



## **North Tyneside Council**

### **Meeting Eligible Social Care and Carer Needs Policy**

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## 1 Introduction

- 1.1 This policy is designed to demonstrate how North Tyneside Council operates its framework for providing Adult Social Care Services to meet eligible needs. This framework is operated in accordance with the requirements of the Care Act 2014, the supporting Regulations to that Act and the Statutory Guidance. In its delivery of this framework the Council will operate within the decision making arrangements of the Mental Capacity Act 2005 and the Mental Health Act 1983.
- 1.2 The policy has been updated following the publication of the Care Act Guidance and Regulations (October 2014). Within this policy “The Act” refers to the primary legislation (The Care Act 2014), the Regulations (that come into force April 2015 in support of the Act) and the Care and Support Statutory Guidance (the ‘Statutory Guidance’) published October 2014 by the Department of Health.
- 1.3 The Statutory Guidance provided by the Department of Health covers all elements of the social care process, and separate practice guidance (based upon the Statutory Guidance) has been developed for social care staff in North Tyneside. Brief references are provided throughout this policy however, this policy should be read in conjunction with the North Tyneside Practice Guidance and the Statutory Guidance; specifically in relation to Contact, Assessment, Carer’s Assessment, Eligibility, Support Planning, Personal Budgets and Reviews.
- 1.4 The policy applies to any person aged over 18 years who is Ordinarily Resident in North Tyneside (as defined within the Care Act 2014).

## 2. Background and Context

- 2.1 The Care Act 2014 introduces the concept of a new National Eligibility Criteria for adults with social care needs and their Carers. The Department of Health issued draft guidance and consultation in June 2014, with final guidance and regulations being issued in October 2014. Part one of the Care Act 2014 (including the National Eligibility Criteria) comes into force on 01.04.15
- 2.2 The Care Act 2014 sets out to reduce inequity in terms of eligibility

criteria by instigating a single national framework for meeting needs; it replaces the previous Fair Access to Care (FACS) guidance. North Tyneside Council met Critical and Substantial needs as defined by FACS, and the new eligibility criteria is designed to be at the same level.

- 2.3 For the first time Carers have a right to receive support in their own right and the Act also introduces national eligibility criteria for Carers.
- 2.4 The eligibility criteria define a range of outcomes and circumstances, in which an inability to meet these outcomes may lead the adult or carer to be eligible for social care support.

## **Links to other legislation and guidance**

### **2.7 The Mental Capacity Act 2005**

The Mental Capacity Act 2005 provides a statutory framework for acting and making decisions on behalf of adults who lack the mental capacity to make particular decisions for themselves, and for adults who have capacity and want to make preparations for a time when they may lack capacity in the future. The Mental Capacity Act 2005 establishes who has legal authority make decisions for a person lacking capacity, in what context those decisions can be made, and the principles and procedures to be followed.

The Mental Capacity Act 2005 sets out five statutory principles which must be adhered to when working with individuals who lack capacity to make certain decisions. Local Authorities must follow these principles carefully during assessment and support planning.

Local Authorities must also consider where the use of Independent Mental Capacity Advocates (IMCAs) and other advocates – such as dementia advocates or learning disability advocates – might be appropriate to ensure that, as far as possible, individuals are supported to be involved in the decision-making process. In some circumstances specified by the Mental Capacity Act 2005, the Council is under a duty to instruct an IMCA.

## 2.8 **The Mental Health Act 1983**

The Mental Health Act 1983 (MHA) places specific responsibilities upon the Local Authority, at s117, when planning with the NHS the discharge and subsequent care and support of certain detained patients into the community.

