

# Consultation response

Ref: 5109

## Department of Health consultation on 'Prioritising need in the context of putting people first: A whole system approach to eligibility for social care

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Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207–221 Pentonville Road, London, N1 9UZ, company number 6825798, registered charity number 1128267. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age NI, Age Cymru.

## 1) Introduction

This consultation proposes new guidance to replace *Fair Access to Care Services* (FACS) guidance on eligibility for social care services. FACS is a national framework that local authorities must use to set local eligibility criteria. The framework does, however leave considerable scope for local discretion. Individual's needs for care are assessed as critical, substantial, moderate or low, and local authorities can choose which level of need they will meet. Most now provide services only to people with critical and substantial needs.

FACS results in services being targeted at those with the highest needs (though this trend was already well established before FACS was issued). This is seen as being at odds with the current focus on redirecting resources towards prevention. Whilst FACS does require local authorities to consider preventative services this aspect of the guidance is not well integrated into the rest of the framework.

FACS also assesses needs on the basis of risks to the status quo. In one respect this approach is positive as it requires that local authorities assess a wide range of risks, including to social relationships, roles and responsibilities, and not just to physical safety. However it is at odds with the personalisation agenda which aims to support people in achieving the outcomes that are important to them as individuals.

The proposed new guidance is intended to address these issues within current legislation. It is proposed that, like the current FACS guidance, it will be issued under section 7 of the Local Authority Social Services Act 1970 and will therefore be binding on them.

## 2) The consultation questions

The following are Age Concern and Help the Aged's responses to the questions set out in the consultation.

### 1) **Do you think the guidance sufficiently integrates the application of eligibility criteria within the new policy context of personalisation, choice and control? If not, what changes would you propose?**

The main problem with current FACS in relation to personalisation is that it considers risks to the status quo rather than to the achievement of outcomes. It therefore disadvantages those people for whom merely preserving the status quo would not enable an acceptable quality of life. The proposed new guidance attempts to address this issue, and includes a set of outcome areas (paragraph 46) where support should enable individual aims to be achieved. These outcomes are helpful, but it is not entirely clear how the 8 outcome domains link up with the risk domains in the FACS framework. We recommend that these outcomes should be used to define the terms 'vital', 'substantial' moderate and critical as they are used in the FACS framework. So for example risk to vital social support systems and relationships should mean social support systems and relationships that are vital in order to achieve outcomes across the 8

domains. To give another example if loss of choice and control resulted in inability to achieve outcomes in the third outcome area, personal dignity and respect, this would qualify as a critical need.

A number for local authorities have used local FACS criteria that confuse the level of need in terms of risks to outcomes with urgency of need – for example stating that for a need to be critical the risk to ‘vital’ aspects of a person’s independence must be immediate or must arise within a defined period such as a few weeks. Age Concern and Help the Age has criticised this practice on the basis of the risk posed to people who need care and support, but it also undermines the spirit of both FACS and the proposed new guidelines. The proposed guidelines state, in this respect, that *‘Councils should ensure that a person’s needs are considered over a period of time, rather than at a single point, so that the needs of people who have fluctuating and/or long term conditions are properly taken into account’* (paragraph 49). Paragraph 44 also states that *‘councils should prioritise needs that have immediate and longer term critical consequences for independence and well-being’*. We strongly agree with this. We recommend that local criteria which require, in addition to the national framework, that risks should be immediate should be prohibited. At the very least the time period should be up to whenever it is that the local authority has agreed to review the assessment. This might be a very short period if the local authority sees assessment as a continuous process and expects to update the assessment within weeks or months, but might be longer. Guidance on reviewing care packages should also refer to this issue.

Paragraphs 31 and 49 of the consultation paper refer to the relationship between assessment, rehabilitation and intermediate care, and states that ‘before proceeding to determine eligible needs’ councils should ‘consider whether an individual might benefit’ from re-ablement or intermediate care’. However this ‘consideration’ itself should involve an assessment in order to ensure that short term re-ablement meets people’s needs. This paragraph should reflect the development of the Common Assessment Framework and its predecessor, the Single Assessment Process for older people, which are based on the idea that assessment should be a cumulative process rather than a single event. Paragraph 49 makes this point with regard to fluctuating and/or long term conditions but it is also true of shorter term events such as hospital discharge where an assessment needs to begin whilst the person is still in hospital, but might not be completed until it becomes clear how well a person is able to cope on returning to the community.

**2) Do you think the guidance sufficiently outlines councils’ responsibilities towards their wider community as well as those individuals with eligible needs? If not, what changes would you propose?**

We have comments on two aspects of responsibilities to wider community.

