directors of adass adult social services

LSCP shaping the future of adult social care

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THE CARE ACT 2014

LONDON ADASS RESPONSE TO THE DEPARTMENT OF HEALTH CONSULTATION ON THE DRAFT REGULATIONS AND GUIDANCE FOR IMPLEMENTATION OF PART 1 OF THE ACT 2015/16

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CARE ACT STATUTORY REGULATIONS AND GUIDANCE

Response from London Branch ADASS

1 Introduction

1.1 Overview

The London Branch of ADASS welcomes the opportunity to respond to respond to the consultation on the Care Act Regulations and Guidance. Overall we agree that the Care Act represents the most significant reform of care and support in more than 60 years, putting people and their carers in control of their care and support.

We particularly welcome the following aspects:

- Providing and legislating for Personal Budgets
- Carers given the same rights as those they care for
- Safeguarding adults put on a statutory footing
- The elements of the Act that address key aspects of the Francis Inquiry such as increasing transparency and openness and helping drive up the quality of care across the system
- Stronger regulatory powers, including prosecution where necessary, and the Chief Inspector of Social Care being able to hold providers of care to account when they provide poor care.

1.2 London's nine requests

There are a number of issues that are likely to impact London more than other areas and it is important that London is not put at a disadvantage as a result of these. We therefore outline a number of requests below and seek assurance that these requests will be actively considered following closure of the consultation and the outcome communicated back to the Branch.

1.2.1 Request 1: Content of the Draft Statutory Guidance

- We request that the content of the Draft Statutory Guidance is edited so that it becomes shorter, sharper and more clearly focused on what needs to be covered in Statutory Guidance. At present we feel that a lot of the Draft Statutory Guidance would be more appropriately placed in non-statutory good practice guidance. We also request that order to mitigate potential legal challenges, the Department provides clearer definitions for all the 'shoulds' and 'musts' noted in the Statutory Guidance. We recognise that the lengthier the Statutory Guidance the more that needs to be defined

1.2.2 Request 2: Potential for legal challenge

- We request that the legal risks that LAs would be open to if the current draft Regulations and Guidance are adopted be fully acknowledged by the Department and mitigated against in terms of the burden of costs and the potential impact of Case Law

1.2.3 Request 3: Assessment and eligibility criteria

- We request that the assessment and eligibility criteria are amended to include risk and gradation. Current testing by London authorities has shown a significant

increase in demand from people who become eligible for care and support under the proposed new eligibility criteria. If this difference is intended then the additional demand should be fully funded. If it is not, then the Statutory Guidance needs to be amended to clarify areas of uncertainty.

1.2.4 Request 4: Adequate resourcing to support the workforce

- We request that the Department acknowledges and appropriately resources LAs in order to support the workforce in London. There are concerns that due to the need for higher staffing resources there could be a shortage of trained staff available and this could push the workforce costs up for councils - costs are further increased in London by the London living wage. The London Report, 2013 shows the median pay rate for care workers in London is £7.00 per hour compared to the median in England of £6.75 per hour, social workers in London are paid £3,000 more than the England median and senior social care managers in London are paid approximately £14,000 more than the England median.

1.2.5 Request 5: Adequate resourcing to implement the significant new burdens arising from the reforms in 2015/16

- We request that the London is adequately resourced to implement the significant new burdens arising from the reforms in 2015/16. We are concerned that the revised allocations that have been set out in the recently published consultation on funding formulae for implementation of the Care Act 2015/16 and the revised Better Care Fund (BCF) suggest London's allocation could be as low as £54 million - a decrease of 26% on average on the initial indicative allocations with seven London local authorities seeing reductions in the region of 50% or more from their initial indicative allocations for preparing for the Care Act in 2015/16. This would increase the funding gap in London in 2015/16 to £36 million. We are concerned that this could seriously impact on councils' ability to effectively prepare for implementing the reform. We are expecting the biggest cost pressure in 2015/16 to be from assessing and providing care and support to carers which could potentially be as high as £54 million in London (taking up all the regional allocation for preparing for the Care Act in 2015/16).We are concerned that this funding is not adequate and that the uncertainty in the number of carers that will seek support could mean costs are even higher than our early assessments suggested.

1.2.6 Request 6: Acknowledgment and appropriate resourcing to address the impact variation within inner and outer London authorities

- We request the Department to acknowledge and allocate appropriate resources to address the impact variation within inner and outer London authorities. The current funding formula is different for inner London and Outer London boroughs. The impact of the Care Act will be mainly centred on the older population and there is a fear that this will impact disproportionally on outer London boroughs. Resourcing needs to address this proportionately in new burdens funding.

1.2.7 Request 7: Acknowledgement of the impact of the changes made to the OR Draft Statutory Guidance.

- We recognise that many residential facilities are now de-registering as care homes and registering as supported living, even though the nature of their care offer has not changed. This can mean that host Councils are becoming responsible for those

placed by other Councils as a result of the registration change, not because the resident has made a choice to make the local area their home. This is leading to gaming in the system as Councils seek to transfer costs to other Councils, which has a disproportionate impact on outer London boroughs with larger numbers of care homes and supported living schemes, although outer London boroughs receive lower levels of RSG than inner London boroughs. These impacts are against the spirit of OR rules and request assurance that this is addressed.

1.2.8 Request 8: Potential increase in the number of assessments and reviews

- We request the Department to acknowledge the potential increase in the number of assessments and reviews that LAs will be required to undertake in order to be compliant with the Act. Modelling the demand is difficult as is dependent on the behaviour of the local population. We request that allocation of resources reflects this challenging aspect.

1.2.9 Request 9: Publication of the finalised Regulations and Guidance

- When the finalised Regulations and Guidance are agreed, a version is sent to LAs clearly outlining the changes made following the consultation

1.3 Wider London issues

1.3.1 The cost of living in London is higher than the rest of the country; this will therefore have implications in the following areas:

- The higher costs have implications on the cost of care, as rates are higher in London as a result of issues such as higher staff costs. This will particularly be a problem when the funding reforms start as based on our analysis on average people in London are likely to reach their contribution cap in 3.5 years while other regions such as the north east will take up to on average 5.7 years as the costs of care are lower. London Councils research has also found that around 27 per cent of self-funders in London are likely to hit the cost cap. In comparison only 3 per cent in the north east and 15 per cent nationally are likely to hit the cap.
- The higher cost of living in London will mean that Londoners are more likely to have less disposable income. This will have an impact on how much an individual is able to save and pay towards their care.
- Home ownership levels are lower in London than other parts of the country. Releasing housing equity is a main way that people are able to contribute towards their care, low home ownership means people have less available to go towards their care.
- The above means that London authorities will experience higher levels of financial risk than other authorities, in relation to increased assessments and care/support plans from the 2015 changes; followed by increased risk in comparison to other areas based on the impact of the rise in the means test threshold and capped costs systems. The DH impact assessment should recognise the impact of regional variations on the additional financial burden Councils will face and new burdens funding should be adjusted to ensure that regional impacts are recognised.

1.3.2 Higher staffing costs

- The Care and support reforms have significant workforce implications. There are concerns that due to the need for higher staffing resources the market will become more competitive and this may push up the workforce costs up for councils. Given the mobility of the workforce in London and within the boundaries of the M25, along with the number of social services authorities, this will have a greater impact in London than in other areas and should be recognised in new burdens funding

1.3.3 Information and advice:

- London is the most diverse city in the country with a 100 different languages spoken in every London borough by communities that reflect a wide range of ethnicities, religions and cultures. The Draft Statutory Guidance sets out a need for councils to consider and have regard to the diverse languages (par.3.20 and 3.56) in their area in the provision of information and advice, this is likely to have a considerable impact on resources for London in the way they offer information and advice compared to some councils in other parts of the country. This proposal is particularly concerning for London boroughs as they come at a time when the Department for Communities and Local Government's message has been withdrawing and reducing the need to provide language specific advice and information. There should be consistency on the requirement for translation between the two government departments.

1.3.4 Mobile population

- London has higher levels of inter-regional mobility than most other regions. This can impose additional costs - normally associated with the needs of particular households. Local authorities will only be able to continue to address these issues effectively if their quality of management, local services, and resources fully reflect the challenge presented by mobility and migration. There is a risk that, as migration and mobility continues at high levels, London may find it increasingly difficult to cope with the costs and consequences of such impacts. Of broader concern is the possibility that rapid turnover of residents, and indeed employees, in some parts of London could undermine the social capital of places (see Population mobility and service provision, LSE London, 2007).
- These issues are very pertinent to London, especially within the context of the Care Act (e.g., in light of the focus of the reforms on prevention and developing social capital, the potential for increased demand for services, levels of home ownership in the Capital, portability of care, workforce planning, etc.).

1.4 Key issues

- The Branch is particularly concerned about the potential volume of assessments and reviews that will need to be undertaken in order to ensure compliance with the Care Act. The timescales in which to deliver this are extremely tight and does not allow LAs time to pilot or refine solutions. The transition arrangement Draft Statutory Guidance also increases this burden over the short term through the requirement to identify cases that previously were ineligible and reassess as a priority e.g. carers.

- We are concerned that if the proposed eligibility criteria is rolled out nationally, this would make large numbers of people will be eligible for LA funded social care who would not be eligible under the current "substantial" banding. As this is not acknowledged and funded within the proposed implementation monies, it will create pressures, significant and unsustainable, in a large number of areas that will also have negative consequences in terms of the wider implementation of the Care Act and threaten the achievement of the ambitions that we all share for improving the contribution that social care makes to people's quality of life.
- We are concerned that many definitions within the Draft Statutory Guidance remain unclear and could result in a wave of new case law (case studies need to be considered carefully so that they clearly outline the key duties within the Care Act). Wellbeing is very broadly defined and not aligned to eligibility criteria. We are concerned that no funding has been allocated to implement the wellbeing duty. We are also concerned with the potential risk of legal challenge due to the broad definition of wellbeing in the Draft Statutory Guidance – this has the potential to increase costs for all LAs as case law may be the mechanism used to define LA responsibilities.
- We are concerned that there is no recognition or reflection within the Act to an asset based model of care and attendant individual and community role and responsibilities towards self-care and support
- We are concerned with elements of the Act that appear over bureaucratic - some activity is extremely tightly defined, some is overly prescriptive and removes a degree of common sense that would otherwise potentially allow processes to flow more effectively and efficiently. With regards to the advocacy requirements – we feel this may be counterproductive and lead to slowing of assessment process and may well prove to be unaffordable.

1.5 London ADASS Branch Contacts

Cathy Kerr

London Branch Chair

Tel: 0208 891 7360

cathy.kerr@richmond.gov.uk

Dawn Wakeling

DASS Care Act Lead London

Tel: 0208 359 4290

Dawn.Wakeling@Barnet.gov.uk

Tristan Brice

Programme Manager (LSCP)

Tel: 0207 934 9550

tristan.brice@londoncouncils.gov.uk

2 General duties and universal provision

2.1 Wellbeing

The draft Statutory Guidance on wellbeing covers:

- the definition of wellbeing
- the principle of wellbeing
- how the concept of wellbeing is reinforced throughout the provisions in the Act

Key areas where the Draft Statutory Guidance could be strengthened

- We request that the Draft Statutory Guidance is edited so that it clearly outlines how to embed the wellbeing principle for those that are not eligible for services. More guidance would also be appreciated in relation to how to embed the wellbeing duty in the LA rather than in social care alone as we feel that several aspects of this duty will be met by Public Health. The Draft Statutory Guidance would be strengthened by clearly articulating the role of health, housing and public health in supporting LAs to meet this duty.
- We would welcome clarity regarding the costs of implementing the principle of wellbeing
- We would welcome some recognition that people take responsibility for their own wellbeing, reflecting the asset based model that underpins the Care Act and linking to the emphasis of the prevention duty to prevent and reduce the need for care.
- We would welcome clarity that the wellbeing clause is not introducing new requirements but embedding existing practice within the legislation
- We would welcome a statement articulating the need for the Department to liaise with the HCA, GLA and DWP to ensure a coherent national message is disseminated locally with regards to housing
- We would welcome inclusion of a case study focused on the role of environmental health officers within this section
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 7) and the number of 'shoulds' (currently 31). Some of this information could be moved to non-statutory good practice guidance
- We would welcome engagement with the Department to assist in addressing the following issues:
    - The need to review the skills of the workforce to explore how to embed the wellbeing principle into their practice
    - Engagement with universities to explore how they are responding to the personalisation agenda e.g. personal health budgets?
    - Staff training generally will need to have a different focus in order to meet this duty and we may need to develop new roles in the future
    - Stimulating the market so that there is adequate choice available
    - Role of quality assurance framework – how to ensure aligned with NHS commissioning?
    - Much of this depends on behaviour change – supporting people to plan, think differently about lifestyles, change expectations – what tools can the DH offer in terms of this?
    - Would benefit from aligning how the wellbeing duty is aligned with welfare reforms – what is the core offer?

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

Response to Q1

- With the caveats above, we feel that the Draft Statutory Guidance provide local authorities with the information they need to embed wellbeing into the way that they work but that it could be clearer about the distinction between the generic support for the wellbeing of the wider population underpinning, but being different from, some of the more specific requirements in relation to prevention. The concept of prevention focused on people on the cusp of needing services needs to be more clearly articulated.

Question 2: Can you suggest some examples to illustrate how the wellbeing principle could be applied?

We would welcome examples that cover the following aspects to be included within the Draft Statutory Guidance:

- Workforce – examples demonstrating how different organisations work together to ensure co-design is embedded
- Clear and robust examples of service specifications that promote and embed wellbeing
- Examples of new types of services that have been commissioned that promote:
    - Wellbeing
    - Choice
    - Control
- Clear examples of outcomes that have been successful and measuring impact
- Examples of how the Wellbeing Principle has been embedded within the wider Council functions

Response to Q2

We have listed below a few examples that could be included

- Example of an innovative approach to support planning – Harrow
- Leicestershire – have SWs, providers, service users in the same room developing tailored bespoke, innovative solutions. Undertaking a consultation to look at core offer for prevention wellbeing and carers
- E-market place – early days in terms of outcomes
- Islington model – with regards to winter planning
- A number of London Boroughs have produced Vision Statements or Charters setting out their commitment to wellbeing and promoting independence and explaining how they will work with residents, partners and providers (e.g., City of Westminster, LB Southwark, LB Hackney, and LB Bexley).
- The Making Safeguarding Personal programme supports an approach to adult safeguarding that puts the person at the centre of the safeguarding process and enhances wellbeing by focusing on the outcome that they wish to see.

2.2 Preventing, reducing and delaying needs

The draft guidance on preventing, reducing and delaying needs covers:

- the definition of ‘prevention’ and different approaches to preventing needs
- how local authorities should go about developing local approaches to preventing, reducing and delaying need

- identifying those who may benefit from specific preventative services
- rules on charging for preventative services

Key areas where the Draft Statutory Guidance could be strengthened

- At present we are concerned about the apparent open-endedness of the duty to individuals with no current particular health or care needs as this seems to be more in the territory of good preventive public health, supporting wellbeing. We would welcome clarifying the Draft Statutory Guidance in this area so that it links back to the principles of the primary legislation to focus on delaying and reducing the need for care. The priority given to investment in preventive services is welcomed but given the pressures on statutory services it will be essential that given the major reductions in social care budgets that any additional burdens are fully funded and the pressures on services recognised.
- We feel that the tertiary prevention appears to place the duty solely on LAs. We would welcome the Draft Statutory Guidance to be strengthened in relation to the role of NHS commissioners (NHS England/CCGs), NHS providers and LA Public Health in this area.
- We feel the Draft Statutory Guidance should be strengthened in relation to taking a whole family approach with clear examples outlined. We also feel that carers should be added to the risk stratification process with examples included of where this is happening
- We would welcome clarity regarding the costs of investing in preventative services
- We would welcome strengthening of the role of impact of housing related support. At present the Draft Statutory Guidance on housing appears to mainly relate to bricks and mortar
- We would welcome greater clarity on the impact of welfare reform on housing and the assessment of suitability
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 22) and the number of 'shoulds' (currently 45). Some of this information could be moved to non-statutory good practice guidance

Overall

- The London ADASS Branch welcomes the requirement for LAs to invest in preventative services. We welcome articulation that prevention is essential to maintaining independence and reducing / delaying the need for care.

Question 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?

Response to Q3

- We agree that differentiating the different stages of prevention is helpful in the Draft Statutory Guidance. On closer examination however, the examples seem rather too specific and at the wrong levels – many interventions are too late. The Draft Statutory Guidance would benefit from teasing out the different levels of prevention and ensuring consistency with use of case studies.
- With regards to prevention for the population at large – our comments above on the extent of the duty as set out in the Draft Statutory Guidance apply. The Draft Statutory Guidance needs to describe the continuum of prevention related activity (as individuals do not necessarily stay at a particular level). It is also important to note within the Draft Statutory

Guidance that individuals do not always progress to higher levels of need and there may be opportunities to increase independence.