## 2.9 **Health**

An adult aged over 18 years who requires care to be provided over an extended period of time, to meet physical or mental health needs which have arisen as a result of disability, accident or illness (“continuing care”), may require services from NHS bodies and/or Local Authorities. Both NHS bodies and Local Authorities therefore have a responsibility to ensure that the assessment of eligibility for, and provision of, continuing care, takes place in a timely and consistent fashion. Where an adult is eligible for NHS Continuing Health Care (CHC), it is the responsibility of the ‘The Clinical Commissioning Group (CCG) of which the adult’s GP is a member’ to provide appropriate services to meet those needs. However, this does not prevent a local authority from providing further services, as it sees fit. Reference should be made to the revised National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (July 2012) for more detail.

## 2.10 **Children and Families**

The Care Act 2014 sets out requirements regarding the transition from childhood to adulthood, and the family centred approach that Local Authorities are expected to embrace. The cooperation duties in the Act include requirements for Adult’s and Children’s Services to work together. The Act makes explicit the importance of the provision of care and support during the transition of an individual from child to adult or support to adults with child care responsibilities.

Local Authorities should identify any children or young people acting in a caring role and consider the impact on them. Support Plans should not rely on the input of an inappropriate level of care from a child or young person. In this respect, in addition to the provision of adult care assessment and support, Local Authorities

should be prepared to address their duty under the Children Act 1989 to safeguard and promote the welfare of children in their area, or section 63 of the Care Act. The Children Act 1989 also specifies the need to take the views and interests of children into account. In discharging these duties, it is essential that Local Authorities take account of the cumulative effects of responsibilities of family members within the household and where necessary, adult and children's services should work together to protect children from having to undertake unreasonable levels of care.

The reforms introduced by the Children and Families Act 2014 aim to move towards a focus on greater co-operation between education, health and social care and a greater focus on the outcomes which will make a real difference to how a child or young person lives their life.

These reforms aim to encourage a holistic approach to supporting children and young people with Special Educational Needs (SEN) or disabilities and their families. The right social care can be vital in supporting children and young people to perform well at school, and to build the best foundations for their lives.

Social care professionals will already be participating in arrangements similar to those in this guide, involving close working with education and health colleagues, early intervention and integrated approaches to supporting the most seriously ill children in our society facilitated by the reforms in the Health and Social Care Act 2012 and the Care Act 2014. The changes being introduced by the Children and Families Act 2014 for children and young people with SEN and disabilities are intended to build on these arrangements.

## 2.11 **Discrimination**

When applying the eligibility criteria for social care, Local Authorities should have due regard to achieving the equality aims of the 2010 Equality Act. These are to:

- Eliminate unlawful discrimination, victimisation and harassment
- Advance equality of opportunity

- Foster good relations

The protected characteristics are:

race, gender, age, disability, marriage and civil partnership, religion or belief, pregnancy or maternity, gender reassignment or sexual orientation.

We are continuing to work to minimise disadvantage and, to ensure that assessment at all levels takes these characteristics into account.

## **2.12 Human Rights Act**

Both the Care Act 2014 and the Creating a Brighter Future Together programme support the promotion of independence. Article 8 of the European Convention on Human Rights requires respect for home, private and family life. Therefore care at home, if it can meet the individual's needs, is to be preferred to residential or nursing care, within the context of the Council's Best Value duties.

## **2.13 Creating a Brighter Future Together Programme**

In 2013 North Tyneside Council, working with partners in the public, private and voluntary sectors developed the Our North Tyneside Plan. It was developed with local people and describes the key outcomes that the organisation wishes to deliver for the borough.

To help deliver the Our North Tyneside Plan the Council has developed the Creating a Brighter Future programme, which will redesign how the Council works in the future.

However the Creating a Brighter Future programme is not just a new plan for delivery. It will also deliver a major culture change and new way of working that will:

- Encourage our customers to be more independent
- Better manage demand for services so people access the right services at the right time



- Focus everything it does to delivering its priorities.

In doing this, our objectives are to:

- Ensure that more children are ready for school
- Ensure that more people are ready for work
- Ensure that people are cared for, safeguarded and healthy
- Evidence that North Tyneside is a great place to live, work and visit.

