

**ADULT SERVICES SCRUTINY COMMITTEE
9 SEPTEMBER 2009**

**FAIR ACCESS TO CARE SERVICES CONSULTATION –
REVISED ELIGIBILITY CRITERIA**

1. Purpose

- 1.1** The revised guidance for the eligibility criteria to adult social care was published in July 2009 and is at consultation stage. This is also referred to as FACS (Fair Access to Care Services). This paper provides a summary for the members of this scrutiny committee and outlines the high level impact of the revised guidance for consideration and discussion.

2. Introduction and Background

- 2.1** The FACS (Fair Access to Care Services) framework was introduced 6 years ago, in order to deliver a fair and transparent system for the allocation of social care services. The principle behind FACS was that there should be a single process to determine eligibility for social care support. The key purpose of the framework was to enable Local Authorities to link need for social care support in a way that is fair and proportionate to the impact it will have on individuals and the wider community, taking into account local budgetary considerations. These guiding principles still hold firm within the revised guidance.
- 2.2** Nearly all Local Authorities apply the threshold of eligibility at the two highest levels: substantial and critical (as does Oxfordshire). This has led to concerns that people with lower levels of care and support needs are being ignored by local authorities (in Oxfordshire we have a range of services such as luncheon clubs and day services which assist people who do not meet our eligibility criteria). It is not clear that having restricted eligibility levels necessarily leads to reduced spending on adult social care in the long run, as lack of support at an early stage may prevent or slow down the development of more complex needs.
- 2.3** Revised guidance, and the recently published Care and Support Green paper set out key themes (outlined below) that will require investment and development to ensure that councils are well placed to meet the challenges of and expectations facing the current system. All of this is consistent with the agenda set out in 'Putting People First' and is at the heart of our strategy for adult social care in Oxfordshire.

Universal services – the general support available to everyone within the community including transport, leisure, education, employment, health, housing, community safety and information and advice.

Early Intervention and prevention - helping people live at home independently, preventing them from needing social care for as long as possible and potentially creating future cost efficiencies.

Choice and control – giving people a clear understanding of how much is to be spent on their care and support and allowing them to choose how they would like this funding to be used to suit their needs and preferences.

Social capital – fostering strong and supportive communities that value the contribution that each of their citizens can make.

- 2.4** Emphasis now is on the overall wellbeing of the community and the development of universal services, which will be vital to those who do not meet the eligibility criteria but who still need a certain level of support to maintain their independence and wellbeing.

3. Aims of the revised guidance

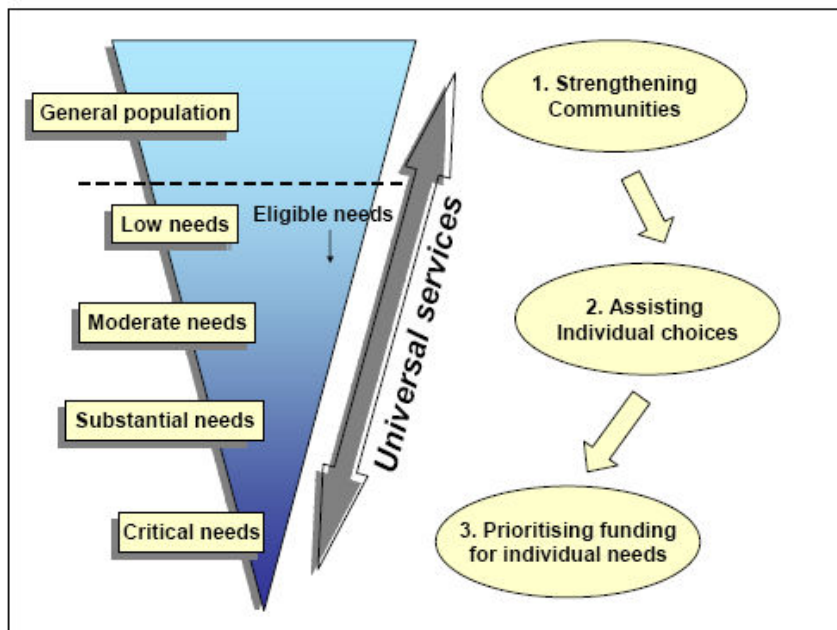
- 3.1** The aim of the guidance is to assist local authorities to establish eligibility criteria that are fair, transparent and consistent, accounting for the needs of their local communities as a whole and individuals' need for support.
- 3.2** The revised guidance also aims to broaden the eligibility criteria and ensure that it is firmly situated within the context of personalisation of social care and generally within a broader theme of public service reform.
- 3.3** There is recognition that the Care and Support Green paper out for consultation may have potential implications for how social care eligibility is determined in the future, including reconsideration of the balance between national and local responsibilities for assessment. The revised guidance reflects on the current responsibilities held by Local Authorities and is therefore an interim measure.
- 3.4** Councils need to base their approach on achieving outcomes rather than providing specific services, and people with similar needs should expect similar outcomes. The assessment should be based on the individual's needs, following which planning for support should be undertaken to identify what outcomes the individual would like to achieve, and how they might use the resources available to them to do so.
- 3.5** Councils should ensure that in applying eligibility criteria to prioritise individual need they are not neglecting the needs of their wider population. Eligibility should be explicitly placed within a much broader context whereby public services are well placed to offer **all** individuals some level of support.