- We feel that the examples are too specific and it is not helpful to tie them to specific levels e.g. the examples cited at the level of tertiary prevention might be as appropriate at secondary level.
- We feel that the primary level is a more general level of well-being. We feel that Draft Statutory Guidance would benefit by including other factors which support wellbeing i.e. good preventive health interventions, good housing, support and training for carers, promoting independent living. More examples in relation to these areas would help.
- With regards to the preventing social isolation aspect of the Draft Statutory Guidance, we note that befriending schemes are identified as specific examples, but Linkage findings indicate that there is no evidence that these work based on. We therefore feel that the Draft Statutory Guidance needs to draw upon a more robust evidence base e.g. Campaign to End loneliness is currently looking at trialling a tool. We agree that there is some evidence demonstrating effectiveness of services reducing social isolation but are concerned that the Draft Statutory Guidance should not add to local authorities' costs by encouraging investment in this type of scheme when there is no robust evidence that it would reduce demand and cost elsewhere in the system.
- We feel there is value in including platforms/ interventions which enable long term self - supporting networks to develop and believe they are much more likely to be sustainable financially. It is important to note however there is limited evidence for the development of these e.g. Circle Support in Southwark was not financially sustainable
- We support the approach suggested of joining up the various directories/websites to provide universal local directories of service, linked to the information and advice function but think this could potentially be best hosted by local voluntary orgs.
- We acknowledge the need to engage effectively with health colleagues around roles and responsibilities. We also note that the Draft Statutory Guidance would be strengthened with greater clarity of the relationship between health / social care / housing in implementing this aspect of the Care Act
- The Department might reference the Greenwich model as a potential care study as it appears to provide a good model that creates opportunities for the delivery of integrated services.

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

Response to Q4

We welcome the inclusion of examples of preventative 'services, facilities or resources' as helpful. However, the current list of examples of preventative 'services, facilities or resources' are confusingly laid out in the relevant paragraph

We have highlighted below a number of additional examples of good preventative services that could be included within the Draft Statutory Guidance.

- Lambeth's TOPAZ scheme focussing on signposting/prevention review
- Bexley's preventive / early intervention programme
- 24 hour helplines for family carers
- Training for carers supporting people with dementia
- Good advice on welfare benefits
- The social housing offer

- Trading Tymes – keeping people in work
- Barnet – Later Life Planners for people55 and older to plan for all aspects of their later life, including those on the cusp of care
- Buckinghamshire – Prevention Matters - £4 m of investment from health to developing profiling tool which identifies people on the cusp of care and provides a range of support and interventions.

2.3 Information and advice

The draft guidance on information and advice covers:

- ensuring the availability of information and advice services for all people
- who in particular might benefit from information and advice
- the local authority role with respect to financial information and advice
- the accessibility and proportionality of information and advice
- the development of plans/strategies to meet local needs

Key areas where the Draft Statutory Guidance could be strengthened

- The Draft Statutory Guidance clearly sets out the duty on LAs in relation to information and advice - we feel that the Draft Statutory Guidance would benefit from strengthening the role of the CCG in this area, particularly in relation to health commissioned services.
- Further clarity on what would be considered 'disproportionate' would be helpful (referred to in Section 3.62 of the Draft Statutory Guidance). This relates to the over use of websites as a communications tool.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 36) and the number of 'shoulds' (currently 81). Some of this information could be moved to non-statutory good practice guidance

Overall

- We recognise that the link to Children's Services is crucial - we would welcome greater clarification on the local offer and the changes to services resulting from the Children and Families Act. Clarifying the need for co-ordination across MH Trust, Acute Trust, community health services, voluntary organisations etc. would also be welcome.
- We feel this area should cover the need for clear information on preventative support from the voluntary sector for those carers who's cared for does not meet social care eligibility.
- We would welcome resolution in relation to the conflict between DCLG and DH in terms of their approach to translating information.
- We feel that greater clarity on the difference between information and advice would be helpful as they sometimes appear to be used interchangeably.
- We welcome greater clarity on the use of digital media as occasionally we appear to receive mixed messages from the Department

Implementation issues

- The Draft Statutory Guidance is not clear about how much is generic and what should be carer specific in relation to information and advice.
- Reasonable adjustments - how much is the care going to cost?

- London is very diverse with large number of languages spoken. The issues about policy on translation have been raised above.

Question 5: Views are invited about how local authorities should coordinate and target information to those who have specific health and care and support needs.

Response to Q5

- It is the expectation of the Branch that universal information and advice services would target those with specific care and support needs as part of their core service. This could be achieved through various methods such as:
    - Targeting specific population cohorts
    - Targeting specific settings
    - Targeting specific points within the clients' journey e.g. discharge from re-ablement services
- In discharging the new prevention duty and the duty to provide information and advice, Councils will need to keep information up-to-date and accurate about what support is available locally, including from the voluntary sector and providers, and will have a role in signposting people to those available resources. There will be opportunities throughout a person's life to inform them about their care and support options. When people come into contact with the Council, GPs, or the NHS, these are opportunities to provide information about health and social care, tailored to people's individual needs. Through contact with a range of services, people should be able to access information and advice, understand what support is available, and be encouraged to self-manage their care and support needs appropriately. Computer-based resources can be used alongside other interventions to raise awareness, encourage people to seek advice at an earlier stage, and make informed decisions about their care and support. The focus on integration provides a further opportunity to ensure information, advice and support is properly coordinated and targeted.

Question 6: Does the guidance provide sufficient clarity about the active role that the local authority should play to support people's access to financial information and advice that is independent of the local authority, including regulated financial advisors?

Response to Q6

- We echo ADASS national response in relation to this area and agree that there is 'a function for the Department to publicise much more widely the detail in relation advance planning and to detail the lasting powers of attorney covering both the financial and welfare dimensions'
- We would also welcome clarity on what standards are expected from LAs in carrying out their active role in supporting people's access to independent financial advice including regulated financial advisors as suggested in Clause 3.9 in the Draft Statutory Guidance
- Councils have a role in facilitating access to independent financial information and advice. We agree that councils should outline the options available (e.g., information on groups of accredited financial advisers, commercial organisations, and voluntary sector information and advisory services) but not be drawn into promoting individual companies. People can then choose from a range of providers about where to go for further independent advice.
- The information and advice provided will need to be tailored according to the individual circumstances of people coming into contact with councils. How we direct people may need to be proportionate to their level of income or assets. Someone with no income or assets

may need advice to access benefits, whereas someone with income or assets may benefit from independent financial advice.

- The use of web-based tools could potentially assist people in planning their finances and making decisions about paying for their care. A good example is the Calculator on the Paying For Care website: http://www.payingforcare.org/calculate-residential-care-costs.
- Employers should also be encouraged to have a role in raising awareness (e.g., via retirement planning and health promotion/prevention initiatives at work).

2.4 Market shaping and commissioning

The draft guidance on market shaping and commissioning covers:

- the principles which should underpin market-shaping and commissioning activity, including:
- focusing on outcomes and wellbeing
- promoting quality services, including through workforce development and remuneration and ensuring appropriately resourced care and support
- supporting sustainability, and ensuring choice
- the steps which local authorities should take to develop and implement local approaches to market-shaping and commissioning, including:
- designing strategies that meet local needs
- engaging with providers and local communities
- understanding and facilitating the development of the market
- securing supply in the market and assuring its quality through contracting

Key areas where the Draft Statutory Guidance could be strengthened

- Greater emphasis on the different commissioning regimes / different markets would be welcomed within the Draft Statutory Guidance as in order to successfully implement this aspect of the Care Act, a joined up approach is required. Greater clarity on how this will be progressed by health colleagues is required.
- Further clarity on how the different frameworks will be aligned to recognise the realities of the market – acute providers and other trusts would be welcomed within the Draft Statutory Guidance
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 15) and the number of 'shoulds' (currently 132). Some of this information could be moved to non-statutory good practice guidance

Overall

- The Branch is very supportive of the focus on outcomes, quality and choice within the Draft Statutory Guidance. However, it is important to note that this alone will not resolve the issues. At this point it is important to highlight the clear and real tension between two key drivers in this area, which are bulk buying linked to the need for LAs to make significant cuts to budgets and personalisation; they are pulling local authorities in different directions.
- It is important to note that this section of the Draft Statutory Guidance is different to others as so much of the detail is going to come out of the Birmingham work focusing on commissioning for better outcomes.
- Crucial to effective implementation of this aspect of the Care Act will be the workforce – we request that the Department recognises the need for a clearer focus on developing the

commissioning workforce, clarity and support for defining the skill set and ensuring there is training in the market which will allow transferability (what can we learn from the past and other DH (world class commissioning) and independent initiatives (IPC model).

- The skills of the workforce are also crucial to successfully implementing this aspect of the Care Act. We note the need to build on the softer elements (co-production, strategies,) be clear about the harder edge (market definition and analysis, financial analysis of providers, contract monitoring what does good look like, alternatives to procurement and direct contracts – market stimulation, more sophisticated/real modelling (POPPI and PANSI have no credibility)). We should not underestimate the scale of the challenge and we need to ensure that workforce will deliver on it

Question 7: Does the Draft Statutory Guidance provide a framework to support local authorities and their partners to take new approaches to commissioning and shaping their local market?

Response to Q7

- Yes the Draft Statutory Guidance provides a framework to support local authorities and their partners to take new approaches to commissioning and shaping their local market but there is a need to emphasise that this consolidates good practice, focuses on clear standards, and then the skills needed to come from the Birmingham work
- We suggest that the Government should acknowledge that commissioners will need to acquire new skills in order to meet the new duties/responsibilities under the Care Act. The Branch suggests an investment in Local Authorities for their commissioners to acquire adequate training to obtain good practice skills otherwise there will be an additional cost/burden to Councils where the workforce may need to be up skilled in order to meet the new requirements under this section. The Branch observes that the reality of the commissioning market has not been reflected in the framework. The Branch's view is based on the following observations:
    - Commissioner skills need to reflect a better and more thorough understanding of the cost pressures and drivers that affect suppliers across all sectors, including the independent and voluntary sectors and which are likely to significantly affect the viability of the services and outcomes commissioners are seeking suppliers to deliver. A lack of commissioner understanding of supplier costs and the financial incentives they require to develop innovation and new approaches to service delivery can both significantly limit the range of suppliers able to respond to opportunities and the quality of the service offer.
    - Commissioners also need to be equipped with skills that will help them better understand either the diversity of suppliers and markets able to respond to local requirements and outcomes or whether there are limits in terms of number of suppliers, supplier interest and supplier competence to deliver the desired outcomes. Equally commissioners need support with developing approaches, which help them move beyond the traditional purchaser and provider relationship including engagement with suppliers and organisations as development partners jointly utilising investment to develop new services.
    - Commissioners need support with understanding and utilising a broader range of data and information that extends beyond needs data focused on access to state funded services and which helps commissioners understand how individuals and communities find out about, arrange and fund the services they need. Equally which helps with understanding the range and diversity of interventions needed to achieve local wellbeing outcomes. An example of this data is the social marketing

information that helps commercial companies develop their products and services to meet the requirements, lifestyles and expectations of their customers.

- Regarding costs we would like to emphasise that this is not the solution to the reductions in resources.
- Government should consider whether JSNA and Joint Health and Wellbeing Strategy Statutory Guidance need to be reviewed in light of the Care Act 2014 (e.g., to ensure closer alignment between assessment of needs and whole-system strategic commissioning).
- Section 4.63 - 4.71 of the Care Act Draft Statutory Guidance sets out local authority responsibilities around understanding the market and developing an assessment of needs. However, this ought to be a 'whole system' understanding. There should be a more explicit acknowledgement of the need for health input (e.g., from CCGs) and from other partners to ensure there is a shared understanding of need across the system.

Question 8: Are there any further suggestions of case studies or tools that can assist local authorities in carrying out their market shaping and commissioning activities?

Response Q8

- Yes
  - We would welcome the development and dissemination of tools that would help determine and model future demand
  - We would also welcome some good examples of preventative services that help manage demand out of the system – good example is the LGA ASC Care Efficiency Programme Report July'14
  - The would welcome examples/guidance on how a model or ideally shaped commissioning market should look like to obtain some good practice

2.5 Managing provider failure and other service interruptions

The Draft Statutory Guidance on managing provider failure and other service interruptions relates to local authorities' responsibilities for dealing with cases of business failure and other service interruptions, in parallel with the CQC's regime. It covers:

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

The draft Care and Support (Market Oversight Information) Regulations 2014, cover:

- the CQC's power to require information so that it can fully assess the financial sustainability of providers

The draft Care and Support (Business Failure) (England and Wales and Northern Ireland) Regulations 2014, cover:

- situations that will constitute business failure which, if it leads to the provider's inability to carry on, will trigger the temporary duty on local authorities or equivalents in Wales and Northern Ireland

The draft Care and Support (Cross-border Placements) (Business Failure Duties) (Scotland) Regulations 2014, cover:

- ensure provision for provider failure duties on Scottish local authorities under the Social Care (Scotland) Act 1968 in the case of cross-border placement in Scotland

The draft Care and Support (Market Oversight Criteria) Regulations 2014, cover:

- the criteria for providers to be included in the CQC's market oversight regime

Key areas where the Draft Statutory Guidance could be strengthened

- We would welcome greater clarity with regards the duties to meet (outside the large provider business) failure/insolvency where CQC are involved, what should be the role of CQC in those other areas of provider failure? How will they assist LAs in exercising their responsibilities in this area?
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 23) and the number of 'shoulds' (currently 18). Some of this information could be moved to non-statutory good practice guidance

Overall

- The Branch welcomes these regulations and believes providers should not baulk at them given that they have chosen to operate in this area. We also agree with the framework design as it is not too burdensome and gets to the right issues.
- We welcome the fact that CQC are bringing in additional financial expertise, given their additional responsibilities in this area, but we need to be clear about roles between CQC and LAs – this is focused on business failure and financial failure. We also emphasise the need for clear communication by CQC of who (which providers) and what they are monitoring.

Question 9: We invite views on the entry criteria to the market oversight regime, and whether and how they should be made simpler for residential care providers.

Response to Q9

- It would be useful for the Branch to be informed on how the criteria figures were arrived at. The Branch acknowledges that there are some areas within the regulations on the market oversight regime that LAs can meet; however, there are some areas which may be difficult for LAs to meet especially regarding providers who fall outside the market oversight regime for example obtaining information from Care Home and home care Providers for which the local authority does not hold contracts, may be difficult to implement in practice. This will be a particular issue in London, compared to other parts of England. In London, there are high numbers of self-funders accessing care homes and there are high levels of churn in domiciliary care providers. Individual Councils are not likely to be the majority purchaser of many providers in London and this will add complexity to managing the regime. Home care

providers are equally important in this respect, as failure in home care can also lead to significant risk for service users.

Question 10: We invite views on the approach to defining business failure by reference to insolvency situations.

Response to Q10

- The regulations burden LAs with more duties to meet outside the large provider business failure/insolvency where CQC are involved, what should be the role of CQC in those other areas of provider failure? How will they assist local authorities in exercising their responsibilities in this area?

Question 11: We also invite views on the insolvency situations listed, for example, are they appropriate and clear. Should other situations be covered?

Response to Q11

- We welcome the inclusion of the insolvency situations listed. However we feel that the Draft Statutory Guidance would benefit from including other situations such as what happens when a provider fails due to non-financial reasons, e.g. safeguarding concerns, and they are placed on placement embargos, which means that they cannot be financially viable clients

Question 12: In particular, are the listed insolvency situations appropriate and relevant to the various legal forms registered care provider can take (including providers registered in respect of establishments or agencies under the relevant legislation in/Wales and Northern Ireland)?

- No comments to add

3 First contact and identifying needs

3.1 Needs assessments and carer's assessments

The draft guidance on adult needs assessments and carer's assessments, together with the draft Care and Support (Assessment) Regulations 2014, cover:

- the purpose of needs and carers' assessments
- approaches to conducting appropriate and proportionate assessments
- what should be done to consider the impact of fluctuating needs, as well as the impact of needs on the whole family of the person being assessed
- approaches to supported self- assessment, where the person themselves leads on aspects of the assessment process
- the required training, knowledge and experience of assessors, including where specialist assessors are required
- the relationship with the eligibility framework.

Key areas where the Draft Statutory Guidance could be strengthened

- We would appreciate strengthening of the Draft Statutory Guidance in relation to self-assessments: more detail on how eligibility determination will work would be useful,

especially from 2016 onwards given the incentive for self-funders to meet the eligibility criteria

- Strengthening in the Draft Statutory Guidance of what 'assurance' means would be helpful
- Inclusion of a process map for assessment up front in the Draft Statutory Guidance would be helpful.
- The Draft Statutory Guidance could be strengthened to provide clarity on assessing and providing services to carers to meet their eligible needs when caring for two or more people living in different Local Authorities to include how to deal with situations where the carer is assessed to have eligible needs because of significant impact on their wellbeing (in the specified circumstances) resulting from caring for two or more people who live in different local authorities where the people with care and support needs do not have eligible needs.
  - Which authority does the assessment
  - Which authority provides the Personal Budget and clarifying whether this can be different from the authority that did the assessment
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 110) and the number of 'shoulds' (currently 92). Some of this information could be moved to non-statutory good practice guidance

Overall

- We agree with the national ADASS response that 'an assessment should be a crucial intervention in its own right'. This could be more strongly emphasised at the outset of the Draft Statutory Guidance in terms of re-stating the link to assisting the realisation of areas of wellbeing in Section 2 of the Act, the focus on assets and not deficits (also mentioned briefly in paragraph 6.4 and later in paragraph 6.33) and not seeing a needs assessment as only a step on the process of determining eligibility for care support'.
- We would value more information on the resources available to ensure that the increased demand for assessments will be able to be met. We would value inclusion of examples of more efficient ways of undertaking assessments e.g. start with short or 'pre-assessment' (in non-statutory good practice guidance preferable). We feel that there is a lot of content in the Draft Statutory Guidance on assessments and request that this could be slimed down in the Draft Statutory Guidance and better placed in non-statutory good practice guidance.
- We also note that Mental Health issues must be taken into account.