**i) Support for carers;**

Paragraph 74 of the consultation states that *‘eligibility should take account of the support from carers, family members, friends and neighbours which individuals*

*can access to help them to meet presenting needs*'. This is misleading. The presence of a carer should not be treated as resulting in lack of need; otherwise the carer's contribution will not be referred to in the care plan as meeting those needs. This means that unmet needs arising from the carer being temporarily unavailable (for example if the carer contracts swine flu) will not be apparent. Whilst the carer is present those needs might not trigger eligibility for services, but what the assessment should record is that the person has a need which would qualify for help under FACS criteria but for the presence of the carer. The care plan could record that in spite of assessed need for it, no support is normally required due to the contribution made by the carer. However there should still be a contingency plan or at least an alert included in the care plan and it should be clear that this is in response to a need identified by assessment against FACS or its successor.

Current FACS guidance supports this approach and lists elements that should be in the care plan, including contingency plans to manage emergency changes and *'contributions which carers and others are willing and able to make'*. This makes it clear that the care plan is a statement of all needs and how they will be met, whether through services or community or family support, and not just of eligible needs and services that are provided in response to them'.

The proposed guidance takes a more limited approach. Paragraph 97 describes the content of the written record of the support plan but only refers to recording of eligible needs so does not result in a care plan that sets out a holistic response to all needs. We recommend that this should be changed and that the guidance should set out a model of care planning that brings together all forms of support that a person uses.

We strongly welcome the focus on council's having *'place shaping'*, strategies, and strategies for promoting wellbeing through universal services. However, again, if as a result of these strategies a person is able to meet support needs through universal services or through community support this should be recorded in the care plan. Otherwise it will not be apparent that there might be an impact on the person's ability to meet their needs if, for example, adult education classes close.

## **ii) Support for self funders and people who do not qualify for local authority care**

Again, the guidance should be written on the basis that assessment and care management are not just tools for deciding on eligibility for services, but may, under proposals in the current green paper, be part of a wider offer to self funders. As the proposed guidance also points out, self funders are under current legislation, entitled to assessment. This is therefore another argument for retaining the holistic model of care planning that we have referred to in the previous paragraph.

**3) Do you think the guidance sufficiently explains the need for councils to implement preventative strategies as well as the benefits that such strategies can bring? If not what changes would you propose?**

Local Authorities currently target services at people with high levels of need. In most cases this means people with critical and substantial needs as defined by FACS, in some cases this is restricted to those with critical needs. Older people receive smaller care package than other client groups, and the aims of care and support are often limited to ensuring that the person remains safe and in good health. This means there is little scope for reducing expenditure on care for older people with high needs. Whilst there is some evidence that personalisation can result in lower unit costs it is not clear that these savings will be maintained as individual budgets are rolled out to older people who do not have community family or community support networks. It may also be the case that traditional services will increasingly be used only by those people who have high levels of needs with the result that unit costs will rise. We are therefore not optimistic that local authorities will be able to redirect resources from people with high need in the short term. In the longer term a focus on prevention might reduce demand for services but this would mean that additional resources would have to be put into the system before these gains would be realised. New guidance cannot therefore work miracles; there is no easy answer to the problem of trying to put more resources into prevention within existing funding constraints.

One way forward is that prevention should be seen as an issue not just for social services but for the wider community and for the NHS. In this respect we recommend that the guidance should place more emphasis on the need to carry out assessments jointly with other agencies, including the NHS or other local authority departments such as housing.

**4) Given the emphasis on access to universal and preventative services as set out in Putting People First, do you think there is still a need for a fourth criteria band?(low) Please give the reasons for your answer.**

Assessment should not be limited to establishing eligible needs but should give a holistic picture of all needs. This is important if people are planning, either for themselves or for older relatives, a care package that involves a mixture of local authority funded services and other arrangements. It is important therefore that there is a category for recording needs which do not trigger eligibility for help. Since a few local authorities still provide help for people with moderate needs, and it is to be hoped that this will continue in the future, this would mean there would still be a category for people with low needs.