3.6 The guidance expects the assessment process to pay heed to various current legislation when assessing individuals' needs (Mental Capacity, Carers and Disabled Children Act 2000, s71 of the Race Relations Act 1976, s49A of the Disability Discrimination Act 1995, S76A of the Sex Discrimination Act 1975, The Children Act 1989, to name a few)

4. Eligibility for social care

4.1 Councils need to consider the needs of their wider population and to put into place strategies which will reduce the number of people entering the social care system in the first place. Before determining eligible needs councils should consider whether an individual might benefit from a short period of re-ablement or intermediate care before an assessment of longer term need is undertaken.

4.2 The most effective community support systems are where all citizens can expect some level of support and those with the greatest needs access additional help.



5. Setting eligibility criteria

5.1 Councils' responsibilities in providing community care services are principally set out in the following legislation:

- National Assistance Act 1948
- Health Services and Public Health Act 1968
- Chronically Sick and Disabled Persons Act 1970
- National Health Service Act 2006
- Mental Health Act 1983.

5.2 In setting eligibility criteria, the local authority should take account of local resources, local expectations and local costs.

5.3 Although the final decision remains with the council, they should provide clarity and transparency and consult with service users, carers and other relevant local bodies. Eligibility criteria should be made readily available and accessible to service users, the public more generally, and other relevant local bodies. Councils should review their eligibility criteria in line with usual budget cycles.

6. Determining eligibility in respect of individuals

6.1 The council has a duty to carry out an assessment of a person's need for services under the Community Care Act 1990. Councils must not exempt any person who approaches or is referred to them for help from the process to determine eligibility for social care, regardless of their age, circumstances or the nature of their needs. (Councils should avoid being too rigid in their categorisation of "client groups" – needs should be considered on an individual basis).

6.2 As part of the assessment, information about an individual's presenting needs (not their eligible needs) should be established and recorded. 'Presenting needs' require individuals to be assessed and not screened out of the assessment process. The Audit Commission and the Commission for Social Care Inspection (CSCI) found that local authority officers were deciding which category of eligibility people fell into before offering them an assessment. The NHS and Community Care Act 1990 require that, having conducted the assessment, councils must decide whether the person's needs call for the provision of any community care services. Councils can then use the eligibility framework to identify eligible needs, according to the risks to independence and wellbeing both in the intermediate and longer term.

6.3 Once eligible needs are identified these needs should be met in a way that supports the individual's aspirations and the outcomes they want to achieve. There is no proposed change to the four eligibility bands: Critical, Substantial, Moderate and Low.