Question 13: What further circumstances are there in which a person undergoing assessment would require a specialist assessor? Please describe why a specialist assessor is needed, and what additional training is required above the requirement for the assessor to be appropriately trained to carry out the assessment in question.

Response to Q13

- We would appreciate clarification on non-duplication of assessments by different agencies. At the moment some assessments are either "double counted" or not counted at all. A useful "tool" might be a recommended standard format for carers needs assessments or if not then best practice examples (especially for whole family assessments). How can assessments best work if two agencies involved? (one for carer, one for cared for).
- We highlight the need to focus on workforce development/training, IT, informatics - in order to ensure robust and valid assessments are completed for all clients.

- We would suggest that non-statutory good practice (rather than Statutory Guidance) proposes independent audit to drive up the quality of carers assessments as well as a "benchmark" of what a good assessment looks like.
- We would welcome some clarity about the assessment of risk as well as need. As currently presented there is a potential inefficiency of 3 parallel 'assessments': adult; carers; risk of harm or abuse. A qualified social worker would be expected to cover all 3 dimensions in their assessment. We would welcome clarity on how 'making a safeguarding enquiry' and 'undertaking an assessment' are going to be linked

3.2 Eligibility

The draft guidance on assessment and eligibility, together with the draft Care and Support (Eligibility Criteria) Regulations 2014, cover:

- the national minimum threshold, which describes needs which meet the eligibility criteria for adults with care and support needs and carers
- how to interpret the eligibility criteria
- considering the impact of needs on the person's wellbeing

Key areas where the Draft Statutory Guidance could be strengthened

- We would welcome strengthening of the Draft Statutory Guidance so that it is explicitly linked with Children and Families Act
- The current wording within the Draft Statutory Guidance on eligibility is open to interpretation. We request that the assessment and eligibility criteria are amended to include risk and gradation. A potential solution would be to substitute the current draft wording for new national eligibility with the current wording of substantial and critical under FACS. We have concerns how eligibility criteria within the Regulations would sit with different FACs criteria. We are concerned that the inclusion of 'Some' in the eligibility criteria could mean 5 to some LAs – could this be reviewed?
- We would value inclusion of an explanation of why safeguarding is not in the eligibility criteria in the Statutory Guidance
- More clarity would be welcomed on how does the housing/social care division work if a homeless person comes to the LA with care and support needs?
- Reference to "medical services" in the criteria is likely to perpetuate disputes between health and social care about respective responsibilities. There remain differences of opinion and confusion in this area despite legislation and it would be helpful if the Statutory Guidance could give more clarity about what is a social care need and what is a health need, particularly covering situations where the person needs to access an activity to meet a health need that is not a medical service.
- With regards to Eligibility Determination/Upfront Indicative Budget Allocation and Care and Support Planning
    - The Draft Statutory Guidance is presently very unclear about whether there is a process step after determining eligible needs of 1) the person with support needs and 2) the carer and before providing both with upfront Indicative budget allocations with which to commence care and support planning. You need to be able to take from the Indicative Budget amount of the person with care and support needs, the needs that will be met by the carer, so the amount from which to start care and support planning reflects only unmet needs. This is not spelt out in the Draft Statutory Guidance.

- If the intention is to keep the Indicative Budget amount for the cared for person carer blind, we would have serious concerns about the confusion that would be caused. It seems very misleading to give an upfront allocation that may well reduce considerably when the cost of support the carer will be providing is taken away from the final Personal Budget. This is likely to create a perception of being denied an entitlement. It may even act as a disincentive to carers to continue providing support.

Overall

- The current wording within the Draft Statutory Guidance on eligibility is open to interpretation and request that this is tightened up. We feel that the role of Public Health could be strengthened within the Statutory Guidance to reflect effective interventions at the low and moderate levels.
- We note that section 2b of the Regulations – 'Maintaining Family Personal Relationships '– does not highlight the needs of young carers sufficiently. Young carers need a specific mention.
- We note that 2.1.a of the Regulations needs to include sensory impairment and learning disability.
- We also note that it is important to remember carers have the same rights as service users and feel that all commissioned services should be required to identify carers and then refer them on for advice and assessment.
- The role of training should not be underestimated and should demonstrate a full awareness and consideration of the needs of all.

Question 14: Do the draft eligibility regulations, together with powers to meet other needs at local discretion, describe the national eligibility threshold at a level that will allow local authorities to maintain their existing level of access to care and support in April 2015? If you believe they don't please explain your reasons for this.

Response to Q14

The draft eligibility regulations, together with powers to meet other needs at local discretion definitely support the current level. The main concern is that they appear to extend eligibility to a wider cohort than would be permitted under the current critical and substantial levels in the current FACS criteria Evidence from testing in London indicates that this could increase the numbers of people entitled by 15-25%. The inclusion of items such as cleaning only in the regulations means that the number of people's eligible needs will also increase.

Issues:

- The criteria need to be tightened back to critical and substantial or funding in new burdens will need to be identified to support implementation of the new eligibility as a broader offer?
- Potentially there are issues for primary care in relation to managing the needs of those with low and moderate level needs
- No leverage to expand the offer
- If this is a commitment to support greater prevention, there needs to be a shift of resources - however the period of time required to see the impact and difference this makes is very long
- Vague enough to be open to interpretation and considerable challenge

Question 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?

Response to Q15

The current wording:

- Doesn't mention risk e.g. self-neglect, safeguarding, supported risk taking etc.
- Defines 'basic care activities' and goes against personalisation; it becomes prescriptive
- Wrongly defines 'basic care activities' as outcomes
- Defines outcomes i.e. change and maintenance. How does this impact on providers?

Question 16: Does the current definitions of 'basic care activities' include all the essential care tasks you would expect? If not, what would you add?

Response to Q16

- We don't feel that a list of 'basic care activities' is helpful and as each case should be treated individually and goes against the ethos of personalisation
- See responses to previous question

Question 17: Are you content that the eligibility regulations will cover any cases currently provided for by section 21 of the National Assistance Act 1948?

Response to Q17

- As you will be aware, at the current time local authorities have duties to provide accommodation under s21 National Assistance Act 1948 however case law has made it clear that such accommodation should only be provided if there is a need for care and attention. Whilst, the new Care Act includes the provision that accommodation can be provided by local authorities it does not appear to incorporate the case law which clarifies when such support should be provided. The Branch have concern about this lack of clarity which could potentially lead to a significant increase in the number of people claiming such support.

Question 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?

Response to Q18

- The Draft Statutory Guidance could be strengthened with the inclusion of good examples - case studies in non-statutory good practice guidance.

3.3 Independent advocacy

The draft guidance on independent advocacy covers:

- matters which a local authority must consider in deciding whether an individual would experience substantial difficulty in engaging with certain aspects of the care and support process
- circumstances in which a local authority must arrange for an advocate during the care and support planning process
- the role of independent advocates and how they are to carry out their functions

The draft Care and Support (Independent Advocacy Support)

Regulations 2014, cover:

- requirements for a person to be an independent advocate
- deciding whether someone has substantial difficulty
- when independent advocacy must be provided, even if there is someone available to represent and support someone
- the manner in which independent advocates are to carry out their role

Key areas where the Draft Statutory Guidance could be strengthened

- The Draft Statutory Guidance is extremely prescriptive in this section and exceeds the level of detail that Statutory Guidance should present. It appears to be more appropriately placed within non-statutory good practice guidance.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 41) and the number of 'shoulds' (currently 30). Some of this information could be moved to non-statutory good practice guidance
- We would welcome clarity in relation to 'substantial difficulty' - need to tease out the practical implications (resource and time)
- We would welcome greater clarity in relation to the role of the advocate in the assessment process

Overall

- We predict that LAs will incur an additional cost burden in meeting its extensive duty in the provision of independent advocacy. We predict the volume to be significantly different to that currently provided. This additional cost and resource demand needs to be reflected or referenced elsewhere
- There is a danger that this element could introduce a delay into the hospital discharge process – we would welcome some advice on how to mitigate against this
- We would welcome assurance from the Department that there a viable market (in terms of suitably qualified professionals) for LAs to recruit from

Question 19: We would welcome views on further specific circumstances where the advocacy duty should apply. In particular, we welcome views on the potential benefits and disadvantages of providing independent advocacy for people for people receiving care jointly from adult social care and the NHS

Response to Q19

- We would appreciate clarity on what status the advocate will have? This would need to be above a general advocate

- We would welcome assurance from the Department how will the new advocacy function be funded
- A complication that we envisage will be establishing which provider (LA or NHS) pays for the independent advocate – greater clarity on this point would be welcomed
- We would welcome greater clarity on roles and responsibilities – the relationship between the advocate and social worker will need to be clear.
- If Q19 is about CHC then this is good - but will need appropriate person with the right skill set and status across LA and health.
- We would welcome greater clarity regarding who chairs dispute process? Would the advocate be put in the firing line?

4 Charging and financial assessment

4.1 Charging for care and support

The draft guidance on charging for care and support covers:

- the principles which should underpin approaches to charging
- financial assessments, including the treatment of capital and income
- the persons' right to a choice of accommodation when in residential care, and in certain circumstances, their right to make an additional payment
- the treatment of temporary residents
- deprivation of assets
- recovery of debts

The draft Care and Support (Charging and Assessment of Resources) Regulations 2014 cover:

- limitations on the local authority power to charge – when certain services must be provided free
- the process for assessment of financial resources
- the financial limits which determine the financial support people may receive from the local authority
- the assessment of capital and income
- calculating tariff Income
- particular sums to be disregarded during the assessment
- 'light touch' financial assessments

Key areas where the Draft Statutory Guidance could be strengthened

- Depletion of Self-funders resources - The issue of self funders and the rate at which self funders deplete their resources has been an on-going concern for LAs. A number of self funders annually find themselves in a situation where all their resources have been depleted and having to rely on LAs to take over the cost of their care and support. A report by London Councils states that 41 per cent of people entering residential care are self-funders however, often as a result of poor financial planning, 25 per cent of those self funders are unable to use capital assets and or deplete their personal resources in paying for their own care; councils are then asked to step in and maintain services. Focus of the Statutory Guidance should not only be on monitoring the progress made on a care account towards the cap but

should be looked at together with the pace at which the overall resources are being depleted.

- Statutory Guidance needs to set out what authority and support a local authority should have to help better manage self-funders resources so that resources are not depleted too quickly.
- Concise Statutory Guidance is also needed on the amount that is deemed acceptable for self-funders to spend as this affects the pace at which overall resources are depleted and the date the self funder will need support from the council.
- Numbers of self funders – as the Statutory Guidance and impact assessments are being developed in absence of a true picture of self funders that are likely to be impacted by the reforms and to seek support from the council there is need to allow for flexibility particularly in the first year of implementation of both the social care reforms in 2015/16 and the funding reforms in 16/17 to allow for:
    - A period of adjustment to councils to enable them to adjust and respond based on the actual numbers of people that will approach them. It is difficult to ascertain what the actual behaviour will be; allowing this flexibility will enable councils some time to embed the system before the funding reforms come in 2016 in the event that numbers of self funders are far higher than initially expected.
    - Government provide assurance that in the event self funder numbers significantly exceed projections extra support and resources will be made available to that council.
- Charging carers - While the option to charge carers has always been an option for local authorities few local authorities have actually charged carers. However, it is unfortunate that with increased financial pressures more local authorities are now considering having to charge carers. This could lead to carers declining to provide care and increasing the care provided by the local authority. If not appropriately funded councils will increasingly explore the alternatives they have available to them to help ease the financial pressures. Currently it is unclear what the boundaries are with regards to charging of carers, clarity is needed in the Statutory Guidance on what councils can charge for.
- Carer assessments - the extension of rights to carers is welcome but for the 2015 reforms this is an area of big concern as it is likely to have significant impact on councils resources – Significant workforce implications as it is the same existing staff that will have to carry out the additional assessments putting pressure onto the system. While councils are doing research and trying to project the demand that will be there next year it is impossible to know for certain what the behaviour of carers will be and whether or not they will seek assistance and support from the council.
- Clarity regarding who assesses a carer – clarity in Draft Statutory Guidance is required in a situation where a carer lives in a different borough from that of the cared for person to avoid any potential conflicts between councils regarding who is responsible for the carer assessments and costs – it is unclear at the moment as to whether these would be the responsibility of the council in which the cared for person resides or whether it would be the council in which the carer resides.
- Light touch assessments - While we welcome the opportunity to be able to carry out light touch assessments, it is unclear how this will be applied. We have concerns for example that while the opportunity exists to carry out online-self assessments, a local authority could potentially be opening itself up to risk should any problems arises further on. Further clarity on what is acceptable as a “light-touch” assessment is required to help bring about a more universal application of this policy.

- Our understanding is that at some point a light-touch assessments will inevitably still requires analysis by local staff to ensure that the assessment has been done correctly – and truthfully. This will therefore not make it any easier for a local authority to meet the demand for additional assessments. Greater clarity on this will also help councils to be more confident in the use of light touch assessments and benefit from potential savings.
- Skills of financial assessment officer: With the funding reforms and introduction of care accounts skills and knowledge of financial assessment officers going forwards is a concern; they will have to be knowledgeable about the Consumer Credit Act. Councils will need to be appropriately funded as officers will need to be trained to be able to carry out assessments in line with the Care Act.
- Portability - The principles on which the portability of care is based are welcome however there is a concern that the policy will be putting more pressure on those councils that are "importing" people with carer and support packages. As an importing council people would have started their carer accounts in another council but the cap is reached in the council that the person has moved to and therefore the costs for care will then fall on the importing council.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 40) and the number of 'shoulds' (currently 40). Some of this information could be moved to non-statutory good practice guidance

Overall

- We recognise that the number of financial assessments that will be required will increase from April 2015.
- We have concerns regarding the costs to local authorities of carrying out the additional financial assessments.
- There will be resource implications for local authorities that will need to be recognised and addressed by government.

Question 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?

Response to Q20

- The Regulations and Statutory Guidance on the charging framework are generally clear and offer local authorities the flexibility to decide locally whether to charge for prevention services or not.
- Overall clarity on charging - Local authorities would benefit from further clarification around some areas which have potential for charging;
    - Cost of assessing e.g. self funders whether eligible for service or not (it is part & parcel of completing a support plan for unmet need).
    - Can we charge for information & advice;
    - Brokerage;
    - Carers for assessment of unmet need; property protection i.e. if person is sectioned etc.
- Deprivation of capital - Furthermore, clarity around deprivation of capital is needed to clarify what is allowable under the deprivation of assets rule. Clearer guidelines and set timescales for people transferring properties to families, or making investments to avoid charges prior

to receiving support, is needed to ensure this policy is applied equally. We suggest that gifts should only be allowed as part of the IHT rules.

Question 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.

Response to Q21

- Debt recovery- The Regulations and Guidance misses an opportunity to strengthen the powers of local authorities in instances of fraud and financial mismanagement. In the wider context of funding pressures debt recovery by local authorities will be even more important. It is critical that local authorities should still be able to use their HSSA powers and any debts underwritten/carried by local authority should be protected. Furthermore there is a need to provide clarity around what are the non-county court options; it seems unethical to refer to recover agents, bailiffs, credit protection agencies, which will only add to the debt.

4.2 12-week property disregard

We are therefore proposing that the 12-week property disregard should apply in the following circumstances:

- When someone first enters a care home. During this period they would be assessed on the basis of their non-housing assets with an upper capital limit of £23,250 in 2015/16 (rising to £27,000 from 2016/17).
- When a person's home unexpectedly loses an alternative disregard, for example due to the death or the moving into care of a qualifying relative. This is an extension to the current policy.
- Provide local authorities the flexibility to apply the disregard in other circumstances where there is a sudden or unexpected change in a person's financial circumstances.

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

Response to Q22

- It seems reasonable to allow a 12-week property disregard when a persons' previously disregarded property becomes part of their assessment due to a sudden change in circumstances e.g. death of partner who lived in the property or partner having to go into a care home, this would be the case if the same level of savings criteria applies at the time of change in circumstances.
- 12 weeks could be considered as generous in particular e.g. if it relates to a very elderly or frail couple. It could be argued that logically they've already had time to think about what would happen in these circumstances but in reality that is not always the case and certainly it would need to be fully explained to the customer at the time of the initial disregard of the property.
- There is always a risk that a member of the family moves in to the vacant property to secure a further disregard if provided a 12 week window of opportunity.

Question 23: Would you prefer to see the current approach retained?

Response to Q23

- Applying a disregard under "other circumstances" is always difficult for the LA to show they have been equitable across all cases (a near impossible task due to unique circumstances of each case). In terms of applying any discretion it is often challenged as to why the LA did not consider this option to all cases (in effect the LA would have to consider discretion for all cases for this to be equitable). LA s often only considers discretion when requested by the customer due to exceptional circumstances. For this to be equitable nationally again is a difficult task. Any area of discretion or option to disregard is difficult to apply, our preference would be to have more specific guidelines, not just examples which can be misunderstood, or misinterpreted.