### 3. National Eligibility Criteria

3.1 The Regulations set out a three part eligibility test for both Adults with Care and Support Needs and for Carers with Support needs:

Adults with Care and Support Needs:

- **Needs arising from or related to a physical or mental impairment or illness**
- **The adult is unable to achieve one of the prescribed outcomes**
- **As a consequence there is or is likely to be a significant impact on the adult's wellbeing.**

Carers with support needs:

- **The needs arise as a consequence of providing necessary care**
- **The effect of this is that any of the circumstances specified in the Regulations apply to the carer**
- **As a consequence there is or is likely to be a significant impact on the carer's wellbeing.**

3.2 The guidance gives clarification in terms of wellbeing, as it relates to adults with care and support needs and carers.

- Personal Dignity (including treatment of the individual with respect)

- Physical and mental health and emotional wellbeing
- Protection from abuse and neglect
- Control by the individual over day to day life (including over care and support provided and the way it is provided)
- Participation in work, education, training or recreation
- Social and economic wellbeing
- Domestic, family and personal
- Suitability of living accommodation
- The individual's contribution to society.

3.3 The Guidance states that the term 'significant' has its everyday meaning.

3.4 In determining the impact on an adult's wellbeing the Guidance states that the individual is best placed to determine their own wellbeing. In considering the *significance* of the impact on the individual's wellbeing, the Council will need to take account of all of the individuals it provides support to, and can take its resources into consideration.

3.5 Section 22 of the Act sets out the limitations of social care, and the interface with the Continuing Health Care criteria (ref 2.8 above). In doing so it clarifies that Local Authorities cannot meet health needs which are beyond the limits of social care; only limited and minor healthcare services, which are incidental and ancillary to the social care needs of the adult can be met by the Local Authority. If, in assessing an adult, the Council identifies that the adult's needs may meet the eligibility criteria for CHC, then the Council must inform the relevant CCG, by means of completing a CHC checklist. In North Tyneside the Wellbeing assessment includes a list of key questions that will assist in identifying whether the checklist should be submitted.

3.6 Under section 7 of the Care Act 2014 (duty to cooperate in specific cases) the Local Authority can formally require other statutory partners to cooperate with the assessment and meeting of the adult's needs.

## 4. Carers

### **Taking support from carers into account when determining eligibility**

- 4.1 The Care Act requires that the Local Authority establish the totality of the adult's needs, so that in the event of the Carer being unavailable, a reassessment is not required in order to facilitate urgent support. The Guidance acknowledges that the support the carer provides may be captured during the completion of the adult's Wellbeing Assessment (and therefore does not need to be a separate function).
- 4.2 The Act requires that the Local Authority include Carers in the assessment of the Adult's needs (with the adult's permission), and the Local Authority should involve and seek the views of carers throughout the process. However, the adult's eligibility is not determined on the basis of the level or quality of support available from carers, or how much support carers are willing or able to provide. Eligibility is determined on the basis of the inability to meet the outcome and the impact on wellbeing, regardless of carer input.

The support provided by the carer should not be taken into consideration until after eligibility has been determined, at the start of the Care Planning stage. Throughout the Care Planning stage the Local Authority should ensure a realistic evaluation of the support the Carer is able to provide and that the caring relationship is sustainable. However should a carer indicate that they are willing and able to continue to provide care, then the Local Authority does not need to provide additional support to meet this outcome; the outcome nevertheless remains "eligible".

### **Assessing carers' needs**

- 4.3 Certain carers have a right, to have an assessment of their needs *as carers*, independent of the needs of the adult to whom they provide care. The adult they care for does not have to be eligible for support themselves, in order for the Carer to have an assessment. There will be circumstances where the Local Authority undertakes an assessment of a Carers' needs without being involved with the adult they care for. The Guidance states that the Carer needs to be providing "necessary care".
- 4.4 The Guidance offers further clarification in terms of *Necessary Care*:

"If the carer is providing care and support for needs which the adult

is capable of meeting themselves, the carer may not be providing necessary support. In such cases, local authorities should provide information and advice to the adult and carer about how the adult can use their own strengths or services available in the community to meet their needs”

Therefore if an assessment identifies that the care being provided is not “necessary”, the carer would not be considered eligible.