Critical - when

- life is, or will be, threatened; and/or
- significant health problems have developed or will develop; and/or
- there is, or will be, little or no choice and control over vital aspects of the immediate environment; and/or
- serious abuse or neglect has occurred or will occur; and/or
- there is, or will be, an inability to carry out vital personal care or domestic routines; and/or
- vital involvement in work, education or learning cannot or will not be sustained; and/or
- vital social support systems and relationships cannot or will not be sustained; and/or
- vital family and other social roles and responsibilities cannot or will not be undertaken.

Substantial – when

- there is, or will be, only partial choice and control over the immediate environment; and/or
- abuse or neglect has occurred or will occur; and/or
- there is, or will be, an inability to carry out the majority of personal care or domestic routines; and/or
- involvement in many aspects of work, education or learning cannot or will not be sustained; and/or
- the majority of social support systems and relationships cannot or will not be sustained; and/or
- the majority of family and other social roles and responsibilities cannot or will not be undertaken.

Moderate – when

- there is, or will be, an inability to carry out several personal care or domestic routines; and/or
- involvement in several aspects of work, education or learning cannot or will not be sustained; and/or
- several social support systems and relationships cannot or will not be sustained; and/or
- several family and other social roles and responsibilities cannot or will not be undertaken.

Low - when

- there is, or will be, an inability to carry out one or two personal care or domestic routines; and/or
- involvement in one or two aspects of work, education or learning cannot or will not be sustained; and/or
- one or two social support systems and relationships cannot or will not be sustained; and/or
- one or two family and other social roles and responsibilities cannot or will not be undertaken.

6.4 Councils should prioritise needs that have immediate and longer term critical consequences for independence and wellbeing, ahead of needs with substantial consequences.

6.5 Councils should consider that people at all levels of need, regardless of whether they have eligible needs or fund their own care, may be able to reduce or even eliminate their dependency on social care with the right type of tailored intervention.

7. Applying eligibility criteria fairly and consistently

7.1 Presenting needs should be explored with individuals to identify what outcomes they would like to be able to achieve against the social care outcomes of:

- exercising choice and control
- health and wellbeing
- personal dignity and respect
- quality of life
- making a positive contribution
- freedom from discrimination
- economic wellbeing

As well as the seven outcomes the assessment must consider freedom from harm, abuse and neglect, taking wider issues of housing and community safety into account.

7.2 Councils should not assume that low level needs will always be equated with low level services or that complex or critical needs will always require more complex/costly services. Needs should be considered over a period of time and not just at a single point and the benefit of a period of re-ablement or intermediate care should always be considered.

7.3 In addition to people with long term or fluctuating conditions other groups of people with disabilities should not be overlooked – e.g. blind and partially sighted; autism spectrum conditions. People who access specialist services (Mental health /Learning Disabilities) should also expect to receive an assessment of eligibility for mainstream support.

8. Response to first contact and assessment

8.1 Decisions about who gets local authority support should be made after an assessment which should be proportionate to the individuals' presenting needs and circumstances. In emergency/crisis situations councils should provide an immediate response. After this initial response, more information should be given as to when a fuller assessment will follow, and that support may be withdrawn or charged as a result of this assessment.

8.2 After an assessment of presenting needs a financial assessment should be carried out promptly and written information about any charges payable and how these have been calculated should be sent to the individual.

8.3 Where eligible support needs have been identified an appropriate support plan can then be put together with the individual.

8.4 From their very first contact with the council, the individual must be given as much information as possible about the assessment process, which must be collaborative and transparent, and understandable for the person seeking support.

8.5 Information about access, eligibility and social care support must be available in a range of formats and languages.

8.6 Councils have a duty under the Community Care Assessment Directions 2004 to consult the person being assessed and their carers where appropriate; to take all reasonable steps to reach agreement and to inform the person about the payment (if any) that they will be required to contribute. (Many recipients of adult social care make a financial contribution to pay for those services). The assessment

process should be person centred throughout, as individuals are the experts on their own situation. Councils may wish to consider those who can do an assessment of their own needs prior to the council doing so.