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

Response to Q24

- We do not feel that it is cost neutral if, allowing a 12 week property disregard, the LA does not have the full cost contribution for the 12 weeks.
- The likelihood of a resident losing an alternative disregard is quite high, whereas the number of those already in care homes who run down their assets (and under the new proposals would not be eligible for a disregard) is likely to be relatively low. Therefore, this is not an effective offset.

4.3 Other disregards

Question 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?

Response to Q25

- Yes. This was the outcome of the previous consultation. Limited impact but would help in making savings decisions for retirement planning less likely to be influenced by charging considerations. Investment bonds could be considered a way of shielding savings / assets even if they have an element of life insurance from the customer's financial assessment.

Risks:

- Customers have to gauge value for money , life expectancy etc. all difficult parameters
- LA: council knows customer had a considerable level of savings but unable to take into account in financial assessment unless annuity payments made these are usually minimal compared to capital investment.

Question 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?

Response to Q26

- Planning for your future is one of the main drivers of the central government agenda and the premise behind the Care Act 2014 so assume this would need to be considered as a disregard. However if a customer had considerable savings or in fact savings between the

upper and lower capital limits then perhaps a disregard would not be required i.e. they could use available capital to pay for the plan or the outright costs of the funeral.

- Where a plan could be disregarded certainly there should be a max amount allowed as customers could max the plan to avoid any contribution or considerably reduce their contribution towards care fees (£4k to £4.5k would be reasonable). The size limit should be modest but in line with the local market (e.g., the cost of plans in London may be more expensive than elsewhere).

Risks:

- Payment of funeral plans for a couple or for a spouse /partner should these also be allowed to be disregarded?
- Funeral plans don't always cover the whole cost of a funeral.
- Some companies could become wise to these exceptions/disregards and use as a selling point. Yes, with a limit of a reasonable cost (£4000).

4.4 Choice of accommodation and additional payments

The guidance on charging for care and support covers:

- the principles underpinning choice and the making of additional cost payments
- the conditions that must be applied in exercising choice
- how an additional cost payment may be agreed
- specific circumstances when a person may make an additional cost payment themselves
- how additional cost payments should be managed
- the responsibilities and liabilities for additional cost payments if there is any breakdown in the arrangement

The draft Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 cover:

- the right to a choice of accommodation
- conditions for the provision of preferred accommodation
- the application of choice to accommodation provided for mental health aftercare
- the additional cost condition (top-up fees)
- the types of accommodation the regulations apply to

Key areas where the Draft Statutory Guidance could be strengthened

We have some concerns regarding the following areas which we feel require further clarification in Draft Statutory Guidance or any key national communications of the reforms:

- Mental Health Act - We are concerned about the possible implications of the S117 aftercare of the Mental Health Act. It is unclear as to whether accommodation in such instances should be free.
- Top up risks - To help manage expectations it is important that it is clarified that where there are top up payments, they will not count towards the maximum care cap. There should be an upfront agreement to minimise the risk of local authorities when an individual fails to pay the top up. Where a local authority decides that it is in the interest of the service user and to avoid taking on the risk of additional debt the local authority should have the flexibility to refuse a care users preferred choice of accommodation.

- Any national communications on top-up payments and choice of accommodation need to be clear that a local authority will have the powers to assess and make the decision whether a person needs to be moved due to financial reasons or not.
- Management costs - It should also be noted that management of top up etc. will result in additional management costs for the local authorities adding pressure to local authorities.

Overall

- We welcome the expansion of provision to cover other types of care that include an accommodation element.
- We welcome the flexibility that this offers people to choose their own accommodation however; it should be clear that a local authority will reasonably do what is possible to help people stay in accommodation of their choice.

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

Response to Q27

It would be rare for a top-up to be relevant to a shared lives or Extracare care setting as the marketplace for these types of accommodation based support are very different to the marketplace for residential and nursing placements. As such there is no obvious reason why the Statutory Guidance around "top-up" needs to particularly cover these types of accommodation.

Question 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?

Response to Q28

- Expanding the circumstances in which people can use a top-up from April 2016 will inevitably create financial risks for local authorities as in the final instance they are financially responsible for the entire cost of the placement.
- The best way to mitigate the risks, for both the local authority and the person, is to ensure that that the Statutory Guidance and any information provided at the outset of any arrangement make it very clear that failure to pay the top-up is likely to result in a move to a more affordable choice of accommodation.

4.5 Pension reform

Question 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?

Response to Q29

- The impact will entirely depend on how pension sums taken as cash sums (rather than annuities) are required to be treated in the financial assessment Regulations and Guidance.
- Under the current rules such sums would invariably be treated as chargeable assets (as opposed to annuities which are disregarded as capital), rendering many more people as full

cost payers. Without changes to the rules, this could result in many people receiving an unexpected nasty surprise should they require social care services.

- It will be necessary to ensure that financial advice about pensions includes the financial rules around paying for social care so that informed decisions can be made.
- It will be necessary to review deprivation of capital rules in line with any proposed policy intentions as incidences are likely to rise given once the new rules take effect.
- It may be beneficial to look at disregarding a proportion of capital taken as a lump sum in certain prescribed circumstances – e.g. requiring residential care within 12 months of taking a lump sum. However, such changes need far deeper thought about overall system design than is possible to discuss here.

4.6 Deferred payment agreements

The draft guidance on deferred payment agreements covers:

- who to offer a deferred payment to
- the provision of information and advice before making a deferred payment agreement
- 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 draft Care and Support (Deferred Payment) Regulations 2014, cover:

- when a local authority must enter into a deferred payment agreement
- when a local authority may enter into a deferred payment agreement
- conditions relating to deferred payment agreements

These reforms also offer an opportunity to make the care system fair, and therefore there is no reason why deferred payment agreements should not be opened up to people in domiciliary care. This will help to pay for the care of those who may choose to stay in their homes. In London in particular there are many cases of people with very low income but with assets that can be used to pay towards their care.

Key areas where the Draft Statutory Guidance could be strengthened

- The Statutory Regulations and Guidance, as currently drafted, do not give LAs additional flexibility to allow people in receipt of domiciliary care to defer care charges through deferred payments. In London in particular there are many cases of people with very low income but with assets that can be used to pay towards their care.
- The opportunity to amend the Statutory Regulations and Guidance to give LAs the discretion to offer deferred payments to people in receipt of domiciliary care should be further considered. This would help people, who may choose to stay in their homes, to pay for the care they need.
- It would also help to encourage local innovation in such schemes, giving local authorities the option to go beyond the minimum requirements set out in the Statutory Regulations and Guidance, if they wanted to offer this.

- We recognise that there are associated administrative costs and financial risks to LAs from such a proposal. Further work would, therefore, be needed to assess the costs and benefits of offering extended schemes and to determine appropriate thresholds for Deferred Payments for people in receipt of domiciliary care. However, we believe that there is merit in the Government exploring this further with the sector. When a person who is eligible for a deferred payment agreement refuses to get one upon advice of the council, a LA should have the power to charge interest on any debt the individual may have for their care.
- Development of new systems – while many councils already have some deferred payment systems in place, the extensions to the deferred payments will require councils to either update or put in place complete new systems for deferred payments. This is likely to be an issue for system providers as development of new systems could take more than a year. To ensure that providers are able to meet the demand that they are likely to have in the coming year we suggest that government should consider delaying the deferred payment agreement until 2016/17 when the rest of the funding reforms are due to start - plus they are well aligned with the rest of the funding reforms due to begin in 2016.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 53) and the number of 'shoulds' (currently 61). Some of this information could be moved to non-statutory good practice guidance

Question 30: Should the eligibility criteria for deferred payment agreements be extended to include people in extra care housing or supported living arrangements? Do you have evidence of the likely demand for deferred payment agreements from people whose needs are met in these types of accommodation?

Response to Q30

- We generally agree that the eligibility criteria should be extended to include people in extra care and very sheltered housing. This should however be a discretionary measure.

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

Response to Q31

- We recommend that a range of products should be developed to give all services users a wider choice – one of these products could be those that are compliant with sharia law. The products developed should be simple and easy to understand and manage.

Question 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?

Response to Q32

- Setting the maximum LTV at between 70and 80% seems reasonable however there should be enough flexibility/discretionary powers to allow for councils to lend up to the property value and to respond in situations when there are sudden surges or dips in the property market impacting interest rates.

Question 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?

Response to Q33

- We understand the proposal for people with deferred payments to be able to keep a proportion of any rental income to incentivise them to put their houses on the market. In London, where housing pressures are high this is particularly welcome. However, a deferred payment is a debt to the council, and in the event of a high number of deferred payment agreements this could become a big issue and impact on a council's ability to borrow. If an individual's needs are paid for and their landlord duties are covered it will be best that any rental income that comes from the payment should go towards paying off the debt and therefore a person should not be able to keep a proportion of any rental income they earn on a property. Councils already have several schemes in place that offer a range of incentives for people to put their properties onto the market.
- A view could be sought to include as a yearly expense: agents' fees, insurance costs, and one months' void period as standard. Anything over that could be discretionary on a case by case basis.
- We would also welcome inclusion in the Statutory Guidance on checks we could make on the tenancies offered, i.e., properties not let on 10 year terms or on rents significantly lower than the average market rent.

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

Response to Q34

- No, but anything could potentially benefit the individual and the community at large by increasing the supply side for additional housing stock to be made available for rental.

Question 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?

Response to Q35

- First charge - Primarily a local authority should accept any legal charges on a property as security for a deferred payment agreement when they are required to enter into on a first charge basis. However, it should be left up to the local authority's discretion in any other circumstances. Debts to local authorities need to be protected. Therefore any debts through a deferred payment agreement should be first on any creditors lists so that public funds are not put at risk.
- There is that if LAs are not the first charge an unscrupulous owner could increase the sum owned on the first charge without a council being aware. To protect local authorities having to accept being the second charge, legislation that is part of the DPA should prevent any increases or further lending on the first charge.
- Any exception to that rule should, only be requested by an independent legal professional acting on behalf of the client to the Local Authority on a case by case basis.

Question 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?

Response to Q36

- Disposable Income Allowance - There is lack of clarity around how the disposable income allowance has been set which needs to be addressed in the final Statutory Guidance. A value of £144.00 per week as expenses seems high and would only decrease the amount of assets/equity that the client had by £7500.00 per annum. In some cases this would add to the financial burden of the local authority as they may fall below the threshold earlier. In terms of the £144.00, unless expenditure of this amount was tracked, it could lead to issues of financial abuse by relatives and would have a questionable dilemma if relatives are charging service users for "overseeing landlord duties".

Question 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?

Response to Q37

- Setting interest rates – different councils may have different true costs of capital due to various factors including their specific credit ratings and therefore could be impacted differently by one national interest rate – therefore rather than a single national interest rate perhaps be a banding, but with the proviso that individual councils have to clearly demonstrate why their cost of capital may be different from a national/regional average to justify a different interest rate (within the national 'band' or 'tolerance'). A local authority should therefore have a discretionary power to set a higher interest rate for discretionary deferred payment agreements within prescribed limits.

5 Person-centred care and support planning

5.1 Care and support plans

The draft guidance on care and support plans covers:

- the production of the plan
- involving the person in producing the plan
- approaches to planning for people who lack capacity
- combining plans for different individuals, or integrating plans with those provided to meet other needs such as health needs

The draft guidance on the review of care and support plans covers:

- keeping plans under review generally
- planned and unplanned review
- considering a request for a review
- revision of plans as a result of review
- timeliness and regularity of reviews

Key areas where the Draft Statutory Guidance could be strengthened

- Subject to the amendments recommended below, we support the Draft Statutory Guidance. In particular, we strongly support the proposition that local authorities should sign-off, and assure plans.
- We have concerns regarding the use of advocates: Chapter 10 does not comment on their qualifications, experience, costs etc. To remedy this reference should be made to Chapter 7 of the Draft Statutory Guidance and cited, as appropriate.
- We have concerns regarding the use of people nominated by the person to involve him/her in the planning process: The Draft Statutory Guidance begs the question of what should happen if the nominated person is unable to effectively facilitate involvement. For example, the nominated person may need, but have no knowledge of social care law and/or local authority procedures. If the solution to this situation is to seek an advocate does the advocate replace the nominated person, work with the nominated person, or is there a third way?
- We feel that planning should be 'proportionate' (paragraph 10.14): The Draft Statutory Guidance's focus on active involvement of the person in planning is welcomed. The proportionate principle is also supported but may lead to challenges of, for example, panel and similar processes. In addition, what does proportionate planning look like in the real world? Case examples are needed.
- In relation to light touch vs. proportionate planning (10.24): The Draft Statutory Guidance states that light touch and proportionate planning are not the same thing. However, it is far from clear that this is the case. If proportionate plans exist on a continuum then those of these plans which require least input may be described as 'light touch.' This is a point of confusion in the Draft Statutory Guidance that needs clarifying.
- In relation to example of proportionate planning (paragraph 10.25): Following on from paragraph 10.24, paragraph 10.25 provides an example of proportionate planning. However, the example given concerns planning for people who have fluctuating needs – a completely different matter. This is a pity as we felt an example/case study of proportionate planning would have been helpful.
- In relation to DOL (paragraph 10.47 – 10.52): We were not certain how usefully the Draft Guidance could comment on DOL given the fast changing pace of the law since the Cheshire West judgement. We would also comment with reference to 10.51 that 'MCA/DOLS teams' may not exist in that format within all local authorities.
- We believe that the third sentence of paragraph 10.61 should be deleted as it is unnecessary and sets-up a potential conflict between local authorities and service users.
- We believe that the presentation of approval panels is skewed (paragraph 10.65): We welcome the emphasis that the Draft Guidance places on approving panels operating in a timely manner that minimises bureaucracy, avoids micro managing planning and operating for purely financial reasons. However, we also believe that the Draft Guidance fails to recognise the important part panels have to play in controlling quality, managing risks (not just financial risks) and ensuring consistency of provision and decision taking. As a result of this failure the Draft Guidance is skewed. The Statutory Guidance should recognise that Panels also play an important role in encouraging innovative and creative support plans, and positive risk taking, as they review care plans developed by social workers whose careers have mostly been spent working within the Care Management context. Many long standing social workers can be traditional in their approach to practice and many Councils use panels as a way of encouraging innovation, not only cost control. Need to explore cost effective ways of undertaking assessments, would be useful to describe various approaches

- We request the need to agree a common methodology to understand the potential demand locally and potential financial impact in implementing this aspect of the Act
- We would welcome further clarity in relation to 'able and willing' - how is this to be interpreted locally? Is there possibility of subjectivity with interpretation?
- In relation to the training of staff – we would welcome further clarity on the key skills that need to be developed?
- We would welcome further clarity in relation to charging for services - will this be implemented by boroughs?
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 44) and the number of 'shoulds' (currently 101). Some of this information could be moved to non-statutory good practice guidance

Implementation issues

- Training: The Draft Statutory Guidance indicates that local authorities will have to re-consider the training they have in place for their own staff and advocates to ensure that practice standards meet the requirements of the Act and that there is an ample supply of competent advocates to support the planning process.
- Market Shaping: The use of advocates to promote inclusive and participatory care and support planning means that local authorities must work hard to ensure that there is a good supply of quality advocacy services. The success of efforts to this end cannot be guaranteed, especially, with respect to people who have communication difficulties or do not have English as a first language. In some areas the advocacy market place will need to develop quickly if it is to deliver the requirements of the Act and there will be, unbudgeted, cost implications.
- Process and Procedures: Local authorities will have to review and revise their processes and procedures to ensure that they will reliably deliver care and support planning that complies with the Draft Statutory Guidance. This will take considerable effort and has training implications for staff who must become familiar with new ways of working. This, in turn, might cause trade union problems and raise concerns among the workforce. The review, revision and training of staff will have cost implications. Again, these are unbudgeted.
- Capacity: The Capacity challenges of the Care Act are well recognised and are to be found in the Draft Statutory Guidance on care and support planning. For example, the review requirements of the Statutory Guidance, the implications of the Cheshire West judgement, the involvement of advocates etc. will all impose added strain on the capacity of local authorities whose resources have been significantly reduced in recent years.
- Information and Advice: The need to provide information and advice about needs the authority won't meet is sensible, but this could be quite resource intensive if it is to be done properly for both self funders and authority funded people.
- Looking at Care and Support in Isolation: Chapter 10 of the Draft Statutory Guidance needs to pay more attention to tasks/activities on which care and support planning is dependent. In this regard the provision of assessments and the allocation of responsibilities for assessments is a potential source of confusion, especially, if they are outsourced. The issue here concerns the need for greater clarity about the relationship between assessment and care and support planning and the impact of delegated responsibilities.

Question 38: Does the guidance on personalisation fully support and promote a care and support system that has personalisation at its heart?

Response to Q38

- We welcome the focus on people being in control of their own care and their active involvement in the planning process. The proposition that individuals will play a strong leadership role in planning is important. We regarded Chapter 10 of the Draft Statutory Guidance as a statement of good practice and person centred planning as something that social care professionals have advocated over a number of years.
- We also welcome the commitment to an approach to care and support planning that is not defined in terms of timescales but by a the provision of plans that are timely and proportionate. In addition, we are pleased to note paragraph 10.65's comments with respect to delegated responsibility. In general we support Chapter 10.

Question 39: Does the guidance on personalisation support integration of health and care (and any other state support)?