4.5 The Act recognises that there are two main support mechanisms for Carers’

- 1) Replacement Care – provision of support to the adult with support needs, to replace the care the Carer provide
- 2) Support to the Carer – direct support to the Carer in their own right

4.6 Carers may choose to have a combined assessment with the adult they care for, or a separate Carers assessment. Both parties must agree to a combined assessment. Whichever option the Carer chooses, the function of the assessment and approach taken by the assessor should be the same.

## **5 Applying Eligibility Criteria Fairly and Consistently**

5.1 This section of the policy details how the assessment process is applied in North Tyneside to ensure fair and transparent determination of eligibility.

### **First Contact**

5.2 Local authorities must undertake an assessment for any adult with an appearance of need for care and support, regardless of whether or not the local authority thinks the individual has eligible needs, and regardless of their financial situation. There are some situations where individuals will approach the Local Authority for information or advice, and will decide that they have been able to resolve their query at this stage. In these situations the contact will not progress to an assessment.

5.3 However the assessment process for all adults begins with the gathering of information, and therefore for those adults progressing to an assessment, first contact is the beginning of the process. The

Care Act recognises that there are a number of different approaches to assessment, which reflects the different circumstances and levels of complexity that adults may present with. Therefore an assessment proportionate to the adult's circumstances should be undertaken; the Care Act defines "proportionate assessment" to include on line self assessment; telephone assessments; face to face supported assessment; combined assessments with carers and integrated assessments with health or other statutory partners.

If the adult selects a self assessment option, the Local Authority must ensure that it is an accurate and complete reflection of the adult's needs, outcomes, and the impact of needs on their wellbeing. In assuring self-assessments are accurate, local authorities may consider it useful (with the adult's permission) to seek the views of those who are in regular contact with the adult self-assessing, such as their carer(s) or other appropriate people from their support network, and any professional involved in providing care.

- 5.4 Removing adults from the process too early could have a significant impact upon their well-being as well as potential economic costs, as it may lead to them re-entering the system at a later date with a higher level of need. Early or targeted interventions such as universal services, a period of reablement and providing equipment or minor household adaptations can delay an adult's needs from progressing. The first contact with the authority, which triggers the requirement to assess, may lead to a pause in the assessment process to allow such interventions to take place and for any benefit to the adult to be determined. It is possible that in some instances the provision of interventions such as reablement may resolve the difficulties, and the adult may agree that they do not need to proceed to a full assessment.
- 5.5 The assessment of an adult's financial situation can run concurrently with an assessment of needs, and at the beginning of the process the Local Authority must make adults aware that their individual financial circumstances will determine whether or not they have to pay a contribution towards the cost of the support provided to them. An adult's financial circumstances however should have no bearing on the decision to carry out a wellbeing assessment providing the Local Authority is satisfied that the adult has an appearance of need for care and support.

- 5.6 The Care Act contains provisions for the Local Authority to provide an immediate response to adults who require social care support in emergencies and crisis situations. This will be provided following an assessment of the presenting situation to determine the most appropriate course of action. This assessment might be done via the telephone or face to face. After this initial response, the adult should be informed that more detailed needs and financial assessments will follow, and that support may be withdrawn or changed as a result of that assessment.

## **Assessment**

- 5.7 The Care Act provides a number of regulations and areas of guidance in terms of the undertaking of an assessment, and this policy should be read in conjunction with the Care and Support Statutory Guidance, the North Tyneside Practice Guidance and the North Tyneside Operational Guide (Assessment).
- 5.8 In North Tyneside assessments may be undertaken by a variety of teams, including integrated/co located health and social care teams. The adult will either be invited to attend an appointment for the assessment, or an assessing officer will conduct a home visit.
- 5.9 In line with the Care Act Guidance, and North Tyneside's Creating a Brighter Future Programme, the Local Authority takes an "asset based approach" to assessment; supporting the adult to identify what is working well, as well as areas they might be struggling with, and exploring the support networks available to the individual.
- 5.10 The Local Authority needs to make sure that it is able to draw on sufficient expertise to understand and support adults with a range of needs so that specific groups of adults are not marginalised by the assessment process. Interpreters, translators, advocates or supporters should be made available when necessary. There is a requirement to ensure that specialists are involved in the assessment of certain groups of people (Deafblind and people with Autism)

