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CROSS BORDER ASSESSMENTS OF CARERS

DRAFT PAPER

**A Protocol for assessment of adult carers who live in a
different local authority area to that of the adult with care
and support needs they care for**

2015 PROTOCOL – ALL ENGLAND

DRAFT PAPER

ADULT SOCIAL CARE - CARERS **Cross Border Assessments of Carers**

Background

It is not unusual for carers, especially in urban areas, to live in a different local authority area to the person they support. They have tended to be known as “cross-border” carers. There are also situations where people live some way away and are generally known as “distance carers” of an adult with care and support needs.

To help ensure responsibilities for carers’ assessments were met and to facilitate appropriate support for all carers, the Association’s Executive Council approved a protocol for **Cross Border Assessment of Carers** in 2008. The intention was to support good practice in determining their local arrangements. The Care Act 2014ⁱⁱ, the Regulations and the Care and Support Statutory Guidanceⁱⁱⁱ issued under it replace Legislation and guidance, including the practice guidance, on which the 2008 protocol was based.

This updated protocol supersedes that of 2008. It is to be read and understood within the context of the legal, regulatory and statutory guidance now in place. The protocol relates solely to adult carers of adults with care and support needs and to young carers of adults who are in *transition* to adulthood and to carers of disabled children in *transition* who have a right to request a carer’s assessment from adult services. It does **not** apply to parent carers of children with disabilities or to young carers of siblings.

Statutory Responsibilities

Under the Care Act 2014 [The Act] carers are recognised in law in the same way as those they care for^{iv}. The Act gives local authorities a responsibility to assess a carer’s needs for support where a carer appears to have such needs. They no longer have to be providing [or intending to provide] “*substantial and regular care*”. Section 10 of the Act contains the main statutory provisions on assessment of carers^v.

The Act also makes explicit that local authorities must have regard to a number of matters, such as well-being, prevention, outcomes and wishes of carers, when undertaking an assessment. Just as with adults with care and support needs, decisions on eligibility for support following an assessment will depend upon a carer’s needs satisfying “eligibility criteria” as specified in the legislation, subsequent regulations and guidance.

The Act, itself does not make specific provision for cross border assessments of carers. This has been left to Statutory Guidance under the Act. It is to be found in Chapter 19 on Ordinary Residence [p.282] rather than the Chapter on Assessment. This reflects the previous approach of the Department of Health on covering such issues in guidance on Ordinary Residence rather than Assessment.

Care Act 2014 - Statutory Guidance

The 2014 Care and Support Statutory Guidance of October 2014 makes clear that:

“19.6 The test for ordinary residence, which determines which local authority would be responsible for meeting needs, applies differently in relation to adults with needs for care and support and carers. For adults with care and support needs, the local authority in which the adult is ordinarily resident will be responsible for meeting their eligible needs. For carers, however, the responsible local authority will be the one where the adult for whom they care is ordinarily resident.”

19.7 Establishing responsibility for the provision of care and support for carers, therefore, requires the local authority to consider the ordinary residence of the adult needing care. However, there may be some cases where the carer provides care for more than one person in different local authority areas.

19.8 Where there is more than one local authority involved, those authorities should consider how best to cooperate on and share the provision of support. For example, where there are services or interventions that directly relate to the caring responsibilities towards one of the individuals (e.g. equipment installed in the carer's home to accommodate one of the people), then it would be a straightforward matter of the relevant authority being responsible. Where that same piece of equipment serves for both people cared-for, then the local authorities concerned should agree how to arrange the package. There might be an agreement to jointly fund the support for the carer, or the authorities concerned may agree that one takes overall responsibility for certain aspects. For example, one might lead on reviews because it is geographically closer to the carer's home.

19.9 The Act contains all the necessary powers for joint assessments and support planning, plus the duties to co-operate to provide a mechanism for one of the authorities... to require the co-operation of the other if needed. ...

The 2014 guidance does not repeat the earlier 2001 advisory recommendation on the development of *protocols* covering the need for co-operation and co-ordination of cross border in such circumstances. This is not surprising given the emphasis on cooperation within the Act itself and the statutory guidance itself. The revision and re-issue of the 2008 protocol, however, is seen as consistent with the approach to implementation support for the 2014 Act. It is also seen as a contribution to transparency in decision making that is supportive of person centred practice and *whole family* approaches.