Response to Q39

- In relation to combining Health and Care Plans (paragraph 10.59): Combining plans is supported but should be encouraged more than the Draft Statutory Guidance seems to suggest. Aligning the planning systems will require much greater direction than just this Statutory Guidance and needs to be reflected in other initiatives e.g. integration and BCF.

Question 40: Does the guidance support care and support workers to do their job effectively?

Response to Q40:

- We believe that the Draft Statutory Guidance in some areas is overly prescriptive. This could introduce high levels of bureaucracy in order for LAs to demonstrate compliance. This could in turn have unintended consequences for the care and support of service users as well as the efficiency and effectiveness of services.
- We however feel that the timescales for implementation are very short and does not leave much time to ensure that the workforce are fully equipped, knowledgeable about the new legislation and prepared for changes. Continued support to the sector around workforce planning, training and development via organisations such as Skills For Care is critical to successful implementation and these efforts will need to be sustained.

5.2 Personal budgets

The draft guidance on personal budgets covers:

- the different required elements of the personal budget
- principles to follow in calculating the personal budget
- agreeing the final budget
- use of the personal budget

The draft Care and Support (Personal Budget Exclusion of Costs) Regulations 2014, cover:

- excluding the cost of intermediate care/reablement from personal budgets, where it is provided to meet needs, rather than as a universal preventative service

Key areas where the Draft Statutory Guidance could be strengthened

- In relation to paragraph 11.2 first bullet point: This bullet point is poorly drafted. It is not clear what it is trying to say. It seems to imply that financial assessments are completed before the care and support plan. Is this so? The bullet point also appears resource, not needs, led i.e. we look at the budget before considering what plan is needed to meet eligible needs.
- In relation to mixed packages (paragraphs 11.7 and 11.8): The end of paragraph 11.7 states a person can have some of their personal budget as a Direct Payment, and paragraph 11.8 says they can have a mixed package of care and support. Are these saying the same thing? Draft Statutory Guidance appears confusing or repetitious.
- Elements of the personal budget (paragraph 11.9): We believe that the first sentence of this paragraph will be clearer if the word 'final' is inserted between the first and second word of this sentence.
- Elements of the personal budget (paragraph 11.10): Paragraph 11.10 stipulates that a personal budget may also set out other amounts (plural) of public money that the person is receiving and gives the sole example of a personal health budget (singular). It is not clear what other sources of public money might be included e.g. benefits. Clarity is needed on this point. It is stressed that the more demanding the requirements in this respect the greater will be the impact on limited local authority resources.
- Elements of care and support that are excluded from the personal budget (paragraph 11.18): The first sentence of this paragraph should be redrafted – overly complicated and too many negatives. Could just say that reablement should not be included in personal budgets.
- Calculating the personal budget (paragraph 11.21): This paragraph refers to the "method used for calculating the personal budget produc(ing) equitable outcomes". However, the precise meaning of 'equitable' is not made clear while we do not know if the is about producing 'equitable outcomes' within or between local authority areas?
- RAS (paragraph 11.22): Greater clarity and consistency is needed with respect to the Government's support, or not, for a national RAS. A consistent approach is needed between local authorities and care groups. Failure to provide this is likely to set-up disputes and, probably, court action.
- Calculating the personal budget (paragraph 11.23, second bullet point): This paragraph makes reference, at the top of page 156 of the Draft Statutory Guidance, to an "indicative allocation". For consistencies sake we feel that this should be changed to "indicative budget".
- Calculating the personal budget (paragraph 11.24): It is hard to see how basing the Personal Budget on an "amount that reflects the cost to the local authority of meeting the person's needs" will ensure that Direct Payments are sufficient. The cost to the authority of quality provision will nearly always be cheaper than it is to the public. There is an on-going risk of a two tier system developing where those who receive Direct Payments may be either disadvantaged by insufficient budgets or receive larger budgets to reflect market prices. In either case the indicative budget would be the same as it would not be possible at that stage to take account of the method of personal delivery.
- Use of personal budgets (paragraph 11.33): Real case examples of how ISFs should be provided in the Draft Statutory Guidance.
- Use of personal budgets (paragraph 11.36): The Draft Statutory Guidance needs to clearly state that the principles of self-directed support must be followed. It is confusing and vague to state that this is "implied". In addition, these principles need to be clearly listed in the Statutory Guidance. To simply give a web link in a foot note to these critically important principles is not good enough.

- Appeals and disputes (paragraph 11.49): The right of appeal to a third party needs to be made explicit. Reference to the 2009 regulations is not helpful to lay people and organisations.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 22) and the number of 'shoulds' (currently 56). Some of this information could be moved to non-statutory good practice guidance

Implementation issues

- Existing commissioning/contracting arrangements will have to be reshaped: As more people receive and manage their own Personal Budget the comfort of existing market certainties (e.g. block contracts, contracts of known length, price regimes) will change and may threaten the business models of some providers, especially those reliant on block contracts.
- Producing Information: The production of excellent information to facilitate the take-up and use of Personal Budgets will have resource implications. These are unbudgeted.
- The market will need to be developed to extend choice of services directly to and for the carer
- Thought will need to be given in relation to calculating the carers budget

Overall

- This chapter reflects current practice and follows on logically from the previous chapter on care and support planning as both are characterised by their shared emphasis on people exercising more choice and control. This we support while we were, particularly, pleased with that part of the Draft Statutory Guidance appertaining to the use of Personal Budgets for carers because of reinforcement of carers' rights and support given to carers in their caring roles.

Question 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?

Response to Q41

- Yes, we feel that the definition is clear and conform to our understanding of intermediate care and reablement

Question 42: Does excluding the cost of reablement/intermediate care from the personal budget as defined above: Create inconsistencies with the way that reablement/intermediate care is provided in NHS personal health budgets? Affect the provision of reablement/intermediate care for people with mental health problems?

Response to Q42

No, we don't feel that excluding the cost of reablement/intermediate care from the personal budget as defined above creates inconsistencies with the way that reablement/intermediate care is provided in NHS personal health budgets nor affects the provision of reablement/intermediate care for people with mental health problems

Question 43: Are the ways in which different personal budgets can be combined sufficiently clear?

Response to Q43

- Clarity is required regarding how personal budgets can be combined. For example, it is unclear how the Education, Health and Care plan (EHCP) in the Children and Families Act and Housing Benefit can be combined with personal budgets.

5.3 Direct payments

The draft guidance on direct payments, together with the draft Care and Support (Direct Payments) Regulations 2014, cover:

- making direct payments available, and circumstances in which the local authority may not make direct payments
- steps following a request to receive direct payments, and specific steps for people who lack mental capacity
- administering direct payments, and conditions which apply to making the payments
- using the direct payment
- reviewing direct payment
- how to discontinue direct payments

Key areas where the Draft Statutory Guidance could be strengthened

- The Linkage between personal budgets and direct payments: As previously stated, it is hard to see how basing personal budgets on an "amount that reflects the cost to the local authority of meeting the person's needs" will ensure that direct payments are sufficient.
- Safeguarding: recipients of direct payments may choose their payments to buy services (e.g. PAs) in an unregulated market place. If the service provided takes place in the service user's home, especially if the service is of a personal and intimate nature, there are safeguarding issues to be considered. The Draft Statutory Guidance could usefully give a steer on this matter
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 37) and the number of 'shoulds' (currently 101). Some of this information could be moved to non-statutory good practice guidance

Implementation issues

- Amount of DP: Direct Payments will need to cover costs of redundancy, sickness etc. and this will have unbudgeted cost implications.
- Reviews of Direct Payments: The increased number of Direct Payments that are envisaged as a result of the Care Act will impose a considerable extra burden of local authority resource (staff and finances) which will be very difficult to meet in a time of austerity.
- Paying Family Members to Administer/Manage the Personal Budgets: Though welcomed this innovation will have cost implications that are currently unbudgeted.
- Producing Information: The production of excellent information to facilitate the take-up and use of Direct Payments will have resource implications. These are unbudgeted.

Overall

- Generally, we consider that the Draft Statutory Guidance formalises what should be good practice

- Review of Direct Payments after 6 months and thereafter every 12 months (this can be linked to annual review of care needs) is something most local authorities are trying to address and reflects their responsibilities under the FACS Guidance.
- Assessing mental capacity issues – this is a status quo position – need to be satisfied that client has capacity to manage Direct Payments etc. – also need to ensure that client could access independent advocacy (there is statutory role for independent advocacy).
- Paying close family members to admin/manage the Direct Payments is an innovation which we welcome.

Question 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? Will this create implementation issues for local authorities?

Response to Q44

- Paying family members: We welcome the recognition that is being proposed for family members who at times spend a lot of their time to manage and administer the direct payments of care users. The greater flexibility in which direct payments can be used is also welcomed. However, we are concerned that while majority of family members will not abuse this right, some family members may take advantage of this. We believe that this should be a discretionary power to local authorities to decide on the viability of this. Furthermore in complex cases this maybe a substantial amount taking away from the payment going towards directly supporting care needs. To clear up any confusion or accusation of financial abuse in this area, a proposition of a simple maximum schedule of rates, nationally set, may be the way forward when considering unqualified family members undertaking paid care duties
- Whilst we recognise that people should be able to choose how they manage their direct payments, there are examples of creative alternatives to paying family members to administer/manage direct payments. For example:
    - The use of pre-paid cards means family members can easily manage the direct payment and we can easily monitor it as and when necessary. Surrey, West Berkshire, Camden and Bexley are currently collaborating on the procurement of pre-paid cards.
    - LB Bexley offers a Care Company that can deal with day-to-day administrative issues, whilst enabling service users to receive the same care.

Question 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?

Response to Q45

- Reviews - The draft direct payment regulations decreases the time period to conduct a review of the direct payment from 12 months to 6 months this is an area of concern for councils as it will have additional resource implications for the review to be carried out every six months rather than annually. It is unclear from the Draft Statutory Guidance as to how in-depth the review has to be as this will have implications.
- It should be down to the local authority to determine the review process; authorities staffing structure will differ and may take resources from other front line services in order to meet this duty.

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

Response to Q46

- Statutory Guidance on ending a direct payment should also be made easier where a local authority thinks it is the most appropriate approach.
- Inclusion of other public money: we support the long term proposal to align different funding streams that a person gets however in the short term it would be useful to have a schedule of other public money that should be set out in a personal budget.

6 Integration and partnership working

6.1 Integration, cooperation and partnerships

The draft guidance on integration, co-operation and partnerships covers:

- strategic planning at the local level between partner organisations
- integrating service provision and combining and aligning processes
- the requirements of the general duty to cooperate
- ensuring cooperation between the different functions within local authorities
- the process for requiring cooperation of a partner in specific cases

Key areas where the Draft Statutory Guidance could be strengthened

- It was felt that this is an area where there is a real need for tools to support local authorities and we would welcome the development of implementation tools.
- We feel that the Draft Statutory Guidance could have gone further in providing clear pathways in exactly what should be implemented. It was felt that there were not enough 'musts' and clear deliverables.

Overall

- We found it very helpful for local authorities to have the Statutory Guidance surrounding integration brought together into one chapter and set out so clearly. It would be useful if other national policies around integration and cooperation were also referenced within this one area.
- The Draft Statutory Guidance does support local authorities and partners to integrate and cooperate; however, it was generally felt that the draft regulations did not propose anything that many councils are not already doing as part of best practice. Duties around integration will, to a large extent, still remain a matter of local interpretation and local processes.

Question 47: Does the draft Statutory Guidance provide a framework that will support local authorities and their partners to make integration a reality locally?

Response to Q47

- It is useful for existing practice to be brought together however; there was general disappointment about the lack of 'musts' in this area and the lack of specific deliverables that all local authorities must work towards. The group understands the complexity of this area and the need for adapting to local situations, but it was felt that the Draft Statutory

Guidance did little to alter the status quo or improve some of the existing problems around integration and cooperation.

Question 48: Are there any ways the guidance can better support cooperation locally?

Response to Q48

- There is little clarity about sanctions if local authorities or relevant partner fails to cooperate other than that it 'could be subject to judicial review' (paragraph 15.28). This will inevitably lead to different local interpretation.
- There was no direct reference to Section 75 and its role in integration.
- There was very little in the Draft Statutory Guidance about joint commissioning as a key mechanism for achieving integration and cooperation

6.2 The boundary with the NHS

The draft guidance on integration, co-operation and partnerships covers:

- the boundary between local authority care and support and NHS healthcare

The draft Care and Support (Provision of Health Services) Regulations 2014, cover:

- identifying the clinical commissioning group from which a local authority must seek consent before it makes any arrangements that involve the provision of registered nursing care
- local authority cooperation with NHS bodies in carrying out NHS continuing healthcare assessments
- dispute resolution procedures about whether something should be provided by the NHS

Key areas where the Draft Statutory Guidance could be strengthened

- We would welcome inclusion of a clear definition of integration which should include what integration/ partnership means in terms of accountability.
- We would welcome acknowledgement within the Draft Statutory Guidance that Integration cannot be achieved without data sharing and would value explicit reference of the need to share data in order to support joint working/integration.
- We note that there is only a vague reference to the BCF, the Statutory Guidance should be more explicit about where there is a direct link
- We would welcome greater clarity around governance; more explicit duties need to be placed on the Health and Wellbeing Boards and what they have to achieve. In relation to this, there is no mention of GP engagement. GPs are supposed to report to the HWBBs but it is often found that local authorities must engage through the CCG board. There should be more explicit duties placed on the HWBBs.
- We would welcome greater clarity in relation to delayed discharge and reimbursements, including who defines and runs the process. This area is vague and an area of concern.
- We would welcome greater regarding charging for services –a fundamental barrier to local authorities working with the NHS is the difference in the two organisation's approach to funding care. Integration means a seamless service, yet this may cause issues around expectation as users may question why they are being charged for services that seem to be provided by the NHS. The boundary between which services are provided by the NHS and which by the local authority may not be clear enough.

- Sharing information/ IT systems – Information sharing (IG) is fundamental part of joint working but is also a major hurdle to implementing joint working with the NHS. It is right to have safeguards but the regulations in IG are beyond that of the CCG. The Draft Statutory Guidance does not explicitly reference the need to share data in order to support implementation.
- The Draft Statutory Guidance does not propose a new way of working and therefore does not resolve any of the existing issues

Question 49: Is the description in the Statutory Guidance of exceptions to provision of healthcare (which effectively sets out the boundary between NHS and local authority responsibilities) sufficiently clear and does it maintain the current position on the boundary?

Response to Q49

- It is not felt that the description is sufficiently clear. It would be helpful to have definitions for "incidental" and "ancillary" within the Statutory Guidance. In the Care Act 2014 Exception for the provision of health services 22(2) states Regulations may specify and then states sections a, b and c. It would be helpful to know which regulations this is referring to.
- The Branch would like to know why LAs must now notify and gain consent from the CCG prior to commissioning services that include an element of nursing care.
- A definition of the "flat- rate" referred to in the Statutory Guidance under 15.35 would be useful.
- A National framework for dispute resolution would be helpful.
- Overall the description in the Draft Statutory Guidance of exceptions to provision of healthcare needs to be sharper and more specific otherwise the issue will be open to interpretation.

Question 50: Is there any danger that the legal barrier could be interpreted as a barrier to integration? Are there specific examples where it would be helpful to clarify?

Response to Q50

- There is a risk that the legal barrier will have an impact on integration, although the legal barrier exists already and services have co-existed. The need is for clarity in definitions, and further examples to illustrate responsibilities will be helpful.

6.3 Delayed transfers of care

The draft Care and Support (Discharge of Hospital Patients) Regulations 2014, cover:

- processes and requirements relating to delayed discharges from hospital for NHS acute care patients with care and support needs
- the period and amounts of any delayed discharge payment

Question 51: Will any of these changes affect the working of delayed discharge processes in ways not discussed in the guidance?

Response to Q51

- There was general disappointment that the Draft Statutory Guidance around working with the NHS does not translate to on the ground operations. The Draft Statutory Guidance sets

out what 'should' happen but not the 'how'. It was noted that this could be driven locally 'from the bottom up', but it might be useful to see a number of deliverables that all local authorities are required to produce, e.g. an agreed joint discharge policy.

- We believe it is regrettable that delayed discharge payments have been retained. These are an old fashioned and outdated mechanism that pre-dates current ways of integrated working and which are at odds with the Better Care Fund approach to pooled funds. The BCF encourages the NHS and Councils to work together and share risks and successes, whilst the system of fining for delayed discharges is an encouragement for the NHS and Councils to work to preserve their own interests above those of partnership working.
- We also note that in London the majority of delayed transfers of care days are attributed to CCGs. We therefore cannot see how this aspect of the Act will impact on the use of acute beds regionally and help resolve this issue.

Question 52: Can you provide any best practice examples or guidance relating to hospital discharge for people with care and support needs?

Response to Q52

- Residential reablement services can provide up to six weeks intensive reablement for people, who are too vulnerable to return home. People going through residential reablement are discharged from hospital but then receive 24 hour support in a care home setting. This support prepares them for returning home.