**5) Do you think the guidance sufficiently underlines the principles of fairness, consistency and transparency in the process for determining eligibility for social care? If not, what changes would you propose?**

The explanation of the role of Resource Allocation System contained in the guidance is very welcome. We fully agree with the view that *'rather than*

*detracting from a council's duty to determine eligibility, the RAS should serve as a useful tool to give an approximate indication of what it reasonably cost to meet a person's particular needs according to their individual circumstances'. We largely agree with this. This explanation is very clear, but paragraph 105 muddies the waters by saying that 'it is important for councils to ensure that their RAS is sufficiently flexible to allow for someone's individual circumstances to be taken into account when determining the amount of resources he or she is allocated as a personal budget'. This undermines the statements made earlier in the guidance that a RAS is intended as a working tool rather than as the final determination of the person's entitlement to help.*

The example given in paragraph 47 of the guidance is unfortunate in this respect. This paragraph re-iterates current FACS guidance by pointing out that there should be no *'hierarchy of needs'* other than where there are life threatening circumstances or serious safeguarding concerns, and that needs relating to social care and inclusion should be seen as just as important as needs relating to personal care issues. We fully support these statements. However the guidance goes on to say that a disabled person who is facing significant obstacles to taking up education and training should be given equal weight to an older person who is unable to perform vital personal care tasks. However this would only be the case, under both the existing and proposed frameworks, if the education and training was, like the older person's care needs, *'vital'*. This paragraph further confuses the situation by introducing the term *'significant'* which does not appear in the FACS framework. This example needs to be clarified to demonstrate that it is the *'vital'* aspect of needs that results in their being given similar priority.

Paragraph 55 of the consultation is extremely welcome in that it reminds local authorities in very clear terms that the individual's financial resources must not determine access to assessment and care planning, and references the legislation and statutory guidance that underpins this view. However although the Department has issued reminders of this position on numerous previous occasions including in the current FACS guidance, many local authorities have simply ignored this. The CSCI survey cited in paragraph 60 of the guidance reflects this. Age Concern and Help the Aged has come across many examples of questions about the person's finance taking place at the initial contact in some cases resulting in suggestions that the individual might therefore want to save themselves *'the bother'* of going through a needs assessment.

Indeed we are extremely concerned that the Care Services Efficiency Delivery Programme on Effective Financial Assessment has as a proposed solution to delays in billing that;

*'telephone assessment is done at the point of contact (probably a contact centre), to establish whether the customer does have eligible needs, to elicit initial information on benefits, income and assets, and to book the financial assessment visit. Ideally, the needs assessment visit would also be booked at this time'*. In addition the flow chart in the document puts the financial assessment before the needs assessment. This is direct contravention to the current guidance and which is reflected correctly in para 55 of the consultation

*that 'an assessment of ability to pay for services should therefore only take place after they have been assessed as having eligible needs'.*

We are pleased that para 60 reiterates that the financial assessment must not be made until there has been a proper assessment of needs. We agree there is nothing against a council making individuals aware that it will be their individual financial circumstances that will determine whether or not they may have to pay for the cost of support, but it needs to be made clear in guidance that this should be done in a neutral way, not to put off the person from accessing a needs assessment. Also it should be made clear there should be no intrusive questions as to the individual's finances at this stage as they are not relevant questions until a decision has been made about the assessed needs.

We also welcome the fact that para 55 states that once a person is identified as having an eligible need, councils should take steps to ensure that those needs are met, regardless of the person's ability to pay. It would be helpful to expand this and use the wording that is in current guidance *'With respect to individuals receiving services at home, a council should arrange these services irrespective of the resources or the capacity of the service user, if that is what the services user wants the council to do'* to put it beyond doubt. Age Concern and Help the Aged has recently come across documentation produced by a local authority which states *'If, following a financial assessment, you are considered to have sufficient capital or income to purchase your own care, the provision of care by ..... Council may cease. If this happens the care package arranged by ..... Council will end 4 weeks after the date of the financial assessment and, if necessary, you will be assisted to purchase your own care directly.'* We do not think the guidance can be too strong given the years of poor practice that it needs to counteract. Guidance on this should be reiterated at para 81.

The statement in relation to residential care at para 55 although helpful should reflect the wording in LAC (98)19 which is clear that if the person is not able to make their own arrangements then the local authority remains responsible unless there is someone *'willing and able'* to make the arrangements on the person's behalf.

Paragraphs 58 and 59, which explain the difference between a rapid, streamlined and proportionate assessment and 'screening' someone out of assessment are excellent. Indeed the Department should consider making this the definitive statement by including further explanation of what is meant by *'ensuring that staff are sufficiently trained and equipped to make appropriate judgments to steer individuals seeking support towards a more formal community care assessment, a period of re-enablement or more universal services'*. We regard this as a crucial aspect of the first response to presenting needs,

We also recommend that this section should also refer to the need to make the first response accessible, particularly as most people seeking help will have some form of disability. Paragraph 70 provides examples of steps that might be examples of good practice in this respect, but the guidance also needs to refer to unacceptable practices such as inappropriate use of telephone based initial assessment, or excessive reliance on self assessment.

