

CSA response to the Care Act guidance on care and support planning and reviews

The Care & Support Alliance

The Care & Support Alliance was set up in July 2009. It is a consortium of over 70 organisations that represent and support older and disabled people, including disabled children, those with long-term conditions and their families, and campaigns to keep adult care funding and reform on the political agenda.

Overall comments

The CSA broadly welcomes the draft guidance on care and support planning and reviews. We are very positive both about the level of engagement through the reference group pre-publication and the development of the guidance itself throughout the process.

We are particularly pleased to see the inclusion of the following points:

Care and support planning

- Expanded content around the involvement of the person and the ownership of the plan (throughout the document, but particularly in 10.30-10.35)
- Greater detail in relation to identifying the people that the adult wants to be involved in the plan (including reference to a prompt in the initial stages of planning under 10.30)
- Strengthened wording in relation to the role of advocacy in the care and support planning and review process, including clarification about the circumstances in which an advocate may be needed (10.33)
- Clear statements on planning for fluctuating needs (10.25 and 13.33), supported by a case study
- Reference to information being provided in an accessible and meaningful way for the person, with adequate time to consider options (10.15).
- Acknowledgement of the importance of support that promotes mental and emotional wellbeing and builds social connections and capital (10.22)
- Reference to the potential benefits of an anticipated review date being included in the care and support plan (10.23)
- Recognition that the confidence of the adult shouldn't be a barrier to genuine involvement and that support should be put in place to facilitate this (10.31/10.32).

Review

- Clarification about the distinction between review, revision and assessment -although we would like to see this strengthened further, as set out below
- Clearer overview of the 3 different routes to reviewing a care and support plan – planned, unplanned and requested (13.12)
- Recognition that the review should not be used to arbitrarily to reduce the level of a person's personal budget (13.4 and 13.32)
- Useful focus on proportionality and flexibility in relation to small changes to how needs will be met (13.6)
- Greater detail about the broad elements that a review should cover (13.11)
- Recognition of the role of other professionals in requesting a review (13.10)
- Strengthened wording on putting interim packages in place where there is an urgent need to intervene and the importance of planning to identify any potential emergency needs upfront (13.33)

Additional comments

Care and support planning

Reference back to the wellbeing clause

There are a number of areas (including 10.1, 10.5, 10.13, 10.24, 10.45) in which the existing provision under clause 1 (in relation to control, the person being best placed to judge their own wellbeing, family, friends and relationships and the person's views, wishes, feelings and beliefs) could justify the current wording of 'should' being changed to a 'must'.

As a minimum, we would like to see 'where this is reasonable' removed from 10.13.

Reference back to Clause 4

Based on the provision under 4(4), we would like to see 'should' in 10.12 become a 'must'.

Timescales for review

For consistency we would like to see some of the wording from the review section of the guidance (13.31) reiterated in 10.23: 'It is the expectation that authorities should conduct a review of the plan no later than every 12 months, although a light-touch review should be considered 6-8 weeks after the agreement and sign-off of the plan and personal budget.'

Involving the person

People who lack capacity to make decisions can all too often miss out on having other people involved, including people who know them well and health and social care professionals with expertise (e.g. speech and language therapists, physiotherapists etc.) to ensure the best possible decisions are made about how their needs will be met.

Consequently, we would like to see the following additions under 10.30.

'or, where the person lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the welfare of the person *or who would be able to contribute useful information*'

'In practice, local authorities should give consideration to include a prompt to the person during the initial stages of the planning process to ask whether there is anyone else that the person wishes to be involved. *Where the person lacks capacity, the local authority should make a best interests decision at this stage about who else should be involved.*'

Making information available to a person's advocate

In 10.67, the local authority 'must' give the person a copy of the plan, and their advocate, if they have one. Paragraph 10.11 states that the person must receive a written explanation where the local authority is not required to meet needs, but the current wording is only 'should' in relation to sharing this information with the advocate. We would like to see this wording amended.

Planning for people who lack capacity and minimising and authorising deprivation of liberty (DOL) for people who lack capacity

Given the Supreme Court judgement on this issue, we would like to see sections 10.39 – 10.36 and 10.47 – 10.52 and cross reference to chapter 7 of the guidance.

Sign-off of the plan

The current drafting does not make it explicitly clear who is responsible for the sign off of the plan. Given that it is the local authority's responsibility to involve the adult in the preparation of the plan and ensure that their eligible needs are met, it would follow that they are responsible for the sign off of the final plan and the current drafting implies that this is the case.

It would therefore be useful to clarify this within the guidance (perhaps at the start of 10.63) to avoid misinterpretation and a conflict of interests where third parties (e.g. advocates) had been involved in the development of the plan.