6.4 Working with housing authorities and providers

The draft guidance on integration, co-operation and partnerships covers:

- the place of housing in health and care and support system
- integration of health, care and support and housing
- ensuring cooperation with housing providers
- integrating information and advice on housing
- housing services which may not be provided to meet care and support needs

Key areas where the Draft Statutory Guidance could be strengthened

- LAs are not the only providers of social housing. Social housing is also provided by Registered Social Landlords (RSLs), sometimes referred to as Housing Associations. The Homes and Communities Agency (HCA) regulates registered social landlords and the duty to co-operate should be extended to HCA and RSLs.
- Appropriate housing is strongly linked to prevention and well-being and the Act made it clear that the suitability of housing should be considered by the local authority. However, the Branch is concerned about defining to what extent this duty extends in terms of housing as there is a clear limit to what the local authority has the power to do. It was read by the Branch that housing should be taken into account when considering well-being, but, where appropriate, this should be taken up with housing officers.
- There was some confusion over whether the local authority would be required to supply housing as part of care and support and it should be ensured that this is clear in the regulations.

Implementation issues

- Availability of suitable housing; this should be considered more strongly as part of JSNAs.

Question 53: Could local authorities' duties in relation to housing be described more clearly in the guidance?

Response to Q53

- We welcome acknowledgement of the importance of housing to an individual's health and wellbeing.
- Also welcomed is the requirement to provide information and advice on issues such as housing options and adaptations that may reduce the need for care.
- The Statutory Guidance should however be more specific in describing local authority duties with regard to housing; including duties with regard to allocations, homelessness and house conditions.
- The Statutory Guidance could also be expanded to provide greater detail and more examples or case studies. These could include issues such as the importance of the Housing Health and Safety Rating system to health and wellbeing. The Statutory Guidance could also examine potential housing problems that Local Authorities may face in meeting care needs, such as landlords in the private rented sector refusing adaptations for properties or asking their tenants to leave, by serving notice, when they have requested work to be carried out.

Question 54: Are the links to prevention, integration, co-operation, information and advice, market shaping and assessments adequate?

Response to Q54

- Much of the housing section regarding integration and prevention only refers to 'may' rather than 'should' consider housing issues, outlining the benefits of housing services only. This approach (where there is not a requirement to engage) may risk losing the resources of housing providers/services in supporting a person's care and limit the potential benefits of joint commissioning.
- In terms of market shaping the Draft Statutory Guidance could be more specific with regard to assessing the needs in an area for supported and older people's accommodation.
- Where housing has not historically been seen by practitioners as of importance there is a risk that housing remains a 'Cinderella service' in relation to health and wellbeing. This may not create the 'step change' required by the Care Act to bring better integration of services for the benefit of residents.
- The Draft Statutory Guidance also does not consider the issue of co-operation in Large Scale Voluntary Transfer (LSVT) authorities, where the housing stock has been transferred to a housing association. In these circumstances a local authority is reliant on Registered Providers for affordable housing and it is important that there is a requirement to consider co-operation in these circumstances. It is recommended this issue is addressed within 15.23.
- Further the Draft Statutory Guidance does not particularly stress the role of RPs in supporting tenants with health and wellbeing, focusing mainly on the role of Local Authorities. The role of RP's and benefits of engagement with RPs could be strengthened. As an example RPs carry out significant work to get tenants back into work and training, which could meet a person's care needs such as addressing social isolation. RPs may also offer tenancy support services, such as assisting vulnerable people to maintain their tenancies.

Question 55: How could guidance on the legal boundary between care and support and general housing responsibilities be improved?

Response to Q55

- The Draft Statutory Guidance could be strengthened by providing case studies or examples of where the main housing duties are likely or may interact with care and support requirements. For non-housing practitioners it would also be useful to outline some of the key housing duties e.g. Part V1 (allocation of housing) and V11 (homelessness) of the Housing Act 1996 and the Housing Act 2004, regarding house conditions.
- Clarification of 'grey areas' between housing and care and support should be used in the Draft Statutory Guidance. For example if someone with high care needs was accepted as homeless by a local authority and a subsequent duty to rehouse agreed – but due to their care needs they were temporarily placed into residential care. There would still be a housing duty towards the homeless household which could (over the longer term) be discharged through offering appropriate accommodation, such as extra care housing. The duty to provide accommodation would be discharged as the applicant gains a tenancy and care and support needs are also met.

6.5 Working with employment and welfare services

The draft guidance on integration, co-operation and partnerships covers:

- considering employment at a local level
- considering employment when working with people

Key areas where the Draft Statutory Guidance could be strengthened

- We would welcome strengthening in relation to the duty to cooperate – Partner services e.g. DWP/ JCP - the role of other partners needs to be clearer with indications of the type of co-operation expected (strategic, operational etc.) e.g. the responsibilities that they have to work with local authorities; it will not work if this is a sole responsibility for the LA.
- We would welcome referencing to get other organisations to co-operate with LAs, and give a lever to get DWP etc. to cooperate.
- We would welcome greater emphasis that JCP and DWP are not the only partners in employment issues e.g. universities, adult education; they are currently not mentioned in this chapter
- We would welcome inclusion of effective (evidence based) employment models within the Statutory Guidance e.g. IPS in mental health; also recognised that this also reflects good commissioning practice. If not in the main Statutory Guidance, then easily accessible links to the evidence base, coordinated on a wider level, would be welcome and helpful.
- Direct payments – we would welcome greater clarity about how far to go with DPs in relation to employment, and where the boundary is between social care direct payments and what the DWP should be providing to people in terms of accessing employment, for example.

Question 56: Are there any good practice examples of local authorities working with their partners, including health, education, employment and housing?

Response to Q56

- We would like to the importance of whole system hearts and minds and about all parts supporting each other. Will hold to account partners more when it gets into best practice.

Examples include:

- **Supported employment – Bexley Twofold:** Working with schools, colleges and a range of partners to provide education and training opportunities that help people to find and stay in work. http://www.bexley.gov.uk/index.aspx?articleid=4131
- **CNWL NHS Trust and JCP Westminster:** CNWL Employment Service have developed a partnership with JCP Westminster to work together to implement the evidence based employment model - Individual Placement and Support (IPS).
- **Lambeth -** Lambeth Council is developing the local personal care assistant (PA) market to support individuals to take a direct payment and maximise their independence.

6.6 Transition to adult care and support

The draft guidance on transition to adult care and support covers:

- when a transition assessment must be carried out, for young people, young carers and carers of children
- features of a transition assessment
- the importance of cooperation between professionals and organisations
- provision of age-appropriate local services and resources
- what happens after the young person in question turns 18

Key areas where the Draft Statutory Guidance could be strengthened

- We would welcome greater clarification with regards ‘subject to top-up’, ‘care cap’ and 'those needs'- in the Statutory Guidance because currently this could be open to interpretation. It also needs to be made clear what the impact of acquiring other needs would be.
- There are currently apparent differences in the Draft Statutory Guidance regarding the timing of assessments around the family’s wishes and the use of EHC assessment review to avoid duplication. We would welcome greater clarification.
- In relation to carer assessments - are there differences in adult carer assessments and parent carer assessments - needs to be made clearer in this chapter of the Statutory Guidance.
- ‘Para 16.35- should make it clear that this means the assessment taking place, not the outcome.
- Examples in the Statutory Guidance of transition assessment and plan tools would be helpful as would examples of joining up a transition plan with an EHC plan.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 50) and the number of 'shoulds' (currently 69). Some of this information could be moved to non-statutory good practice guidance

Overall

- This chapter is fairly clear, is non-prescriptive, and reflects current good practice

- The issue of providing 'free care for life' for those with eligible needs at 18 was discussed in terms of the impact on those who will miss this because of age and the impact on budgets. We acknowledge that this will consulted on at end of the year and should clarify the issue.
- It was noted that there are potentially high numbers of people who are e.g. carers of SEN cases and the right to a carers assessment, could lead to a huge assessment burden if drafted to include them all

Question 57: Is the guidance clear enough that the term 'significant benefit' is about the timing of the assessment? Is the guidance precise enough to ensure that 'significant benefit' is not open to misinterpretation and that people who should be assessed are assessed at the right time for them?

Response to Q57

- In relation to 'significant benefit' versus 'Right to assessment' – we note that significant benefit is about the timing of the assessment. Although included in the Draft Statutory Guidance, this point needs to be made upfront at the beginning of the chapter and very clearly (and definition of 'significant', even on timing, is something that can be interpreted). If an assessment is refused, LAs will need to give details of refusal and should ideally give an indication of timing when an assessment will be carried out. It is recognised that much of this will be reliant on social work practice and managing expectations e.g. cares issues and 'significant benefit' carers issues.

Question 58: Are the descriptions in the guidance of people's rights to transition assessments and continuity of care beyond 18 sufficiently clear?

Response to Q58

- We would welcome greater clarity on the links with child and adolescent mental health services (CAMHS)
- Safeguarding – we would welcome greater clarity about the interface between children's and adults safeguarding – needs to make clearer the links to the Safeguarding chapter of the Statutory Guidance, make clearer that this is not an additional burden to set up whole new team/system, etc.

6.7 Prisons, approved premises and bail accommodation

The draft guidance on prisons, approved premises and bail accommodation covers:

- setting the context of care and support in custodial settings
- the application of specific care and support functions in custodial settings
- complaints, investigations and inspections

Key areas where the Draft Statutory Guidance could be strengthened

- Clarity is required with regard to the likely eligible populations in prisons etc. particularly need numbers of all age groups e.g. older people, people with mental ill health, learning disability etc.
- We note that prison officers should not be able to act as advocates
- We would welcome bringing forward the link between Community Safety Partnerships and social care services

- We would welcome greater clarity on the need to recognise that other prisoners often play a caring role for those with care needs, and this may have an implication in terms of the numbers and outcomes of carers assessments
- We would welcome greater clarification on the links between social care and NHS services in prisons- particularly as the commissioning of prisons health services is the responsibility of NHS England
- Greater clarity is required with regard to who is responsible for providing what types of equipment and adaptations in prisons etc.
- Significant issue in relation to the breakdown of mental health care when people go into prison; this needs to be addressed within the Statutory Guidance, especially if the NHS responsible commissioner guidance does not align with the Care Act.
- We note the high level of mobility in London prison populations will lead to the requirement for timely and more frequent assessments, which has resource implications- particularly as this work is not currently being carried out.
- There are particular issues in London in relation to offenders being re-settled in the capital- all boroughs in London will be affected, not just those with prisons
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 15) and the number of 'shoulds' (currently 66). Some of this information could be moved to non-statutory good practice guidance

Question 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 and joint commissioning arrangements between custodial establishments, local authorities and health services.

Response to Q59

- We note that advocacy must be independent of the prison service, and provided by proper advocates. No reason why existing advocacy services shouldn't support those within custodial settings in their locality
- We note that personal budgets always operate within the parameters of choice available, which always face various restrictions. Custody increases those, but doesn't remove the scope for self-direction and this should be maintained as far as possible
- A different range of services could be offered. E.g. using PBs to enable greater access to speech and language therapies, building on the evidence: http://www.rcslt.org/about/young_offenders_and_criminal_justice/evidence_and_resources
- We note that portability of financial assessments and support plans being as difficult as they are in a high-turnover prison setting is one reason why the Draft Statutory Guidance should be strengthened to direct any custody setting to notify a receiving local authority of a prisoner being moved to their area prior to transfer. The LA's can then follow up with Care transition arrangements, but the notification should sit on the prison, as they will know first and should co-ordinate.

Question 60: When delivering care and support in custodial settings, how should local authorities go about reflecting the high prevalence of mental ill health, substance misuse and learning disabilities?

Response to Q60

- We note that prisons should have an integrated MDT to support clients with mental ill health, substance misuse and learning disabilities

- In London we are concerned that the pace with which prisoners are transferred through prisons does not allow MDTs the time to effectively work with these clients and deliver effective client centred outcomes
- We also seek assurance from the Department that LAs will be adequately resourced in order to deliver these duties

Question 61: How might these be best provided in custodial settings and how might responsibility for provision best be identified?

- No comments to make

Question 62: How could the initial assessment of a prisoner's care and support needs be best constructed to be useful in supporting proportionate reassessment and planning to meet any eligible care and support needs in subsequent custodial settings throughout the person's sentence? Are there triggers, particularly which might be identified in the health assessment which all prisoners receive on entering prison, which could help prison staff and/or health care partners to identify when it would be appropriate to refer a prisoner for a care needs assessment?

- No comments to make

6.8 Delegation of local authority functions

The draft guidance on delegation of local authority functions covers:

- overview of the approach to delegation
- the importance of contracts
- which functions may not be delegated
- the difference between legal delegation and outsourcing or commissioning activities
- identifying and avoiding conflicts of interest

Key areas where the Draft Statutory Guidance could be strengthened

- It is unclear how this fits with/relates to usual arrangements for delegation, i.e. via s.75 agreement with NHS partner for mental health social work services. It would be helpful if the Statutory Guidance could be clear on whether this constrains our existing arrangements or supports them.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' (currently 8) and the number of 'shoulds' (currently 19). Some of this information could be moved to non-statutory good practice guidance

Question 63: Are there any core principles or requirements that local authorities should always place on contractors when delegating care and support functions?

Response to Q63

- Core requirements that should always be placed on contractors when delegating care and support functions include:
    - Ensuring staff are appropriately qualified and experienced

  - Ensuring appropriate training courses are undertaken
  - Ensuring that staff are appropriately checked by the Disclosure and Barring Service (DBS)
- The Branch suggests that that sharing good practice information on how a model contract should look like will be helpful

Question 64: Some stakeholders have mentioned that a 'model contract' would be helpful. What would be included in a model contract? Can you give any examples of a good model contract when delegating statutory care and support functions?

Response to Q64

- The London Social Care Partnership developed useful resources for Section 75 agreements in relation to mental health services in the region. This provided structure and support without being prescriptive.
- NHS model contracts are unwieldy and poorly used / understood in many areas.
- Resources for commissioners and legal services on the components of delegating functions, considerations for shaping contracts and non-statutory good practice guidance on the differences between those and commissioned but not delegated functions, would of course be helpful. Statutory Guidance needs to be practically focused.
- We should aim for greater consistency in what issues are addressed and scoped in contracts, but each will have individual issues and need local solutions.

7 Adult safeguarding

7.1 Adult safeguarding

This section of the Branch response has received contributions from the Dignity, Capacity and Safety group whose membership includes the Metropolitan Police, LSAN, NHS England, MCA/DOLS lead and a number of London Directors of Adults Services.

We welcome the Care Act and its focus on safeguarding and in particular the use of the principles embedded in Making Safeguarding Personal and the placing of the Safeguarding Adults Boards on a statutory footing. We also welcome the inclusion of the principles of wellbeing and the use of universal services such as information and advice and access to community support in preventing abuse. Given the crucial role of carers we believe these principles should also apply to them.

In relation to the specific questions;

Question 65: Are there any other types of behaviour that should be explicitly stated in the guidance? Are there any that should be removed?

Response to Q65

- We would like to see further refinement of the Draft Statutory Guidance on the meaning of neglect and self neglect and of institutional abuse.
- There is a question regarding whether poor quality assessment, decision making and planning in health and social care services is intended to be covered in paragraph 14.6? Please clarify. It would be helpful to distinguish between personal and institutional accountability.

- It may be helpful to include a statement that decision making for the purposes of a safeguarding adults enquiry should not be confused with decisions made in other contexts such as decision-making about negligence and liability. These are separate issues.
- We have some reservations about having "exploitation" as a category. This issue can arise under any of the categories and should be taken in to account when assessing risk. It would be helpful if the Department were able to share its thinking behind adding this as a separate category.
- It might also be helpful to reference addressing carers' needs as a critical part of preventing abuse or neglect.
- We would welcome an additional section that makes more explicit family dynamics and the relationship of carers.

Question 66: Are there additional possible members of Safeguarding Adults Boards that we should add?

Response to Q66

- We would like to see the Statutory Guidance state that CCGs must have designated professionals, doctors and nurses, for safeguarding adults and for these designated professionals are members of SABs as is the case in LSCBs and indeed many SABs.
- We would like the Statutory Guidance to recommend consideration be given to involvement of the third sector perhaps through umbrella organisations.

Question 67: Are there additional aspects of the Safeguarding Adults Board's work that we should highlight?

Response to Q67

- It would be helpful for the Statutory Guidance to specifically set out the links to other Boards such as the Health and Well-being Board, the Crime and Safety Partnership Board, QSG's and the LSCB. We believe that a joint LSCB and SAB could reduce the focus on adults, becoming overshadowed by the children's agenda. However we recognise the need for links across to such issues as working with parents who have Learning Disabilities and or mental ill health, and Violence Against Women and Girls.
- It may be helpful to enable the local Board to develop and publish a long term strategic plan and to require publications of updates each year. We would welcome a requirement that annual reports set out the contributions that core partners have made.
- It would be helpful to add in something that clarifies the interfaces of SARs with Domestic or Mental Health Homicide Reviews and with SCRs for children, where there has been a death or serious harm to both a child and an adult in the same household/ environment. In addition the interfaces with MARAC's, Community MARAC's and MAPPA need to be specified.
- Although welcoming the statutory footing of Boards we wish to highlight the resource demands for all agencies. In London there are 32 boroughs and one Police Force, the CCGs and the Hospital trusts cover more than one borough, therefore ensuring sufficient attendance from key partners could be a risk. It would be helpful to set out the expectations of attendees i.e. seniority.