8.7 Assessment should be co-ordinated and integrated across local agencies relevant to the agencies concerned. (The Government has recently consulted on the Common Assessment Framework (CAF) with the aim of promoting more person-centred assessments and the sharing of assessments.

8.8. When a service user moves from one area to another account should be taken of the previous assessment. If the new council decides something substantially different they should produce a clear and written explanation to the service user.

9. Carers

9.1 During assessment no assumptions should be made about the level or quantity of support available from carers. Under the Community Care Directions 2004, carers are entitled to be consulted during assessment if councils think this appropriate. This act also sets out that councils should take into consideration whether or not the carer is undertaking or wishes to undertake education, training or leisure activity and the impact that their caring role might have on this. Councils may consider providing support to a carer to meet their own needs.

10. Assisting individuals not eligible for social care support

10.1 The Commission for Social Care Inspection (CSCI) now the Care Quality Commission (CQC), in their annual report on the state of adult social care highlighted the tendency of some local authorities to regard people funding their own care as outside of their responsibility. Furthermore the report identified a common perception that people funding their own care are capable of making their own arrangements, when in fact they may be highly isolated and vulnerable. The revised guidance emphasises that councils must consider how they work to support high quality outcomes for all their citizens, whether they are funding their own care or not.

10.2 Where councils do not offer direct help following assessment, or where support is withdrawn following a review, the reasons for such decisions should be put in writing. If individual circumstances change then a re-assessment should happen.

10.3 The CSCI report "*Cutting the cake fairly*" noted that 35% of people who don't meet eligibility criteria struggle to manage without help and councils need to intervene.

10.4 Councils need to consider how to support and address the needs of the wider population and how to support the development of universal and open-access services. 'Putting People First' identified the need for 'a universal information, advice and advocacy service for people needing services and their carers irrespective of their eligibility for public funding'.

11. Review process assessment of needs

11.1 Service users with similar eligible needs should receive support packages that are capable of achieving broadly similar outcomes. Person-centred support planning should be considered for those who privately pay and who are seeking informal support to assist.

11.2 Councils should ensure that there is an effective risk management strategy in place that is embedded at every level of the organisation to ensure that the assessment process offers choice and control to the individual.

11.3 Reviews should focus on outcomes rather than services and should follow the assessment process. Frequency of reviews should be proportionate to the circumstances of the individual but there should be an initial review within 3 months. Thereafter, reviews should be at least annually. They should be carried out flexibly and with regard to what works best for the individual. Adults lacking capacity are likely to need more frequent monitoring arrangements than other service users. The process should be simple and avoid duplication or unnecessary amounts of paperwork or visits.

11.4 For mental health users, councils should consider synchronising reviews for social care with the Care Programme Approach Framework.

12. Commissioning

12.1 Effective commissioning is vital to the success of social care reform and the personalisation of care services. The Government's expectation is that by 2011 all councils will have:

'a commissioning strategy, which includes incentives to stimulate development of high quality services that treat people with dignity and maximise choice and control whilst balancing investment in prevention, early intervention/re-ablement and providing intensive care and support for those with high-level complex needs' (Transforming adult social care LAC(DH) 2009)

12.2 Some services will be commissioned for people that meet the eligibility criteria whilst others will be commissioned to meet the needs of the wider population and should be made available to all regardless

of their eligibility. Extending choice and control through personal budgets must be accompanied by commissioning strategies that put people at the centre and services should be more flexible and outcome-focused.

- 12.3** All councils and Primary Care Trusts (PCTs) must have commissioning plans for the areas of service they are responsible for which should be diverse and innovative, have a greater focus on prevention, early intervention and support for self-care. The sharing of strategic needs information using the Joint Strategic Needs Assessment (JSNA) produced jointly by the Primary Care Trust and the local authority will assist in commissioning.