## **6. Personalisation, Support Planning and Brokerage**

6.1 Following the identification of eligibility the Local Authority should work with the adult to develop a plan for their care and support. The Care Act sets out the essential requirements for the Support Planning Process and Support Plan documents, and this policy should be read in conjunction with the Care and Support Statutory Guidance, the North Tyneside Practice Guidance and the North Tyneside Operational Guide (Support Planning).

6.2 Following completion of a support plan the Local Authority will work with the adult and a range of providers to identify the support that can meet the needs and outcomes identified (i.e. the brokerage function). Brokerage will be undertaken by a variety of teams in the Council, or people can choose to use the Planning Cafe or Care and Connect.

The Council has a power to meet non eligible needs; if it chooses to exercise this power with an adult, the same process in terms of assessment and support planning must apply. In many instances the way that the Council will support someone to meet non eligible needs will be via access to information and advice, referral to universally available resources or the provision of preventative services.

6.3 For an annual fee (currently £260), the Local Authority also offers a brokerage function for those adults who privately pay for their care. This includes access to the Local Authority's Commissioned contracts, discussing available options for support, brokering services and regularly invoicing the provider and the customer.

6.4 Any brokerage will be undertaken using information and advice services and encouraging and enabling adults to make the best use of their own strengths, capabilities and resources to live as independently as possible. This will help to strengthen the social networks available in the community, help to maintain the independence of adults who use resources and their carers and may reduce their need for social care in the future. As set out in 8.1 below, the Council will always seek to meet needs via the most cost effective option, which in the first instance will be Universally available support.

## **7. Personal Budgets and Resource Allocation**

7.1 Personal Budgets have been offered to Adults with care and support needs in North Tyneside for a number of years, but the Care Act creates a statutory duty to provide a Personal Budget, where the Local Authority is meeting an adult's needs. This policy should be read in conjunction with the Care and Support Statutory Guidance, the North Tyneside Practice Guidance and the North Tyneside Operational Guide (Support Planning).

7.2 To support the delivery of personal budgets to Adults with care and support needs, the Council uses a resource allocation system (RAS) as a way of estimating how much money is required in an adult's personal budget to meet their assessed eligible needs. The aim of the RAS is to provide a transparent system for the allocation of resources, linking money to outcomes while taking account of the different levels of support adult's need to achieve their goals. It allows adults to know how much money they have available to spend in their personal budget so that they can make choices and direct the way their support is provided.

7.3 The RAS was developed in 2010 using

- The national RAS guidance;
- The views of carers, service users and professionals; and
- A representative sample of 350 real cases in North Tyneside.

The RAS has been fully operational since 2012 and the existing RAS has been transcribed into the new Eligibility and Personal Budget calculator to support the delivery of the Care Act.

7.7 The RAS consists of three main components:

- An assessment that seeks to identify a service users' care and support needs
- A points allocation system that translates eligible needs into points, to reflect the relative level of those needs; and
- A 'pounds per point' calculation that converts the points into a sum of money, known as the indicative personal budget.

7.4 Pounds per Point Calculation:



Once the points have been allocated, they are then converted into the indicative personal budget via the annual 'pounds per point' calculation. The annual 'pounds per point' rate sets a certain monetary figure for each point scored on the questionnaire. This figure is multiplied by the number of points scored on the questionnaire in order to determine the indicative personal budget. The annual pounds per point rate is based on the cost of meeting eligible support needs, having regard to available resources in North Tyneside Council and the average cost of local care services. The pounds per point rate in North Tyneside is currently £5 – this is unchanged since 2012.