Whilst the proposed guidance on eligibility criteria is impressive we are concerned that there are glaring inconsistencies between the proposed guidance and some guidelines being produced by quasi autonomous bodies which appear to be supported by the Department of Health. For example current guidance on Commissioning and Contracting for Outcomes, published by CSED in September 2008, tells local authorities that;

- The initial assessment, defined as a 'high level' needs assessment should be *'able to be completed, with reliability, by the individual on a self assessment basis'*;
- Financial assessment is carried out before any further assessment takes place;
- Resource allocations are subsequently adjusted on the basis of review by a 'counsellor' employed by the provider,
- It is assumed that specialist expertise in carrying out assessment and review should be redirected towards *'complex support planning and specialist delivery.'*

In contrast the Department's proposed guidance on eligibility states that *'assessment of a person's financial situation must not be made until after there has been a proper assessment of needs'* (paragraph 60). With regard to the last point it states that *'some people with relatively low needs will need more complex intervention'*. Obviously these contradictory messages are confusing for local authorities and others.

We fully support the proposed guidance on eligibility criteria as both helpful in supporting the aims of personalisation and an accurate reflection of the current rights of service users. We therefore strongly recommend that the Department should ensure that any guidance issued by quasi autonomous groups such as CSED and In Control which the Department endorses are consistent with legislation and with any new guidance.

**6) Do you think the guidance itself is sufficiently transparent and understandable for both health and social care professionals and people seeking support? If not, what changes would you propose?**

It was apparent from the IBSEN study of the pilot projects that many older people did not find budget allocation a transparent process. Some local authorities adopted resource allocation systems that were difficult to understand and in one case the resource allocation system was a closely guarded secret and even the local authority's own staff were unaware of how it worked. The local authorities in question refuse to divulge any details of the resource system even in response to a freedom of information request. Obviously this makes it difficult for a service user to know whether they have been treated fairly, whether the assessment accurately reflects their needs or whether they have been discriminated against, and makes it difficult to back up a complaint if the person is dissatisfied. We therefore recommend that guidance should state that, where local authorities use

a RAS it should be in the public domain and easily accessible to people who are going through the assessment process and their supporters.

The current FACS practice guidance states that final decisions on what is “critical” or “vital” have to rest with the council. We do not agree with this and will argue in responding to the current Green Paper that these concepts will in practice normally engage basic human rights and should be defined at a national level. Whilst the new guidance is not the place (as we note in response to question 7 below) to shift the balance between national entitlements and local autonomy, we do recommend that the new guidance should at least require that councils do not apply different definitions of terms used in the FACS framework on the basis of age.

**7) To what extent do you think the proposed guidance will have a positive impact on equality? Is there anything else that you would like to see in the guidance to manage any adverse impact and to promote positive impact?**

One of the benefits of a more transparent system is that it would make discrimination more apparent. Older people are often disadvantaged by unwarranted assumptions that needs for personal change and development and for social and community development end at the age of 65. Clarity about the outcomes that support is intended to achieve would make such assumptions clear. We recommend that this point should be made specifically in explaining the potential benefits of using the outcomes set out in paragraph 46 of the guidance.

Paragraph 39 of the consultation document states that councils can use the eligibility criteria framework set out below to identify the needs which call for the provision of services (eligible needs). This contrasts with the current FACS guidance that says the council must use the framework and which, since it is issued under s.7 of the Local Gov. Act is binding. Current FACS Practice guidance (q. 3.1) goes into more detail, stating that;

*‘The eligibility framework is not merely a guide, and councils should not vary the wording. Once a council decides where to draw the line, subject to the resources it has allocated to adult social care, it should use the exact wording of the bands given in paragraph 16 of the FACS policy guidance to describe the risks from which eligible needs will be identified and met. Whereas councils should not delete or amend the current wording, they may add additional risk factors as extra bullet points within a band’.*

We recommend that new guidance should not shift the current balance between national entitlements and local autonomy, especially as this is subject of current consultation on the green paper. There should, therefore, continue to be a requirement that local authorities should use the national eligibility framework rather than this being discretionary.

**8) Do you have any comments about costs and benefits (monetary or otherwise) that the revised guidance will involve? Do you for see any impact on local authorities or people seeking support that we have not identified?**

Some aspects of the personalisation agenda might lead to increased demands for both assessment and support both from people who expect to fund their own care and from people who have assumed that traditional services would not meet their needs. An increased focus might in the long term save money but in the shorter term is bound to involve additional expense. This is because current services are already so narrowly targeted on people with high needs that there is little scope for reducing these services. However this is not down to the guidance on how eligibility should be considered. Any fair and transparent system of assessment has potential to expose discrimination against older people and exploitation of carers but again, this is not the fault of the guidance. We do not therefore see any additional expenses arising from the proposed guidance itself.