That said, we agree with the sentiment of the current drafting that sign off procedures must remain simple and non-bureaucratic, and not act as a disincentive to people playing a greater role in the development of their own plan, with or without support from a third party.

In relation to 10.65 specifically, we would like to see it clarified that the panel must be appropriately skilled and trained. This would reflect the currently provision under the assessment guidance.

Although it mentions the involvement of an expert assessor explicitly, even where an expert assessor wasn't involved in the assessment, it is still important that suitable expertise is brought in to be on the panel or to support the panel if needed. This is particularly crucial for situations where people have complex or multiple needs.

The following resource might be of interest in relation to this issue:

Involve Me: involving people with profound and multiple learning disabilities in decision making
www.mencap.org.uk/involveme

Sharing the information in the plan

Although the recognition of the value of sharing information is welcomed, it would be good to amend this wording to make it clear that the local authority should already have been working with other professionals and supporters throughout the care and support planning process, where there are others already involved in the adult's care and support.

Clarification about the freedom of choice in relation to accommodation

It would be useful to make the draft wording clearer that the adult is free to choose which type of accommodation would suit them best, and that no assumptions about the suitability of residential care should be made.

References

It would be great to remove the reference to the 2013 Principles of care and support planning (<http://bit.ly/IKqjp5>) as this version of the document has now been superseded by the final guide, which is already included at the top of the list.

Review

Greater clarity between care and support planning, review and (re)assessment

It will be important to ensure that the guidance sets a clear boundary between assessment and care and support planning and review.

For example, a person may meet the eligibility criteria but is still responsible for arranging their own care, due to means testing. In these circumstances, the person could ask the local authority to 'arrange care' for them, but it is currently unclear exactly what they will be charged for, and what constitutes assessment or re-assessment, which will continue to be free.

In this context, review (if it is not reassessment), might be seen as part of a brokerage function and therefore chargeable. For this reason, as per the CSA response on assessment, we believe that guidance be clearer about when a review is actually a reassessment and should make clear that reassessments must comply with assessment regulations.

Building on this, there is a wider point about the role of assessments and review where a person's needs are anticipated to change over time. Connecting back to 6.60 in the assessment guidance, assessments can either play a role in anticipating changes to need over a defined period of time (e.g.

until a planned review) or can recognise that needs might be inherently unpredictable and that resources should therefore be more focussed on frequent review over time.

The second of these approaches is particularly relevant in relation to hospital discharge assessment. In some cases it might not be possible to establish the person's needs until their health has stabilised sufficiently to enable discharge, until they have had a period of re-ablement or they have experienced living with a new level of support needs. Assessment should therefore be a process rather than a one off event. Consequently, guidance should make it clear that assessment should attempt to anticipate risk and changes in need where possible up to the next planned review.

Involvement of the person

Given that local authorities are required to involve the person in the review process, it would be good to see the wording 'where feasible' removed in 13.2.

Connection to other plans

Although it is great to see the connection to other plans in 13.14, health plans will not necessarily only be reviewed annually. Discussions in health are increasingly moving closer to the anticipated review date model, with the person and professional deciding together when a review may be useful in relation to their specific circumstances. Guidance currently in development is likely to reflect this position.

It would also be useful to cross reference to the integration and cooperation clauses here, to stress that it is the process, not only the output that should be coordinated to promote the well-being of the individual and prevent and delay the development of future needs.

Method of review

Given the local authorities' responsibility to involve the person, we would like to see the wording 'wherever reasonably possible' removed from 13.16.

Lead professional

Similar to the reference to a 'lead organisation' in the care and support planning guidance (10.60), it would be useful to understand if the role of the 'lead professional' is/will be expanded in further guidance and if and how this relates to the 'named clinician' and 'care coordinator' roles set out in health (which is due to be developed further in the next steps of the Transforming Primary Care agenda).

Duty to request a review

We generally welcome the 'duty to request a review' in commissioned services set out in 13.17 as this should ensure that potential risks are picked up early, if carers are not present. However, it will be important that the person is involved in these discussions at the earliest stage possible to ensure that they still feel they have control over their care and support.

Timeliness of reviews

We know that often staff put extra support in place because they know the person needs it and they have a duty of care, but this means that it can often take months for the local authority to respond to requests for a review, carry out a review and agree to fund any extra support needed.

To respond to this issue we would like to see the following additions:

'The local authority should listen to requests for reviews and act promptly' (at the end of 13.17)

'Commissioners should be reviewing needs on an ongoing basis. A review should not just be seen as something that is done every 12 months. Commissioners should listen to requests for reviews and act promptly' (at the end of 13.31).

Providing information in advance of the review

In relation to 13.32, it might be useful to reiterate the importance of sharing accessible information in advance of the review and the adult having sufficient time to consider the sorts of questions set out on 13.11, with carers and/or other professionals or supporters, where appropriate.