7.5 Calculating what resources should be made available to adults should not detract from a Council's duty to determine eligibility following assessment and to meet eligible needs; therefore the RAS calculation is applied following the determination of eligibility, and only if it has been established that the adult's eligible needs cannot be met via access to universally available support.

7.6 The RAS has a set number of questions, and as consequence there is a maximum amount that could be allocated by the RAS. However we recognise that this will not meet the needs of all adults with care and support needs and therefore there is discretion for higher amounts to be allocated, following consideration by an exceptions panel (see 7.9). The greater transparency of resource allocation supports the delivery of a more equitable system for all groups of service users based on assessed eligible need.

7.7 Allocating resources to Carers:

The North Tyneside Carers' personal budget allocation system has been developed in conjunction with the CCG and North Tyneside Carers' Centre, and has operated as a discretionary function since 2012/13, which has informed the Council's approach to Carers' Personal Budgets as required within the Act. The discretionary panel has awarded up to £500 a year, on the basis of an application form and assessments. Within the 24 months that the panel has operated, evidence has shown that an award of up to £500 has met the needs of the vast majority of carers. Therefore in determining the Carers' Personal Budget allocation, we have retained this indicative amount. However we recognise that this will not meet the needs of all carers and

therefore there is discretion for higher amounts to be allocated following consideration by an exceptions panel (see 7.9).

- 7.8 The Council should be able to evidence a reasoned decision as to why the final allocation is adequate to meet the assessed needs in the manner agreed in the support plan. The decision should show the Council's reasons for deciding that the allocated amount would suffice, despite not fully enabling the individual's preferred outcomes in meeting the need.
- 7.9 In recognition of the fact that the resource allocation systems will capture the majority but not all levels of need, North Tyneside operates an "exceptions panel" for consideration of those plans which fall outside of the indicative budget allocation. Service Managers are authorised to increase budgets by up to 10%, but all increases greater than this, will need to be considered at an exception panel. A rationale and decision form is completed in all circumstances. On occasions the exceptions panel may ask for further information, clarification or the provision of preventative services, before reaching a final decision. By their nature exceptions panels should only be considering a small number of Care and Support Plans, as the majority of Adults or Carers should have their plan agreed in line with the Indicative Personal Budget.

## **8. Meeting Eligible Needs**

- 8.1 Section 8 of the Care Act 2014 lists examples of "of what may be provided (by a local authority or others) to meet needs:
- (a) accommodation in a care home or in premises of some other type;
  - (b) care and support at home or in the community;
  - (c) counselling and other types of social work;
  - (d) goods and facilities;
  - (e) information, advice and advocacy.

It also includes an illustrative list of how a local authority may meet needs:

- (a) by arranging for a person other than it to provide a service;
- (b) by itself providing a service;
- (c) by making direct payments.

8.2 The Care Act 2014 also stipulates that when carrying out a needs assessment, a local authority must also consider whether matters other than the provision of care and support might contribute to the achievement of the outcomes that the adult wishes to achieve in day-to-day life, and whether the adult may benefit from the provision of anything which might be available in the community (i.e. universally available support), preventative services or information and advice.

8.3

North Tyneside takes a stepped approach to meeting needs; although it is not necessary to rigorously move through all of the steps, it is necessary to demonstrate why needs cannot be met by a solution outlined in one of the earlier stages.

- Self support: the adult accesses information available from the Council, its partners or the community and voluntary sector in order to meet the outcome.
- Guided self support: a Council officer (or an officer from a partner/community and voluntary sector agency), supports the adult to access information in order to meet the outcome.
- Universally available resources (including community resources, assistive technology and small items of equipment): the outcome can be met by accessing a universally available service.
- Reablement/enablement: the adult is supported to achieve full or greater independence and is therefore able to meet all (or part of) the outcome.
- Professional support: the adult is supported by a council officer (usually a social worker or social services officer) for a planned period of time in order to achieve the outcome.
- Short term support (usually provided in an urgent situation or to support hospital discharge), pending a full assessment: the adult is supported with a short term package of care or placement, for a defined period of time, until a more

comprehensive assessment can be undertaken. A financial assessment and charge (where applicable) will usually apply (for short term support arranged outside of office hours, charging will commence from the next working day).