- There is little mention of how resources will be found to service the needs of the Board from a business and administrative point of view. There is a requirement for LSCB partner agencies to contribute to these costs and we would welcome the same clarity for SAB's
- We would like the Statutory Guidance to set out the range of types of review that may be undertaken to add clarity.
- In the section headed Chief Officers and Chief Executives you should include NHS and Police Chief Officers/ CEs/equivalents.
- We would want the Statutory Guidance to say more about the relationship between the role of the SAB and aims found elsewhere in the Act, specifically
    - Preventing the need for care and support s.2 and to cross reference this with the safeguarding chapter to include information on how people can protect themselves from abuse.
    - Promoting integration (s3)
    - Providing information and advice (s4) see first bullet
    - Promoting diversity and quality in provision (s5)

Question 68: Would it be useful to append a draft template for the strategic plan for Safeguarding Adult Boards to use if they wish?

Response to Q68

- Yes, we would welcome a template with the proviso that it comes with an explicit statement that use of it is optional.

Question 69: Is there anything we could add to improve how managers and practitioners view and participate in Safeguarding Adults Reviews?

Response to Q69

- We welcome the focus of the SAR's on lessons learnt and organisational development. One of the most important determinants to the usefulness of Safeguarding Adults Reviews is that they are preceded by an effective Safeguarding Adults Enquiry. We welcome the focus on training of professionals and staff in all agencies to ensure that enquiries and investigations are undertaken by skilled and effective staff.
- We welcome the fact that it defines at least two streams of work: work with the person who has been harmed and work with/ action against the person/ organisation that has caused harm. The bills on wilful neglect, modern slavery and the work on sexual violence will also help if they are harnessed positively.
- However we believe these sections are in need of more careful consideration and Statutory Guidance and set out some detail of our concerns below.
- We would like more detail and Statutory Guidance on the meaning of *"Safeguarding Enquiry".*
- We would also welcome explicit reference to action post enquiries and more explicit statements about enabling people to achieve resolution and recovery. In addition we would like greater clarity on informing relevant people and bodies of the progress and outcomes of the enquiry.
- Our reading of the Act is that s42 creates a duty on the local authority to coordinate whatever the set of enquiries that will constitute the "Safeguarding Enquiry" for any particular case, but that it creates no powers for the undertaking of those enquiries. Therefore, each partner must be able to point to a mandate elsewhere as the basis for its

contribution to the "Safeguarding Enquiry". If this reading of the Act is correct, it would be useful if the Statutory Guidance set this out. If our reading of the Act is incorrect, then it would be useful if the Statutory Guidance made clear what the position is.

The relationship between duties in s42 of the Act and those in s9 & 11 of the Act

It appears to us that when the conditions in s42 (1 (a), (b) & (c)) for a safeguarding enquiry are met, the conditions in s9(1) and s11(2(b)) will also be met. That is to say, a safeguarding enquiry will always involve an assessment of needs for care and support by (or on behalf of) the local authority which the person cannot refuse. If this is not the case, can examples be given of when the conditions in s42 are met which does not trigger the duty to assess under sections 9 and 11?

The Draft Statutory Guidance would also benefit from making clear what is to be done if a matter is referred to the Local Authority for consideration under s42, and they determines no enquiry is required as one or more of the tests in s42 are not met. Is there any expectation to inform others either that a referral has been made, or that no enquiry will take place? Are there expectations on the local authority (or the person or organisation making the referral) about informing:

- The person who has referred the matter to them for consideration?
- The person who was thought to be experiencing or at risk of abuse?
- Any other party?

Is there an expectation that the SAB need monitor the number or nature of safeguarding concerns brought to the attention of local authorities that do not lead to safeguarding enquiries?

Taking actions when there has been no intent to abuse or neglect

As it stands, paragraph 14.8 is unclear and has an ambiguity that needs to be resolved. It risks being read as saying that there would be no need to refer a matter to the police if the abuse or neglect was unintentional. Unintentional abuse and neglect can involve matters that should be referred to the police, and the Statutory Guidance needs to reflect this possibility.

Expectations on partners other than Local Authorities

The Act makes clear the duty on a Local Authority to undertake a safeguarding adults enquiry when the conditions in s42 are met, but neither the Act nor the Draft Statutory Guidance say anything about expectations on partners to bring such matters to the attention of the Local Authority. Without this, there is a risk that concerns about people with care and support needs who are experiencing or are at risk of abuse and neglect may be dealt with as an "internal matter" by, say, providers of health and social care services. This seems to be at odds with the intention of the Act.

Paragraph 14.55 says "It is the responsibility of all staff and members of the public to act on any suspicion or evidence of abuse or neglect and to pass on their concerns to a responsible person/agency." This seems to fall short of what is needed, as it does not create a shared expectation of what constitutes a "responsible person / agency". For example, consider a situation in which a nurse on a hospital ward sees or hears something that gives them cause for concern about possible abuse or neglect, which they report to the ward manager. Does this constitute all that is

expected about passing concerns "to a responsible person / agency"? Is there an expectation in such a case that a referral will be made to the local authority?

Paragraph 14.32 says "The employer should investigate any concern unless there is a compelling reason why it is inappropriate or unsafe to do this". Without the Statutory Guidance saying anything about an expectation that the employer has referred the matter to the local authority it appears that the decision making about whether the employer investigates or not to be one for that employer to make independently, rather than being a decision which the local authority has a duty to make under s41(2).

As it stands the Draft Statutory Guidance appears to allow service providers to undertake internal investigations into concerns about abuse or neglect, or the risk of these, without referring to the Local Authority. At best, this risks Safeguarding Boards not having the full picture of the safeguarding concerns in its area. At worst, it creates the space for the lack of effective scrutiny and challenge as was seen in Mid-Staffs or Winterbourne View.

In order to avoid confusion, the Statutory Guidance should state that Relevant Partners must make referrals to the Local Authority where it appears that a case may meet the tests in s42(1(a), (b) and (c)), and that their commissioning arrangements should place the same expectation on service providers.

We need greater clarity about Care Quality Commission and commissioners (health and social care) roles if this is to really work - and when safeguarding might be the only option – particularly if providers are failing and therefore aren't competent. 14.31 It is good that this is such a clear statement about the first responsibility in regulated settings being the provider, then with regulators and commissioners. However, it would help to add in something about the fact that there may need to be the involvement of social workers, therapists, or others, in order to support people to recover after abuse or neglect.

Exclusion from right to refuse of assessments where there is abuse, neglect or the risk of these

There is, or at least appears to be, a tension between

- The person-centred aims expressed in the Draft Statutory Guidance
    - The principle of "Empowerment" as in paragraph 14.4
    - Applying "Making safeguarding personal" as per paragraph 14.51 and 14.21
- Local authorities being under a duty to undertake an assessment of need for care and support in such circumstances, which the person cannot refuse

Perhaps the Statutory Guidance can make clearer what a local authority might reasonably do in circumstances in which it is required to undertake an assessment of someone under s9(1) and s11(2(b)) where that person does not wish to be assessed and does not engage with the assessment process or where the local authority is prevented from making an assessment by a third party. .

The Statutory Guidance needs to make clear the expectations on a local authority in meeting the requirement of s9(5(a)) to involve the person in an assessment of their needs, in circumstances where the person does not want to be involved and refuses to cooperate with an assessment that the local authority is under a duty to complete under s11(2(b))?

Safeguarding adults enquiries in integrated services

We welcome the clarity of section 18.4 and that councils retain responsibility for delegated functions. We also welcome the clarity that the safeguarding lead functions of councils may not be delegated. However it would be helpful to clarify how this works in practice where Local Authorities have seconded staff into an integrated service such as a Mental Health Trust and they undertake safeguarding investigations. With further integration very much a part of the agenda it would be helpful to have absolute clarity on this.

Risk of abuse and neglect

S42 duties are triggered not only by someone experiencing abuse and neglect, but by being at risk of these. How is this to be understood and applied in day-to-day work? On the face of it, the absence of a threshold about risk seems problematic as everyone faces some residual risk of abuse and neglect at all times.

Cross-border safeguarding adults work

S42 clearly relates to a person in the local authority's area. But where a s42 duty and an s9 duty co-exist, and as ordinary residence does not come in to the assessment and support planning process under s13(3(c)) does the s9 duty apply to

- The local authority where the person is
- The local authority where the person is ordinarily resident
- Both

The importance of continuity in any safeguarding investigations should be stressed here.

Safeguarding adults policy and procedures

Paragraph 14.44 says that local safeguarding adults' policy and procedures should be both reviewed annually and "routinely updated to incorporate lessons from recent cases". "Routinely updated" is too vague to be useful

- The requirement to incorporate recent lessons should be included in the annual review.
- There needs to be clarity what "recent cases" means: Might these mean safeguarding enquiries carried out by that local authority? Safeguarding reviews carried out nationally? If the latter, the Department of Health will need to ensure there are mechanisms in place at a national level to collate and share these.

Safeguarding Adults Reviews

The Statutory Guidance should create an expectation that recommendations from Safeguarding Reviews are written in a way that implementation or completion is measurable, and the recommendation is achievable by the SAB that has commissioned the Review.

The Statutory Guidance should say that social work training, regulation, and professional bodies should be informed by the learning from Safeguarding Adults Reviews. In this way learning can be shared regionally and nationally. This is particularly important for London given its close Local Authority boundaries and the complexity of partner's structures.

The Statutory Guidance should say that relevant partners that are involved in a Safeguarding Review should make a contribution to the costs of the Review.

Record keeping

Paragraph 14.46 seems to need greater clarity. Of particular note

- Along with abuse need to add neglect and risk as in other parts of the Statutory Guidance.
- We think it would be better to say "Clear and accurate recording by all agencies is of importance. Each agency should have procedures which set out how this recording is to be done and whom by. Each agency should ensure that actions it takes are recorded using systems that readily allow a review of the response to the concerns."
- We question making records available is limited to CQC regulated services? Would it be more useful to say "providers of services should ensure these records are made available to service commissioners and regulators when reasonably required"?

Question 70: Are there other areas of information sharing that need to be spelt out in this section?

Response to Q70

The Statutory Guidance needs to be clearer about when a person's wishes around information sharing might be overridden. We think this could be along the lines of the London Safeguarding Adults Policy and Procedure which say:

"Where an adult at risk with capacity has made a decision that they do not want action to be taken and there are no public interest or vital interest considerations, their wishes must be respected. The person must be given information and have the opportunity to consider all the risks and fully understand the likely consequences of that decision over the short and long term."

Vital interest

If the adult at risk has the mental capacity to make informed decisions about their safety and they do not want any action to be taken, this does not preclude the sharing of information under Safeguarding Adults procedures with relevant professional colleagues. This is to enable professionals to assess the risk of harm and to be confident that the adult at risk is not being unduly influenced or intimidated, and is aware of all the options.

This will also enable professionals to check the safety and validity of decisions made. It is good practice to inform the adult at risk that this action is being taken unless doing so would increase the risk of harm.

Best interest

If an adult at risk lacks capacity to make informed decisions about maintaining their safety and they do not want any action to be taken, professionals have a duty to act in their best interests under the Mental Capacity Act 2005. This would automatically trigger a Safeguarding Adults referral.

Public interest

If the adult at risk has the mental capacity to make informed decisions about maintaining their safety and they do not want any action to be taken, practitioners have a duty to share the information with relevant professionals to prevent harm to others. This will automatically trigger a Safeguarding Adults referral." (SCIE Report 39, page 48)

8 Moving between areas: inter local authority and cross-border issues

Key areas where the Draft Statutory Guidance could be strengthened

- The Draft Statutory Guidance is over complicated with too much detail about "the day of the move". In our view it is also unworkable. A number of LAs currently continue a direct payment or care plan for up to 6 weeks if someone moves out of the borough to give the new local authority time to make the new arrangements. The Draft Statutory Guidance makes an everyday occurrence into a huge area of complexity.
- We think the Draft Statutory Guidance around how adaptations should be dealt with appears ill-thought through. It is impractical to assume people will always be able to take their stair lifts with them when they move.
- We request that the Department recognises that it is not within the gift of LAs to determine where and when citizens may choose to move. We would welcome the Draft Statutory Guidance to acknowledge this point.
- We would welcome editing of the Draft Statutory Guidance to reduce the number of 'musts' and 'shoulds' within the three subsections which currently are as follows:
    - Ordinary residence 20 'musts' 54 'shoulds'
    - Continuity of care 37 'musts' 49 'shoulds'
    - Cross-border placements 14 'musts' 64 'shoulds'
- We believe that some of this information could be moved to non-statutory good practice guidance

8.1 Ordinary residence

The draft guidance on ordinary residence covers:

- how ordinary residence affects the legal framework in the Care Act
- how to determine ordinary residence
- determining ordinary residence when a person moves into certain types of accommodation in another local authority area
- disputes between authorities, and the process for seeking a determination by the Secretary of State for Health
- financial adjustments between local authorities
- further information where ordinary residence may apply, relevant scenarios and other legislation under which ordinary residence determinations can be made

The draft Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014, cover:

- the types of accommodation to which the ordinary residence principle applies when arranging care and support in another local authority area

The draft Care and Support (Disputes about Ordinary Residence, etc.) Regulations 2014 cover:

- the process when disputes around ordinary residence arise

Question 71: Are the definitions of the types of accommodation as cited in the regulations too wide? Are they workable and clear?

Response to Q71

- The specified accommodation regulations detail the types of accommodation to which the ordinary residence 'deeming' provision applies and sets out three types of accommodation: care homes, supported living/extra care housing and shared lives/adult placement schemes. The definitions of these types of accommodation are not sufficiently explicit in the regulations for example 19.26 pg. 287.
- The Regulation refers to old standards for example section 3 of the Care Standards Act 2000, but the definition should be clearly referred to in the Care Act.
- The difference between extra care and supported housing is not sufficiently explicit.
- Supported living' appears to be a grey area. The arrangements and entitlements to housing benefit are not clearly specified. It is unclear if those in supported living arrangements will be entitled to housing benefit and for those with supported living with direct payments what the entitlement is to have continuity of care. It should also be recognised that many residential facilities are now de-registering as care homes and registering as supported living, even though the nature of their care offer has not changed. This can mean that host Councils are becoming responsible for those placed by other Councils as a result of the registration change, not because the resident has made a choice to make the local area their home. This is leading to gaming in the system as Councils seek to transfer costs to other Councils, which has a disproportionate impact on outer London boroughs with larger numbers of care homes and supported living schemes, although outer London boroughs receive lower levels of RSG than inner London boroughs. These impacts are against the spirit of OR rules and should be addressed.
- What is meant by 'specifically designed' or 'adapted', is this adaptation in terms of facilities and equipment, designation of space or does this for example constitute a physical change to the layout or structure of the building? This needs to be specified in the regulations. Further clarification is also required in terms of 'specifically designed' and 'adapted' specifically in relation to facilities for people with learning disabilities/mental health.
- There is a lack of clarity if changes are to be applied retrospectively. It is recommended that it is explicit that they aren't.
- The plans and arrangements for ensuring that regulations in the act are aligned or supersede other regulations needs to be explicit within the regulations.

Question 72: Do the guidance and regulations about ordinary residence disputes provide enough clarity to settle ordinary residence disputes between two or more local authorities? Are there other scenarios that it would be helpful for the guidance to consider?

Response to Q72

- Yes, the Draft Statutory Guidance and Regulations about ordinary residence disputes provide clearer guidance than in the past and the level of dispute should therefore be reduced. However there is not sufficient clarity if they have 'more than home'. In these circumstances it might be difficult to determine their ordinary residence. 19.14/42/43 could also leave scope for ambiguity and this might cause some conflict in determining ordinary residence.
- The Draft Statutory Guidance around ordinary residence could also create some issues regarding step down; whilst the Statutory Guidance is clear on responsibility when placing in certain types of accommodation outside the area of ordinary residence that responsibility remains with the placing authority there are potentially issues regarding step down as the Statutory Guidance states that if someone moves out of specified accommodation and decides to remain in that area it can then become their ordinary residence and this could create some perverse strategic incentives in terms of placement strategies.
- There needs to be a consistent formula/arrangements between social care and health and ordinary residence for CCGs to replicate those of local authority – e.g. in relation to LAC service. In terms of health care ordinary residence should sit with area in which their registered GP is.
- Need clear read across between Transition
- Pages 308/309 – step 3 – where is step 3? (4 steps and only 3 or is there 4 steps).

Question 73: Which authority should be responsible for meeting the needs of an adult or carer when two authorities are in dispute or another authority cannot come to an agreement on who should be the lead authority? Do you agree with the regulations as currently set out?

Response to Q73

- This question is in relation to Regulation 2 care and Support (Disputes about Ordinary Residence, etc.) Regulations 2014 the responsible authority for service provision pending the resolution of the dispute [lead authority]
  a) LA providing care and support to customer when dispute arises
  b) If no LA providing care and support when dispute arises LA in whose area adult residing
  c) If adult in need of care and support not residing in any LA area; it is the LA in whose area the adult is present
  d) If the responsible LA who has a duty to provide interim services pending resolution of the dispute is not a party of the dispute – the other LAs who are in dispute must bring to the LA in question that
     i. its duty to provide services in the interim and
     ii. that it is the lead authority in the dispute and has certain duties as such with regard to the speedy resolution of the dispute or referral to the Secretary of State for determination].
- The regulations set a clear scheme of responsibility to be lead LA and responsibility for providing interim services.
- However it is not clear what happens if a LA assumes the role of lead authority in the event that the LA charged under the regulations with meeting interim provision pending resolution of the dispute steadfastly refuses to accept it has any duty and denies that it is the lead LA
- Can the LA that feels that one of the authorities should assume the role of lead authority and subsequently does so - recover its costs from the authority that was the lead LA under the regulations?