Consistent with the framework of the Act and Statutory Guidance on information and advice, all carers should have made available to them information on the statutory responsibilities of Local Authorities. They should be given appropriate advice and assistance to make decisions and have information about local services and support as a resident within an area. Additionally, paragraph 4.49 of the statutory guidance also makes clear:

4.49 Local authorities should encourage flexible services to be developed and made available that support people who need care and support, and carers who need support, to take part in work, education or training.^[1] Services should be encouraged that allow carers who live in one local authority area but care for someone in another local authority area to access services easily, bearing in mind guidance on ordinary residence

The essential message is that we should work together to ensure that council boundaries do not get in the way of responding to carers and the people they support in a timely and appropriate manner consistent with provisions on well-being and prevention under the Act^{vi}. This includes issues of ordinary residence, any matters around inter-authority reimbursement and charges should they be considered applicable. The 2015 protocol on Cross Border Assessment seeks to facilitate this and to support transparency and early local resolution of any difficulties should they arise.

It is suggested that local arrangements should be monitored and reviewed as necessary or at set intervals.

Adult Social Care – Carers

Protocol on Cross Boundary Assessments of Carers^{vii}

When an adult with care and support needs and a carer live in different local authority areas:

1. The Local Authority where the adult with care and support needs lives^{viii} will take responsibility for the Carer's assessment and the subsequent preparation of any support plan and the meeting of their eligible needs for support.
2. The Local Authority where the carer lives will provide any information, which is available and which it is appropriate to provide, to enable the completion of the assessment and subsequent provision of support; including enabling the carer to make an informed decision about whom to approach about assessment.
3. The Local Authority where the adult with care and support needs lives will be responsible for meeting care and support needs of that person identified under the assessment of needs of "out of area" carers.
4. The Local Authority where the adult with care and support needs lives will take responsibility for reviews of the carer's support plan.
5. The Local Authority where the adult with care and support needs lives is will cooperate with the Local Authority where the carer lives to make information available to the carer about carer support available to them.
6. The Local Authority where the adult with eligible care and support needs lives may ask the Local Authority where the carer lives to provide a service to that carer if that is the most appropriate way of supporting them
7. Issues around inter authority reimbursement or charging should not become a source of difficulty or delay for carers. Local protocols on reimbursement or charging for support to carers are a matter for local determination. Local protocols developed should be both transparent and publicly accessible.
8. If the Local Authority where the adult with eligible care and support needs lives asks the Local Authority where the carer lives to arrange support, that Local Authority should confirm any reimbursement or charging requirements that may arise before such support is arranged.
9. If the support requested has no, or negligible, cost, however, the carer's local authority may wish to consider providing such services without recompense on a "knock for Knock" basis¹ as a means of reducing administrative burdens and avoiding delay.
10. Where a carer provides care to a person in two or more other local authority areas all the local authorities involved may wish to identify a lead role for assessment consistent with the caring role that appears to impact the most on the carer and any preferences.
11. If the carer states a preference for their assessment and support to be arranged through the local authority where they (the carer) live, this preference should be respected unless there are significant reasons for not doing so.
12. If the carer states such a preference any implications arising from local circumstances for support must be clear and be consistent with local protocols.

¹ Examples of such services may be newsletters, help line services and support groups. This protocol is based on the premise that the overwhelming number of responses involving a significant cost that are arranged to support carers are in fact provided directly to the adult with eligible care and support needs.

Notes to Advisory Protocol

This protocol was approved on Its provisions will be subject to review by the Executive Council in April 2018 or earlier should this be necessary.

ⁱ For definition, See: *Caring at a Distance: bridging the gap*, Carers UK/Employers for Carers, 2011.
https://www.google.co.uk/url?url=https://www.employersforcarers.org/resources/research/item/download/64_0ee4993da3927b2457f4cd3bb58f65be&ret=j&frm=1&q=&esrc=s&sa=U&ei=utPdVKDGDKPR7Qb1-IG4BA&ved=0CBkQFjAB&usg=AFOjCNEFWSR7tysqteu7zZBMa7b7uHO5hg

ⁱⁱ Care Act 2014, Chapter 23, <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

ⁱⁱⁱ Care and Support Statutory Guidance Issued under the Care Act 2014, June 2014
<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

^{iv} Department of Health, Fact sheet 8 The Care Act- The Law for Carers,
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366089/Factsheet_8_-_Carers.pdf

^v Note there are also specific provisions for carers of disabled children in transition and for young carers in transition to adulthood. The Children and Families Act 2014 covers responsibilities in relation to parent carers and young carer.

^{vi} Care Act 2014, Sections 1 and 2.

^{vii} Nothing in this updated advisory paper seeks to amend or replace relevant statutory or accepted best practice guidance on any of the issues the template seeks to cover. Should any conflict or apparent difference in interpretation arise, or if further statutory guidance is issued, the expectation is that the statutory guidance would take precedence. Statutory Directors should obtain further information or legal advice, as necessary.

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The content of the template applies in all situations irrespective of age, disability, gender, race, cultural or religious beliefs and sexual orientation.

^{viii} In this protocol the term “lives” should be read as meaning the same as “ordinarily resident” within statutory guidance.