- Personal Budget (including a direct payment): some or all of the outcomes cannot be met through the previously described routes, and an Indicative Budget (or “ball park” figure) is identified at the end of the assessment. The support planning process determines how the outcomes will be met and the final personal budget is agreed.
- Personal Budget in Extra Care: there are a number of Extra Care schemes in North Tyneside, providing people with their own front door and individually tailored packages of care, with the reassurance of a safe environment and 24 hour care on site. The schemes are not directly managed by the Council but council officers work closely with the housing providers to manage the allocation process. Individuals allocated a place in Extra Care will usually have a personal budget allocated.
- Residential or Nursing Care: North Tyneside seeks to support adults in their own homes for as long as possible, however sometimes this is no longer possible. The provision of Funded Nursing Care is an NHS decision, determined via the Continuing Health Care decision making framework. If the person does not require a Funded Nursing Care placement, Extra Care would be the primary solution considered, and a residential care placement would only be agreed if it is **evidenced** that Extra Care could not meet the adult’s needs.

8.4 Local Authorities are under a specific Best Value duty under the Local Government Act 1999 to use resources effectively. Section 10.27 of the Care and Support Statutory Guidance states that in determining how to meet needs, the local authority may also take into reasonable consideration **its own finances and budgetary position**, and **must comply with its related public law duties**. This includes the importance of ensuring that the funding available to the local authority is sufficient to meet the needs of the entire local population. The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an adult in determining *how* an adult’s needs should be met (but not *whether* those needs are met). However,

the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes – doing so would not deliver an approach that is person-centred or compatible with public law principles. The authority may take decisions on a case-by-case basis which weigh up the total costs of different potential options for meeting needs, and include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the best value.

- 8.5 Where eligible needs/outcomes can be met via the provision of universally available resources, these needs would not attract a Personal Budget, as per the stepped approach described in 8.1
- 8.6 Some adults supported by the Local Authority are eligible for Section 117 aftercare (Mental Health Act 1983). Whilst the route to support for these adult's is different, the same principles in terms of meeting needs would apply (8.13).
- 8.7 It is possible that an adult may not be eligible via the Eligibility Criteria, but they may reach eligibility by virtue of the Safeguarding framework, or via their Carer's eligibility (it is anticipated that this scenario may apply to adult's who are unable to achieve one outcome only). In these circumstances the same stepped approach to meeting needs will apply (8.31)
- 8.8 To ensure that services are provided to meet eligible needs in the most cost effective way, it is important that rigorous tests are applied to high cost support packages to ensure that they are justified in terms of the benefits they deliver for the adult, and in terms of cost effectiveness and best use of public money.
- 8.9 The Council's resources are not relevant to whether an adult is eligible for funding. This means that a lack of resources is legally irrelevant to the duty to meet need appropriately and therefore cannot be an excuse for not meeting need. If the Council agrees that the need can only be met in one way, appropriately, then the cost of any other inappropriate way is irrelevant because this would not meet eligible need.
- 8.10 However, if there is considered to be more than one way, appropriately to meet the eligible need, the Council has the

discretion to offer the cheaper of two **appropriate** alternative means to meet that need. As long as the support arrangements are appropriate and in keeping with the Wellbeing Principal, the Council can take cost into account in deciding whether to agree an adult's support plan. The Council is under a Best Value duty to meet all eligible needs in the most cost effective way as it spends public money.

## 9. Interface with Health Needs

- 9.1 The Care Act 2014 has a clear directive to Local Authorities and their Partners in terms of working together and integration, and gives the Local Authority and their Partners reciprocal powers in terms of cooperation. It also provides some greater definition in terms of what constitutes "social care", and therefore by definition, what does not.
- 9.2 In applying the National Eligibility Criteria, Adult Social Care assessment staff have a responsibility to consider whether any needs the person may have should be met by the NHS.