- What are the sanctions that are available to the Secretary of State when local authorities do not comply with their duties under Regulation 3 of the Care and Support (Disputes about Ordinary Residence, etc.) Regulations 2014, which sets out the steps to be taken prior to referral of a dispute?
- Where an referral to the Secretary of State [SoS] for determination has been lodged with the Department of Health prior to the implementation of the Care Act 2014 [1st April 2015] but has not been determined subsequent to the Care Act 2014 coming in to force, please confirm whether that dispute will be determined on a pre-Care Act basis ?
- Can you please also confirm the approach that the SoS will take in circumstances where a referral of a dispute to her for determination has not been lodged but a formal notification of the dispute was sent to the other local authority in the dispute before the commencement date of the Care Act 2015 but the 4 month period of negotiation, within which the dispute must be resolved prior to a referral for determination being made to the SoS [pursuant to Direction 4 the Ordinary Residence (National Assistance Act 1948) Directions 2010] expires after the commencement date for the Care Act 2014?

8.2 Continuity of care

The draft guidance on continuity of care covers:

- making informed decisions to move, confirming the intention to move, supporting people to be fully involved in the process
- what to take into account when planning the move
- how to ensure continuity of the person's care if the second local authority has not carried out an assessment ahead of the day of the move

The draft Care and Support (Continuity of Care) Regulations 2014, cover:

- what local authorities must have regard to when they have not completed an assessment on the day of the move

Key areas where the Draft Statutory Guidance could be strengthened

- 20.13: 'The person may request assistance…the authority should ensure that they have access to all relevant information and advice…' This could be clearer as to what support the person can expect- a Visit where communication needs are such that this would be preferable to a telephone call? How the person-the LA could meet their duty by having a website with some information; leaflets in their civic centre/ or local library. Perhaps stating when an independent advocate will be required.
- 20.16: Could the Draft Statutory Guidance be clarified in relation to those who were receiving care under children's legislation - but the care facility is not registered for adult care-thus a transfer of care and continuity of care provision needs to be planned in a timely manner to manage expectations and support needs.
- 20.17: 'A copy of the person's most recent care and support plan' –to try and stress the importance of the second authority proving for a seamless service it would be better stated A copy of the persons most recent care and support plan-which must include a Holistic assessment to include all including carers contribution-primary care; Speech and Language; physiotherapy; falls clinic; memory clinic; MDT; not just LA. Where the needs have been unchanged-The assessment must be no more than 12 months old. For such cases a Pathway for referral and gathering of assessments by the care co-ordinator as a single point of

reference would be beneficial. Additionally the Adult should not be required to speak with several different people in each area.

- 20.24: Preventative services - sometimes assessments are undertaken with the services in mind that will meet the evident or most significant need. With so very many more people on the trajectory of developing memory issues; dementia, Alzheimer's disease. This section could be worded so that even if a service or activity for older people or those with Downs Syndrome is not provided in the originating Authority to promote maintenance of Cognitive function-this should be considered as Important for wellbeing. Furthermore services that address the issue of loneliness would prevent deterioration in wellbeing.
- 20.32: The receiving LA will need to be made aware in the care and support plan of any contract for annual maintenance of that equipment; whether that contract will need amendment /adjustment-and when the equipment is due to be replaced.
- Annex H, point 3: There will be cases where the equipment has been joint funded-this does not appear to be addressed
- 20.34: Where a piece of equipment is on long term loan from the NHS. The discussion needs to be not only with the second LA but also with the NHS locally about their familiarity with that equipment and anticipatory orders. For example adults who have BIPAP and relevant equipment; suction machines; tracheostomy -long term and established
- We would welcome greater clarity regarding how disputes that are underway under existing law will be dealt with?
- We would welcome greater clarity regarding how self funders will be dealt with who have placed themselves in a borough in terms of determining ordinary residence?
- In terms of disputes and resolution reference page 291-19.46, more clarity is needed to enable resolution to be reached. We would welcome greater clarity on what will be in place to support this when the Act first comes into force; there is no reference to any provision of central support to facilitate resolution such as a mediation service for 6 months whilst Council's fully embed practice.
- There needs to be further clarity where there are joint funding arrangements for example do they 'return' until dispute has been resolved?
- The overriding principle is that care is not negatively implemented; this needs to be brought through more sharply with much more explicit Statutory Guidance that this must be the highest consideration.
- Provision is for critical/substantial needs; guidance is therefore lacking if moderate needs are being provided for or prevention services are in place; in this scenario what constitutes 'care' and what constitutes 'prevention'?
- Retaining continuity of care and support should not be a disincentive to step down and there is a risk that currently the Draft Statutory Guidance may create this as responsibility only relates to substantial and critical need.
- Is there an expectation that 'all' responsibilities apply for a care package?
- Social Care Act - issue of finding families housing and affordable housing in London - what is meant by 'suitable' housing accommodation?
- 20.32 - Loan equipment should move with the person. Needs to be some further work to establish how contracts work as it might be more cost effective to provide it within the local area. In situations where it is integrated into the home where would costs for this be picked up resulting from a move?

Implementation issues

- 20.36-Ordinary residence - further clarity for all to follow please so as to minimise disputes.

Question 74: What further circumstances should be considered when carers and people with care and support needs want to move?

Response to Q 74

- 20.1 That those who wish to Transfer to another location should reasonably expect there to be no interruption to their care and support is an excellent standard of requirement for LA's to work together – this expectation should be strengthened by the "how" this can be achieved-for example-A key-co-ordinator will be identified by each LA; they will make themselves known to patient and carer; they will liaise with other members of the MDT who will also need to ensure continuity of service-such as Primary care-prescribing/medication;-collection and re-provision of equipment; NHS services-such as those for long term conditions- that is seamless.
- The Care Act makes changes to mental health reference 19.38/19.39, is it retrospective?
- In relation to Deprivation of Liberty, there might be additional responsibilities - organising authority; needs to take account of recent court judgement.

8.3 Cross-border placements

The draft guidance on cross-border placements covers:

- principles which apply to cross-border residential placements
- steps to take when making a cross-border care home placement
- how to manage disputes between authorities

The draft Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014, cover:

- process for resolution of cross-border disputes that may arise between authorities about the general principles of non-transfer of responsibility
- process for resolution of cross-border disputes that may arise between authorities in relation to temporary duties to meet needs in the provider failure context

Question 75: Do the regulations provide for an effective dispute resolution procedure?

Response to Q75

- We welcome the Regulations laying out a very clear dispute resolution process

Question 76: In particular, in setting out the process for local authorities to follow when making a cross-border residential care placement, are there any gaps or omissions in the guidance in terms of key issues that need to be addressed before a placement can successfully take place?

Response to Q76

- We believe that the guidance is contradictory in places. When placing in devolved administrations into nursing homes a local authority has to inform the relevant CCG but when placing in nursing care in its own area the local authority has to obtain consent of the CCG

- Paragraph 21.51 states that the first authority retains responsibility for reviews and amendment of the support plan. It would be helpful is the guidance was stronger in terms of encouraging reciprocity around reviews.

Question 77: With regard to the arrangements for managing a placement once it has commenced, can you envisage issues other than those identified? Specifically, what are these and how should they be addressed?

Response to Q77

- No specific issues identified

Question 78: Would it be helpful for the guidance to be supplemented by best non-statutory good practice guidance? If so, what issues and scenarios will it be important for best non-statutory good practice guidance on these placements to cover?

Response to Q78

- Yes it would be helpful for a best practice guide that it clear and concise and perhaps contains some process flow diagrams

9 Other areas

9.1 Registers

The draft guidance on sight registers covers:

- registration, certification and making contact with people who are sight impaired
- rehabilitation and care planning for those individuals
- the use of other registers

The draft Care and Support (Registers) Regulations 2014 cover:

- who should be treated as sight-impaired or severely sight-impaired

Question 79: Should certification of CVIs be extended to senior ophthalmologists, or should this continue to be carried out by consultant ophthalmologists as is currently the case?

Response to Q79

- Yes, we would welcome the extension of CVIs to senior ophthalmologists

Question 80: Should we seek the patient's consent to pass their contact details to RNIB, as well as to the local authority, as part of the CVI process in order for RNIB to offer advice and support?

Response to Q80

- Yes, we feel that patient's consent should be sought to pass their details to RBIB and LAs.

9.2 Transition to the new legal framework

The draft guidance on transitional provisions covers:

- transition to the new statute in 2015/16 for people receiving care and support, and carers
- the status of previous assessments and eligibility determinations under the Care Act
- the role of care planning and review in implementation
- preparing for funding reforms in 2016/17:
- understanding the likely demand
- awareness raising
- approaches to carrying out early assessments and managing capacity
- other systems implications

Question 81: Are there other considerations around preparation for implementation of the April 2015 elements of the Care Act on which national guidance would be helpful?

Response to Q81

- It would be helpful to have more Statutory Guidance and any draft regulations with respect to the provision if any of care and support to persons from abroad with no recourse to public funds or otherwise subject to immigration control.
- Section 21 Care Act [CA] 2014 provides that: "A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 ("the 1999 Act") (exclusion from benefits) applies and whose needs for care and support have arisen solely—
    - because the adult is destitute, or
    - because of the physical effects, or anticipated physical effects, of being destitute
- It also provides that a local authority may not meet its duty under section 2(1) CA 2014 to prevent or delay the development of future needs for care and support in relation to an adult to whom section 115 of the Immigration and Asylum Act 1999 applies.
- It is presumed that an asylum seeker or any person whose immigration status is not regularised who presents to a LA presenting with asserted needs for care and support should be assessed [as should any carer for that individual] and if there are eligible needs for care and support to the adult [or his carer] the LA must meet them – subject to the provisions to Schedule 3 Nationality Immigration & Asylum Act 2002 [NIAA 2002]
- It is further presumed that Paragraph 1 Schedule 3 NIAA 2002 is being amended.
- Paragraph 1 of Schedule 3 NIAA 2002 sets out a number of current social care provisions which are to be repealed under the CA 2014.
- The services set out in Paragraph 1 are services to which certain classes of person from abroad are prima facie ineligible subject to either human rights and EU treaty rights exceptions.
- At present section 117 Mental Health Care Act 1983 [MHA 1983] - the provision of after care services to persons who have been compulsorily detained in hospital are excluded from Paragraph 1.
- This means currently that a person who comes within any of the ineligible classes for care and support are entitled to section 117 after care services if they have been detained under section 3 MHA 1983.
- However as the CA 2014 has amended aspects of section 117 MHA 1983 it would be helpful to know whether it is proposed that section 117 will now be inserted under any new proposed Paragraph 1 under Schedule 3 NIAA 2002.

- It would also be helpful to know how it is envisaged that social care provision to adult persons from abroad will interact with the proposed provisions under the Immigration Act 2014 specifically:
    - The provisions that are yet to come into force which prohibit the lease of residential accommodation to persons who are disqualified because of their immigration status and sanctions being imposed on social landlords for not checking on the backgrounds of tenants
    - The provisions with regard to costs recovery from persons from abroad with regard to reimbursement of hospital treatment and if any similar regulations or amendments are proposed with regard to recovery by LAs with regard to the provision of services pursuant to its power under section 22(4) CA 2014 and its duty under section 3 CA 2014
- As noted in the Wiltshire representations, there is concern that personal injury payments may not be able to be taken in to account when charging service users for the provision of care. As you will be aware, at the current time the rules around the use of personal injury payments are covered in guidance and not regulations and allow for such payments to be taken in to account in certain circumstances. The Branch would suggest that rather than having this matter in the regulations it should remain in the Statutory Guidance. However, if this is not possible they would support the amendments to the regulations that were suggested by Wiltshire which would allow for such payments to be taken in to account. If this does not happen it could have significant financial implications for local authorities.
- We would welcome easy read version for each section of the Statutory Guidance and practitioner tools and templates
- It would seem sensible to delay deferred payment introduction until new extended means test is in place and other primarily financial management changes relating to the Dilnot recommendations are in place.
- It would be helpful if the regulations and guidance on appeals were widened to cover non-financial aspects of the Care Act.
- Implementation of the Act within integrated adult mental health settings needs particular guidance to account for where systems are integrated in different forms with NHS secondary services / Foundation Trusts. There are major risks of non-compliance & of building in a lack of equality of practice between mental and physical health at a time this is being challenged assertively and with some success at a national level from elsewhere in DH.
- Individual boroughs lack leverage in shifting Trusts, and regional co-ordination is difficult. Directive interventions from DH are needed to help budge Trusts to adapt for delivery, and more thought needs to go into what compliance looks like in these service areas.

Question 82: Are there other considerations around preparation for implementation of the April 2016 elements of the Care Act on which national guidance would be helpful?

Response to Q82

- Volume of assessments – driving change in model of delivery in a short time with little or no time to pilot or refine solutions, transition arrangement guidance also increases this burden over the short term through the requirement to identify cases that previously were ineligible and reassess as a priority.
- Reference section 23.15 of the Draft Statutory Guidance we do not agree with the statement “the general rules on determining ordinary residence have not changed and previous ordinary residence determinations will continue to apply”. The rules for Ordinary Residence have changed.

- We feel that the following wording used in section 23.26 is inappropriate:-"people with modest assets" this need to be defined in a better way.
- Section 23.36 the phrase "around April 2016". This need to be more specific.
- 23.27 – there is no reference to information governance and data protection when referring to sharing information.
- Clarity around the status of current deferred loans and whether people are able to continue to defer residential and nursing home costs against current agreements once the Care Act is enacted – especially as the legislation under which these loans have been provided is being repealed. Guidance around 'targeting' affected groups would be useful particularly for those who may have eligible needs under the Care Act. It is difficult to ascertain the populous who do not currently meet FACS eligibility but who may meet the new eligibility criteria as their appears to be no correlation between the existing and new eligibility criteria
- We would welcome easy read version for each section of the Statutory Guidance and practitioner tools and templates
- We would welcome some guidance on charging for arranging care including administrative fees.

9.3 Monitor licensing regime and social care organisations

Key area where the Draft Statutory Guidance could be strengthened

- Clarification required as to what is meant by 'providers of NHS continuing healthcare' as there is no such thing as providers of CHC, rather CHC is a funding stream, and people eligible for it can receive a range of services, typically care homes, home care, community nursing etc.

Question 83: Do you think that providers of NHS continuing healthcare and NHS-funded nursing care should continue to be exempt from the requirement to hold a licence from Monitor?

- Unable to answer at present until clarity received

Question 84: Should providers NHS continuing healthcare and NHS-funded nursing care services be subject to those services being designated Commissioner Requested Service?

- Unable to answer at present until clarity received

10 Appendix A – Consultation Methodology

The regional submission was overseen by the London Care Act Lead Director of Adults Services group.

As part of the London ADASS Branch consultation and engagement around the Care Act, we organised a number of consultation activities relating to areas covered in the Department of Health consultation on the Care Act draft regulations and guidance. Each group was chaired by a London Director of Adult Services. The activities are set out below[i].

1. Name: Care Act Leads Network
People involved: Care Act Leads for each London authority
Details: The Care Act Leads Network was set up support London authorities in implementing the Care Act. The Care Act leads divided into five sub-regions are reviewed specific elements of the Regulations and Guidance. These were then added to the final submission

2. Name: Carers Leads Network
People involved: Carer Leads for each London authority
Details: The carers leads met twice over the consultation period and reviewed the Regulations and Guidance through a carers' lens

3. Name: Prevention Task and Finish Group
People involved: Prevention leads within London authorities
Details: The prevention task and finish group met twice over the consultation period and reviewed the Regulations and Guidance through a prevention lens

4. Name: Safeguarding Perspective
People involved: The Dignity, Capacity and Safety group whose membership includes the Metropolitan Police, LSAN, NHS England, MCA/DOLS lead and a number of London Directors of Adults Services.
Details: All contributed to the safeguarding elements within the regional response

5. Name: Care Act Commissioning Leads Network
People involved: Care Act Commissioning leads within London authorities
Details: The Care Act Commissioning Leads Network met twice over the consultation period and reviewed the market shaping and commissioning and managing provider failure and other service interruptions elements of the Regulations and Guidance

6. Name: Directors of Housing consultation event
People involved: Directors of Housing (or designated alternate) within London authorities
Details: The Directors of Housing (or designated alternate) met once over the consultation period and reviewed the Regulations and Guidance through a housing lens

7. Name: Finance Leads Network
People involved: Finance Leads within London authorities
Details: The Finance Leads met twice over the consultation period and reviewed the Regulations and Guidance finance elements as well as all the Regulations and Guidance through a finance lens

8. Name: Care Act 2014 Lawyers Group

People involved: Legal professionals from London authorities
Details: The Care Act 2014 Lawyers Group met once over the consultation period and fed into the regional response

9. Name: London Care Act regional consultation event
People involved: Approximately 170 delegates from LAs, NHS, provider organisations
Details: The regional event focused on five elements of the Regulations and Guidance. These included:

- Transitions
- Information, advice and advocacy
- Carers
- Deferred payments
- Assessment and eligibility

[i] Notes of each of the events above are available upon request