13. Effective service and market development

- 13.1** At the heart of the vision in the Green Paper and Putting People First is 'a locally agreed approach utilising all relevant community resources especially the voluntary sector so that prevention and early intervention and enablement become the norm'.

- 13.2** CSCI showed that raising the eligibility thresholds without putting in place adequate preventative strategies often leads to a short term dip in the number of people eligible for social care followed soon after by a longer-term rise. Eligibility criteria should not be used to restrict the number of people receiving support to those with the highest need, they should adopt a strong preventative approach embedded at every level of the social care system. The approach suggested includes:

13.3 *Place shaping and promotion of wellbeing through universal services*

- 13.3.1** Universal services extend beyond the parameters of social care and only a minority of social care services will be funded through social care. Many will be reliant on community based provision such as luncheon clubs, physical recreation and leisure pursuits, community safety, housing related support and transport.

- 13.3.2** Services work best when cross Directorate and other stakeholder working is in place to ensure that everyone can get the information, advice and support needed to be able to access them at the right time and in the right place.

13.4 *Targeted interventions*

- 13.4.1** Councils are encouraged to target people with specific health conditions, or those with low level support needs, for appropriate targeted interventions using predictive tools. Investment in re-ablement services, therapy and intermediate care may also be advantageous as will extending technology services.

13.5 *Integrated services and joint planning*

13.5.1 The Social Care Green paper sets out an ambition for individuals to be placed at the centre of a system which brings together health, housing and social care services and facilitates better integration between social care and other public services.

13.5.2 It is suggested that many components of a council's preventative strategy can be implemented without significant additional resources; others will require the reshaping of existing resources, for example, through the Social Care Reform Grant. Councils should publish their eligibility criteria and their strategy for prevention and early intervention addressing the issues above.

13.6 Training and development activities should be put in place to enable an organisational culture that promotes independence, choice and control and to ensure that in every individual case the application of eligibility criteria is fair, consistent and transparent. Staff undertaking assessments should be sufficiently skilled in understanding people with a range of needs so that specific groups are not marginalised. Assessment staff should be able to demonstrate an ability to work towards individual outcomes rather than a service led approach.

13.7 Fair determination of eligibility for social care should be monitored and audited.

Once monitored and audited it should be shared with interested parties including service users, elected members and other local agencies. It should feed into the JSNA and commissioning strategies.

The CQC, in conjunction with other inspectorates, as part of the Comprehensive Area Assessment process, will check on trends in the setting of eligibility bands by councils and how this impacts on people. Continuing the work of CSCI they will check the overall balance and impact of the range of support that is available and in particular, look at universal accessibility and gauge the quality of life being achieved in areas.

14. High level impact of the revised guidance

14.1 Implementation of the revised guidance will have some impact in Oxfordshire. Whilst there are no plans to revise the local eligibility, the fact that we have to implement and consider the needs of the whole population, means that there will be changes required in some current practice around assessment, sign posting and recording. Outlined below is the high level impact of implementation. At this stage further impact has not been analysed and costed, as the guidance is at consultation stage.

- 14.2** All citizens can expect some level of support from their Local Authority whether they are FACS eligible or not. This will result in more emphasis on defining what universal services are provided locally and how they are accessed.
- 14.3** There will be much more emphasis on early intervention and prevention - including shifting funding to these services, as these should no longer be seen as add ons but mainstream activities.
- 14.4** Targeting of specific communities with specific health conditions. This will require skills in the use of predictive tools and really well developed understanding of the needs of local population (JSNA). Further investment in re-ablement services, therapy, intermediate care and extending technological services, including telehealth is, strongly promoted.
- 14.5** The assessment process should happen first, and should include carers. A financial assessment should happen promptly after the assessment. There will be a need to better resource initial contact so that we are able to provide an immediate response, proactive sign posting and follow up and support in emergencies and crises.
- 14.6** All of these developments are consistent with the strategies that are already in place.

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