.12.

Revision of plans

85. In the case of a care and support plan, in deciding whether or how to revise the plan, the authority (a) must have regard in particular to the matters referred to in section 9(4) (and specified in the plan under section 25(1)(d)), and (b) must involve (i) the adult to whom the plan relates, (ii) any carer that the adult has, and (iii) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare (Section 27(2)).
86. In the case of a support plan, in deciding whether or how to revise the plan, the authority (a) must have regard in particular to the matters referred to in in section 10(5) and (6) (and specified in the plan under section 25(1)(d)), and (b) must involve (i) the carer to whom the plan relates, (ii) the adult needing care, if the carer asks the authority to do so, and (iii) any person whom the carer asks the authority to involve (Section 27(3)).
87. Section 27(4) provides for a new needs assessment or carer's assessment where circumstances change. The Guidance states (13.27):

*The revision should wherever possible follow the process used in the assessment and care planning stages. Indeed, the local authority must if satisfied that the circumstances have changed in a way that affects a care and support or support plan, carry out a needs or carer's assessment and financial assessment, and then revise the plan and personal budget accordingly. The assessment process following a review should not start from the beginning of the process but pick up from what is already known about the person and should be proportionate.*

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