This applies to the consideration of eligibility for Continuing Health Care (as per 3.5 above), and also whether presenting needs should be met by NHS commissioned services, for example, (but not exhaustively):

- Medication management
- Application of ointments, drops and creams
- Support to manage continence
- Fitting/wearing of surgical or medical appliances (including TED stockings)
- Invasive feeding systems such as PEG

- 9.3 The Guidance states "**Where the NHS has a clear legal responsibility to provide a particular service, then the local authority may not do so.** This general rule is intended to provide clarity and avoid overlaps, and to maintain the existing legal boundary. However, there is an exception to this general rule, in that **the local authority may provide some limited healthcare services as part of a package of care and support, but only where the services provided are "incidental or ancillary"** (that is, relatively minor, and part of a broader package), and where the services are the type of support that an authority whose primary responsibility is to provide social services could be expected to provide."

9.4 There are occasions where the management of such needs will be incidental and ancillary to the person's personal care needs (e.g. emptying a catheter bag whilst supporting the person to dress). However where needs exist in isolation (e.g. the person can manage to dress themselves but cannot put on TED stockings) then such a need would not meet the National Eligibility Criteria for social care.

9.5 The Council has identified a key question in terms of the provision of "incidental and ancillary" adult social care support;

"Is it possible to address any of the 'not eligible' needs without any extension to the social care plan, in terms of the type of provider required or the amount of time allocated"?

If the answer to the question is "**Yes**" and the needs to be addressed are health care, they can be properly described as "incidental and ancillary" and can be addressed via the social care plan.

If the answer to the question is "**No**" and the needs to be addressed are health care, they cannot be properly described as "incidental and ancillary" and cannot be addressed via the social care plan.

Through the integration and cooperation arrangements within the Care Act, the CCG may wish to request that the Local Authority extends the social care support plan, in order to ensure that the care provided to the adult is seamless. In North Tyneside the Local Authority and CCG have a "shared care panel" which considers such situations.

9.6 The provision of reablement, enablement or rehabilitation (which are provided outside of the Eligibility Criteria), would be appropriate regardless of the "incidental and ancillary test", *if* the aim is to support the person to become independent with the task. If this is not the case, or if at the end of the period of reablement the adult requires longer term support, then the test in 9.5 should be applied.

9.7 CQC have already signalled that their inspection regime going forward will need to consider whether domiciliary care staff are

providing social care (as per their registration), or health care. The skill set of the domiciliary care member of staff, or the fact that an informal carer can be trained to undertake the task, does not make the task a social care task, if the task does not meet the National Eligibility Criteria.

## **10. Review – moving from FACS to National Eligibility Criteria**

- 10.1 The National and North Tyneside Guidance Documents provide instruction in the function and process of reviews. This document specifically refers to those people who currently receive support under the FACS framework, and who will require a review applying the new Eligibility Criteria set out above. The Care and Support Statutory Guidance provides specifically for the transfer to the new criteria, with the expectation that adults will receive a review when scheduled or earlier if they request one/a reassessment is required.
- 10.2 Adults currently receiving care and support will have a review planned. Where this review follows an assessment that was undertaken prior to the implementation of the Care Act 2014, then at the next review the eligibility criteria as set out above will be applied in accordance with the Care Act 2014 and supporting Regulations. The Eligibility criteria is set at the FACS level of Critical and Substantial, and therefore we do not anticipate significant changes in eligibility for adults within North Tyneside.
- 10.4 In order to minimise anxiety and concern, we will contact adults shortly before their planned review to explain the process, the new criteria and to reassure them.
- 10.5 In the unlikely event that someone who is currently eligible, is no longer eligible (by virtue of the change in legislation, not because their needs have changed), we will assist them to identify alternative support and make sure that this is working for them.